

Williams Services, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 11-CA-13674-1 and 11-CA-13852

April 11, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On November 26, 1990, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed an exception and a supporting brief. The General Counsel filed a motion to strike the Respondent's exception.¹

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 exception and brief and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

¹The General Counsel has moved to strike the Respondent's exception on the ground that it does not comply with the requirements of Sec. 102.46 of the Board's Rules and Regulations. We find that the Respondent's exception and brief together sufficiently designate the Respondent's points of disagreement with the judge's decision even though not fully in compliance with the literal requirements of Sec. 102.46. *Cincinnati Bronze*, 286 NLRB 39 (1987). Accordingly, the General Counsel's motion is denied. We, however, have considered the Respondent's exception and brief only as to the specific issues addressed in the brief, i.e., the 8(a)(3), (4), and (1) violations in the reprimands and discharge of Kitty Cadorette and the 8(a)(5) and (1) violation in the unilateral reduction of employees' wages.

The Respondent argues in its brief that its unilateral change in wages did not constitute a violation of Sec. 8(a)(5) and that it is unable to comply with the judge's recommended remedy for that violation because the Respondent lacks discretion over wages under the terms of its contract with the Navy. To the extent that the Respondent relies on the jurisdictional issues considered by the Board in *Res-Care, Inc.*, 280 NLRB 670 (1986), Member Devaney finds that the argument is untimely. The judge found that on December 27, 1989, the Respondent entered into a Stipulated Election Agreement in Case 11-RC-5648, involving this bargaining unit, in which it admitted that it was an employer subject to the Board's jurisdiction. The Respondent failed to contest the Board's jurisdiction either prior to the election or in its election objections, raising the matter only in a motion to dismiss the instant unfair labor practice proceeding approximately 4 weeks after the objections were filed in the representation case. Under these circumstances, Member Devaney finds that the Respondent has not timely asserted a lack of discretion over wages as a jurisdictional matter, and may not at this time raise that issue as a defense to the unfair labor practice finding. See *Ryder Student Transportation*, 297 NLRB 371 (1989); see also *Training School at Vineland*, 301 NLRB 217 (1991).

²The 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that Isaac Chisolm's name is incorrectly spelled in the judge's decision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Williams Services, Inc., Beaufort, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Patricia L. Timmins, Esq., for the General Counsel.
John W. Oxendine, Esq. (Oxendine & Associates, P.C.), of Norcross, Georgia, for the Company.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. Trial in this matter was held in Beaufort, South Carolina, on July 31 and August 1, 1990. On June 29, 1990, the Regional Director for Region 11 of the National Labor Relations Board (the Board), issued an order consolidating cases, consolidated complaint and notice of hearing (the complaint), based on unfair labor practice charges filed by International Association of Machinists and Aerospace Workers, AFL-CIO (the Union), on January 12, and amended on February 23, 1990, in Case 11-CA-13674-1 and on May 18, and amended on May 30, and June 18, 1990, in Case 11-CA-13852 alleging violations of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act).

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs.

Based on the entire record, on briefs filed by counsel for the General Counsel and counsel for Williams Services, Inc. (the Company), and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted that at times material here, the Company has been, and is, a Delaware corporation with a place of business located at the U.S. Navy United States Marine Corps Air Station in Beaufort County, South Carolina, where it is engaged in providing mess attendant services. The Company admits that during the 12-month period preceding issuance of the complaint here, a representative time, it provided services valued in excess of \$50,000 for the United States Government (Marine Corps) in Beaufort County, South Carolina. Notwithstanding these admissions, the Company denies its operations have a substantial impact on the national defense of the United States or that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Company, however, on December 27, 1989, executed a Stipulated Election Agreement in an underlying representation case (Case 11-RC-5648) in which it admitted both of the above denials. The Company did not demonstrate any changed or special circumstances nor does it contend it

has discovered any new or previously unavailable evidence that would require a reexamination of its earlier admission that it is subject to the Board's jurisdiction. I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.¹

II. LABOR ORGANIZATION

The parties admit, and I find, the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Union commenced an organizing drive at the Company at approximately midyear 1989. The campaign culminated in a Board-conducted election on February 6, 1990. The tally of ballots shows there were approximately 34 eligible voters and that number of ballots was cast, with 20 cast for the Union, 12 cast against the Union, and 2 ballots were challenged. On February 13, 1990, the Company filed timely objections to conduct affecting the results of the election and, on March 16, 1990, the Regional Director for Region 11 of the Board issued his Report of Objections. Thereafter, on April 6, 1990, the Board in an unpublished Decision and Certification of Representative certified the Union as the exclusive representative of the employees in the following appropriate unit:

All mess attendants employed by the Employer at its facility located on Marine Corps Air Station in Beaufort County, South Carolina; excluding all office clerical employees, all professional employees, guards and supervisors as defined in the Act.

I shall consider the complaint allegations essentially in the order dictated by the complaint.²

A. *The Independent 8(a)(1) Allegations*

It is alleged at paragraph 8, subparagraphs a, b, and c³ that the Company engaged in certain conduct violative of Section 8(a)(1) of the Act.

1. Alleged interrogation of employees

It is alleged at paragraph 8(b)⁴ of the complaint that Assistant Manager Terri Brown in mid-November 1989 interrogated employees concerning their union activities.

Mess Attendant Lorraine White testified Assistant Manager Brown talked to her about the Union as the two of them

walked along the Company's hallway to clock out either in late October or mid-November 1989. White testified:

[S]he approached me and she said Lorraine, now you can't tell me you don't know about the union that's going on and I said excuse me. She said you mean to tell me no one has approached you about the union and I said if I do, it's my business and I'm not going to say anything. She said you mean to tell me you can't tell me or you don't know anything else about it. I left it like that. I said I'm not going to answer it. We walked on and clocked out.

White said she had not engaged in any open union activity at the time of this conversation.

White was not cross-examined on the above portion of her testimony and although Assistant Manager Brown testified she was not questioned about the conversation. White was a believable witness and as such I credit her uncontradicted testimony set forth above.

I shall review this and other allegations of interrogation in light of the Board's decision in *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel Employees & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In *Rossmore House*, the Board held the lawfulness of questioning by employer agents about union sympathies and activities turns on the question of whether "under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act." The Board in *Rossmore House* noted the *Bourne*⁵ test was helpful in making such an analysis. The *Bourne* factors are as follows:

- (1) The background, i.e. is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g. did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e. how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of "unnatural formality"?
- (5) Truthfulness of the reply.⁶

Assistant Manager Brown is, and was at the time she questioned White, the second highest member of management at the company site involved herein. Assistant Manager Brown did not give White any valid or legitimate reason for questioning her about her union activities nor did she give White any assurances against reprisals if she responded to her questions. White had little, if any, opportunity, even if she had wished to do so, to have avoided Brown's questions inasmuch as Brown questioned her in the company hallway leading to the timeclock where White had to clock out. Assistant Manager Brown did not stop questioning White even after White told her "it's my business and I'm not going to say anything" rather she continued to explore whether White had engaged in any union activities. For all the above rea-

¹To the extent that its denial of jurisdiction is based on the fact it is a contractor subject to the Service Contract Act, such contention is without merit. First, the fact it is subject to the Service Contract Act is not something newly discovered nor previously unavailable to it. Second, the Board in *Ebon Research Systems*, 290 NLRB 751 fn. 5 (1988), held:

The fact that an employer is a contractor subject to the terms of the Service Contract Act does not mean . . . the Board will decline to assert jurisdiction over that employer.

²I will address the independent 8(a)(1) allegations supported by the testimony of Kitty Cadorette under the portion of this decision related to her discharge.

³Counsel for the General Counsel moved posttrial to amend out par. 8(d) of the complaint. I grant her unopposed motion.

⁴Subpar. 8(a) will be addressed in the portion of this decision related to the discharge of Cadorette.

⁵*Bourne Co. v. NLRB*, 332 F.2d 47 (2d Cir. 1964).

⁶The *Bourne* test has been cited with approval by various circuits. For a partial listing of those circuits see *Teamsters Local 633 v. NLRB*, 509 F.2d 490, 494 fn. 15 (D.C. Cir. 1974).

sons, I conclude the interrogation was coercive interference and as such violated Section 8(a)(1) of the Act as alleged in the complaint.

It is also alleged in paragraph 8(b) of the complaint that Manager Patricia Ford on or about January 10, 1990, interrogated employees concerning their union activities.

Mess Attendant Lisa Moore testified she became aware of union activity at the Company and attended a union meeting at employee Cadorette's home at Cadorette's request. Moore said that on January 10, 1990, she and fellow employees Kenneth Spencer, Sue Montgomery, and Sharon Simmons were in the breakroom "sitting at the table talking about meetings and stuff at the union" when employee Simmons stated, "No one had ever invited her to a meeting that all she heard was little bits and pieces." Moore testified Manager Ford "stepped in and asked me [Moore] had I ever attended a meeting." Moore told Manager Ford she had not although she had in fact done so.

Manager Ford testified at length but was not asked about the above conversation. Employee Simmons was called as a witness by the Company but was not questioned about this conversation. Moore, who is still employed by the Company, appeared to be testifying truthfully. Accordingly, I credit her uncontradicted testimony as outlined above.

I am persuaded Ford's questioning Moore constituted coercive interference and as such violated Section 8(a)(1) of the Act. The Company engaged in other violations of the Act as has already been and will hereinafter be set forth. Manager Ford, the top management representative at the facility, did not advance any legitimate reason for her inquiry nor did she give the employees any assurances against reprisals if they participated in union activities. Moore's untruthful reply indicates she was fearful of the consequences of admitting she had attended a union meeting. Ford was already aware of the union organizing drive and had no valid reason for the information she sought.

2. Alleged threats of pay cuts

It is alleged at paragraph 8(c) of the complaint that the Company threatened to cut the rate of pay for its employees if they selected the Union as their bargaining representative. In support of this allegation, counsel for the General Counsel relies on certain leaflets as well as a letter admittedly distributed to the employees at various dates between December 27, 1989, and February 6, 1990.

The first such document counsel for the General Counsel relies on is a letter that was sent to all mess attendants by Vice President Maggie Williams dated January 16, 1990. Williams' letter in pertinent part follows:

If you choose to join the Union, they will take \$.45 per hour out of your paycheck to pay for Union health insurance. This Union health insurance will be mandatory for all employees.

How will this effect you and your family? As a military dependent, you will be forced to pay \$.45 per hour for Union health insurance that you don't need. . . .

Are you willing to take a \$.45 per hour pay cut just so that you can have an insurance policy that you will never use and simply make the Union health fund rich?

One of the leaflets counsel for the General Counsel relies on is labeled "What Will Happen If You Vote For the Machinist Union?" One item listed on the Company's leaflet reads:

You are currently receiving an H&W supplement of \$.45 per hour in your pay checks, but if you vote in a union, the union will take that \$.45 for each and every hour out of your paycheck.

Another leaflet distributed by the Company labeled "Did You Know That?" contains the following:

Each and every month, the Machinist Union will take another \$.45 per hour out of your paycheck to be put in their insurance account.

Another leaflet distributed by the Company labeled "Differences Between Williams Services and The Union" in part reflects the following:

<i>Williams Services</i>	<i>The Union</i>
Pays you an additional .45 per hour for you to use for insurance or for any other purpose which you desire.	Does not give you a choice, they will take .45 per hour out of every pay check and put the money into the Union Health Fund.

Union Grand Lodge Representative William Camp testified, without contradiction, that the Union at no time material herein had any mandatory health and welfare or medical insurance plans.

It is undisputed that the Company at that time paid its employees 45 cents per hour above their hourly wages to purchase health insurance.

I agree with counsel for the General Counsel that the references to the loss of 45 cents per hour of additional benefits constitutes unlawful threats to cut the employees wages if they selected the Union as their bargaining representative.

3. The warnings to, and discharge of, Cadorette

Counsel for the General Counsel contends the Company discharged Cadorette on January 9, 1990, because of her activities on behalf of the Union and because she participated on December 27, 1989, in the Board hearing in the underlying representation case (Case 11-RC-5648). Counsel for the General Counsel contends the reasons advanced by the Company for Cadorette's discharge were pretextual and that she was treated in a disparate manner. The Company, on the other hand, contends Cadorette "was discharged for poor work performance and insubordination." The Company argues the government failed to meet its burden of proving "that Williams Services had any discriminatory intent" in discharging Cadorette.

a. *The Company's overall mission and Cadorette's duties*

The Company serves three meals per day, 7 days per week to military personnel (Marines) at the United States Marine Corps facility in Beaufort County, South Carolina.

Cadorette was employed by the Company from December 15, 1988, until her discharge on January 9, 1990, as a mess attendant. Although the employees are generally classified as "mess attendants," the evidence establishes they are assigned to specific jobs as in the "salad room" as "cashiers"

in the “scullery,” “the pot shack” as “line servers,” “bussers,” in the “pastry” or preparing “box lunches” and as a “truck driver,” “utility,” or “maintenance” employee.⁷

Cadorette’s most recent assignment (from November 1989 until January 9, 1990) was as a “scullery” employee under the supervision of Roxanne Cole. Cadorette was paid, as were all other mess attendants at the time, \$6.50 per hour plus 45 cents per hour for health and welfare benefits. Cadorette described her “scullery” duties as follows:

Basically, we took and loaded dirty dishes in a dish machine. Took and unloaded and put them in carts. And had taken them out, set them up for the other employees to take and use in their job areas. We had taken and cleaned, broke down the dish washing machine. Which consisted of taking and pulling out pipes, cleaning them. Taking out the drain racks, cleaning that. Rinsing down the machine. We’d at least once a week, lime away it.

. . . .

We’d take and put the machine back together and set it back up for the next meal.⁸ Finish cleaning, sweep, mop, whatever had to be done.

Cadorette testified employees were never told what time to “break down” the dish machine but that it was customarily done after all dishes for each meal had been “run” through the machine. She said this was normally 30 minutes after each meal closed.

The Company utilizes approximately three “bubble machines”—plastic dome type machines—from which “juice, tea or fruit punch” drinks are dispensed. These “bubble machines” are washed three times per day. According to Cadorette, the “scullery” employees were not responsible for cleaning the “bubble machines” but rather the “bussers” performed that task. Cadorette said the “bubble machines” were sometimes hand washed in the “scullery” area while at other times the “bubble machines” were placed in the dish machine and washed in that manner. Cadorette said the employees were never told they could not wash the “bubble machines” in either of the ways just described.

b. Cadorette’s union activities

Cadorette first began to talk with her fellow workers about union representation in June 1989. After ascertaining there was an interest in representation, she contacted International Union Representative Camp. The Union held its first organizing meeting at Cadorette’s apartment on July 1, 1989. Cadorette acted “basically [as] the go-between” “the employees” and the Union regarding “any questions” the employees had or information they sought. Cadorette testified she solicited employees to sign “those cards . . . used to . . . file a [petition . . . for an election.” Before the Union filed its representation petition with the Board,⁹ Cadorette asked her supervisor, Roxanne Cole, and another supervisor,

Leroy Foulks to sign union cards. Cadorette served on the Union’s in-plant organizing committee.

After the Union filed its petition in November, the Board set a hearing on the petition for December 18, 1989. International Union Representative Camp told Cadorette and another employee (Chisolum) they would be needed to assist the Union at the representation hearing. The representation hearing was postponed from December 18 until December 27, 1989. Camp told Cadorette and Chisolum they would be needed at the hearing on the new date. Camp caused a mailgram to be sent to the Company’s attorney on December 21, 1989, requesting that the above two employees be released from work on December 27, 1989, at 9:30 a.m. to attend the Board hearing.

Cadorette reported for work as usual on December 27, 1989:

I got there about 6:00 that morning. When I went in there, I had told Roxanne, because she was the supervisor for that day. I said, “Roxanne,” I said, “I have a meeting at 11:30 with the Union people and the Board agent and Williams Services.” And I said, “I have to be there and I need off.” I said, “I don’t know if I’ll be back to work or not.” I said, “It depends on what time the meeting gets done with.”

So, after I got done talking to her I posted a note on the board in Pat’s office,¹⁰ because Roxanne had unlocked the door for me to go clock in. I had posted the note up on the board stating that I needed to get off at 9:30, which was my break time, to go and attend to that meeting and I didn’t know if I would be back that afternoon.

Cadorette testified Supervisor Cole told her she would “get someone to replace me.” Later that morning, Cole told Cadorette she had gotten mess attendant Connie Jenkins to replace her.¹¹

Cadorette testified she had a conversation with Manager Ford later that morning:

It was right before break, because I was cleaning the sink. She had come in there and had told me that—she asked me if I could cancel my meeting. I told her that there was no way that I could take and cancel my meeting because it had been cancelled before. And she said that she was short of employees and that she didn’t think that she could get somebody to replace me.¹²

And I said, “Well, I’m sorry, but I can’t cancel it.”

And she said, “Well, I’ll get back with you, then, on that.”

Cadorette testified Manager Ford never got back with her that morning.

Manager Ford testified:

¹⁰ Cadorette said she posted the note in Manager Ford’s office because Ford had requested employees give her 3 to 4 hours’ notice if they were going to be off from work.

⁷ The descriptions of the various jobs as well as the spellings for those descriptions are as utilized by the parties.

⁸ Cadorette stated it took approximately 45 minutes to an hour to “break down the dish machine,” clean it, and put it back together.

⁹ The Union filed its representation petition on November 30, 1989.

¹¹ Supervisor Cole was not called to testify. Manager Ford who did testify, did not specifically dispute the actions attributed to Cole by Cadorette.

¹² Cadorette testified that at the time Ford spoke with her, Supervisor Cole had already said she had Jenkins to replace her.

I came to work that morning [December 27, 1989] and there was a note up on the board that Kitty [Cadorette] . . . needed to leave after she finished her job.

I looked at her note and there was another note up there also about some other people who had already put in time or helped Kitty, so then I went back and I talked to Kitty first. She was back in the dish room over by the sink and I said, Kitty, I'm not going to be able to let you off, because I already got three (3) people out and I'm going to be short, so after break I'm going to need you to come back and then Kitty said that she had an appointment. She didn't tell me what it was. She just said she had an appointment that she had to go to, so then I asked her if by chance she could change it and then she said no, she couldn't change it, so then I said well, I'm not going to be able to let you off. I will need you to come back after lunch, because we're going to be short already, because someone else had already scheduled stuff ahead of her, so then Kitty said okay, I'll be back after break, so then I didn't get nobody in her place, because she said she was going to come back after break.

To the extent that Ford's and Cadorette's testimony conflicts regarding the morning hours of December 27, 1989, I credit Cadorette's testimony. First, she impressed me as a sincere and honest witness. The actions she attributed to Supervisor Cole about getting a replacement for her were undisputed. I am persuaded Cadorette did not just tell Manager Ford she had an appointment that morning as testified to by Ford. I am persuaded she informed Ford about the nature of the meeting because she had made the specific need for her absence known to Supervisor Cole. Also Manager Ford knew about the representation hearing that morning because she attended the hearing. I am convinced Cadorette did not tell Ford she would return to work after her break because Cadorette knew at that time that Supervisor Cole had already gotten employee Jenkins to replace her.

c. The Beaufort County Courthouse meeting

Cadorette attended the representation hearing at the Beaufort County Courthouse on December 27, 1989. It is undisputed that Union Representatives Camp, Devers, and Briggs also attended for the Union along with employees Chisolm and Foulks. Attorney John Oxendine, President Freddie Williams, Vice President Maggie Williams, and Manager Ford attended for the Company. The meeting was presided over by an agent of the Board. The Board agent urged and, after approximately 3 to 4 hours, the parties agreed, to a "Stipulated Election Agreement." In arriving at the agreement, Cadorette and the Union's representatives utilized, among other things, a multipaged work schedule¹³ Cadorette brought to the hearing. According to Cadorette, the Union showed

¹³Cadorette described the schedule as:
It looked like a photostatic copy.

. . . .
I guess it was between five and seven pages. It had people's names, Sunday through Saturday and the hours people had worked. I had taken and scratched off and made marks on it because of people being terminated or quitting or other reasons. I had written on the back of the paper. Made notes for myself.

the schedule to the Board agent who in turn showed it to the Company's attorney. The Company contended the schedule was one of its "original schedules." Cadorette told them it was not that she was the one who had written on the photostatic schedule in ink.

The five-page schedule in question was received in evidence and appears to be a photostatic copy with employees' names, the days of the week, and the hours employees are, or were, scheduled to work. Manager Ford testified that when she saw the schedule at the hearing she told Vice President Williams it was one of the items that had been missing from her office.¹⁴ Manager Ford testified the red ink markings on the schedule were ones she had made but that other inked-in (blue) markings had been made by someone else. Manager Ford said she prepared the original of the work chart in question and kept a copy in her office for reference when changes needed to be made or employees needed to be called in for work when someone was absent for whatever reason. She said the schedule in question covered approximately 6 months. Ford said she made copies from the original of the schedule and posted one such copy on the outside door to her office. She said she also gave a copy to her assistant manager and to each of her supervisors.

Manager Ford asked Cadorette (and Chisolm) twice during the representation hearing to return to work because they were needed on the job. Ford first asked at 11:59 a.m. and again at 12:36 p.m. Neither Cadorette or Chisolm left at the times requested. International Union Representative Camp testified, "I told them both that it was necessary for them to remain [at the courthouse] until the hearing was finished because we absolutely needed them to help argue the schedule if it was necessary to go on the record."

Cadorette returned to work at approximately 1:34 p.m. and worked alongside her regularly scheduled work partner Regina Allen and her replacement Connie Jenkins. She worked in the "scullery" until Assistant Manager Brown moved her to the "pot shack." Later that afternoon, Manager Ford told Cadorette to report to the office that Vice President Williams wanted to meet with her.

d. The December 27 meeting at the Company

Cadorette reported to the office as ordered where President Williams, Vice President Williams, Manager Ford, employee Sharon Simmons, and Attorney Oxendine had already assembled. Cadorette asked fellow worker Normita Anderson to join her for the meeting. According to Cadorette, the meeting lasted for approximately 45 minutes. She testified:

They [Vice President Williams and Attorney Oxendine] asked me where did I get it [the schedule] and I told them I didn't really know at that time. That someone had given it to me. When they gave it to me it was folded and I showed them how it was folded. They kept asking me that. They asked me if I knew that the document had been stolen and I told them, no, that I did not know it.

He [Attorney Oxendine] said, "Well, did you know that anything that has been stolen out of this office?" I said, "No, I didn't know."

¹⁴Ford testified she discovered that certain items were missing from her office in mid-November 1989.

They just kept questioning me and questioning me. They told me that it would jeopardize my job.

[By Counsel for the General Counsel]

Q. Did they say how it would jeopardize your job or what would jeopardize your job?

A. Termination.

Q. What was it that would jeopardize your job?

A. Me not telling them who gave me the schedule.

Cadorette testified they continued to questioning her and kept telling her the schedule she had at the hearing was the “original” one. Cadorette continued to assert it was not that the extra markings on the schedule were ones she had added to the “burn-off copy” she had. Cadorette testified:

[T]hey kept asking me and I told them that I—I told them all that I knew. That I didn’t have anything else to say, that I’d stand there and shut my eyes and shut my mouth and lean against the wall.

Cadorette said they finally told her to clock out and go home which she did.

Vice President Williams and Manager Ford give a somewhat different version of the investigative meeting with Cadorette. Manager Ford testified:

Mrs. Williams was asking Kitty [Cadorette] where did the paper come from. Kitty said—what did she say—oh she said that she wasn’t going to tell her and then—Kitty said she knew who gave her the paper, but she—Kitty wasn’t going to tell Mrs. Williams who gave her the paper, so then Mrs. Williams told Kitty, I’m not saying that you stole the paper. All we want to do is find out where things have been going that’s been walking out of the office. We’re just trying to stop the theft, because it was a lot of stuffing leaving out of there, so then Kitty said she said that—Kitty said that she knew who was taking it, but it really didn’t matter no way, and then she said—Kitty said the person that gave it to her didn’t work there any more.

Then Mrs. Williams asked her again and Mrs. Williams gave her a direct order, Kitty, I’m asking you now in a direct order to please inform us of who gave you the paper. Kitty then said I don’t know who gave me the paper. Somebody walked up, put the paper in my hand, then I just put the paper in my pocket and I didn’t look at the paper for a while, so she then—so Kitty then knew who gave her the paper.

After then Kitty kind of got a little loud and upset, and said that it was a bunch of bull shit.

Manager Ford testified Cadorette “said she was through with it and marched out and left.” Ford testified only Vice President Williams and Cadorette spoke during the meeting except that Ford spoke up once to say the writing on the schedule was hers.

Vice President Williams’ testimony was essentially the same as Manager Ford’s except she added that Cadorette “started yelling” and “cursing” at her during their meeting. Williams told Cadorette if she did not tell her who gave her

the schedule, there could be “serious repercussions” “even” discharge.¹⁵

Vice President Williams testified she returned to the Company’s Columbia, South Carolina headquarters after the meeting and thereafter had Manager Ford forward Cadorette’s personnel file to her at that location. Williams said she then began “really pondering what to do about the meeting we had on the 27th.”

On December 28, 1989, Cadorette was given a written warning by Manager Ford. Ford prepared and signed the warning before she gave it to Cadorette.¹⁶ The warning has certain preprinted matters of which “unreported absence” and “insubordination” were checked. Ford wrote on the warning:

Kitty [Cadorette] requested to leave work for appointment at break time. Kitty was informed at 9:10 that she needed to come back after break because I was already short 3 employee. No replacement was called in. Kitty was informed at 11:59 & 12:36 to report back to work. Policy in lounge requires three days notice for appointments. Kitty stated that she found out Sunday night about appointment. She reported back to work at 1:34.

Cadorette refused to sign the warning and told Ford the Union had sent the Company’s attorney a letter requesting she be granted time off for the representation hearing. Cadorette said she reminded Manager Ford that she, Ford, had told the employees in a meeting they only needed to give 3 to 4 hours’ notice if they were going to be absent. Cadorette wrote the following on the warning and returned it to Ford unsigned:

Williams Services, Inc. lawyer was notified last week by certified mail, as I was told yesterday by Union Representative. I was notified late Sunday night about the meeting that was to be held on Wednesday 12–27–89 at approximately 11:30 AM. I was schedule to be off on Monday 12–25–89 and 12–26–89 which was Tuesday. I returned to work on Wednesday as scheduled. At 6:00 AM when I came in I told supervisor Roxanna Cole that I had a meeting at 11:30 AM she said OK. I spoke briefly with [supervisor] Roxanna Cole and she told me that she called Connie in to take my place in the scullery. She called Connie at approximately 9:30 AM. Connie was here before 11:30 AM which my schedule reads 615–930 1130–200. When the meeting was over [we] I returned back to and clocked in at 1:34 and returned to the scullery where I found Connie and Regina working in the scullery.

Cadorette testified that as she clocked out on the night of January 1, 1990, Supervisor York Jennings told her he “had to write” her up that day because she had broken down the dish washing machine too early.¹⁷ Cadorette said she had not

¹⁵ Sharon Simmons, the Company’s employee witness at the meeting, corroborated the testimony of Vice President Williams and Manager Ford except she made no mention of any “yelling” or “cursing” taking place. Additionally, she did not limit those speaking at the meeting to just Vice President Williams and Cadorette.

¹⁶ Ford testified she also disciplined Chisolum in the same manner.

¹⁷ According to Cadorette, Jennings had a copy of the warning in his hand at the time.

broken the machine down early, that she had broken it down at 5:35 p.m. She said she was certain about the time because she had checked a watch she had in her pocket.¹⁸ Cadorette said she asked Jennings how he knew she had broken the machine down early. Jennings told her "he didn't know because he was back there making box lunches in the galley." Jennings told Cadorette "somebody" had complained to him so he had to write her up.

Cadorette said Supervisor Cole showed her a copy of Jennings' warning at around 6 a.m. on January 3, 1990. Cole provided Cadorette with a copy of the warning which had written on it "Kitty [Cadorette] break down the dish washing machine, before the dining room people was complete cleaning the juice machine." Later that morning, Manager Ford called Cadorette to her office and gave her a warning which had already been filled out in the manner described above. In addition to the above-outlined comments, the following had been hand written on the warning: "The machine was broken down early today Monday Kitty broke down machine at 5:17 but did not punch out until 6:50. The dish room does not take 1 hr. & 35 min. to clean." Cadorette said she told Manager Ford she had not broken the machine down at 5:17 p.m. that it would have been impossible for her to have done so because "dishes were coming back" to the "scullery" at that time.¹⁹ Cadorette also told Manager Ford she had looked at her watch at the time she broke the dish washing machine down and it reflected 5:35 p.m. Cadorette said she not only advised Ford of the timing mistake on the warning but also pointed out there was two different handwritings on the warning. Cadorette told Ford the first couple of lines were Supervisor Jennings' but the remainder had been added by someone else. Ford told Cadorette to write her explanation of the events on the back of the warning which she did.²⁰

Supervisor Jennings testified he warned Cadorette on January 1, that "she could not break down the [dishwashing] machine until she had all the equipment from the dining room area in the scullery." According to Jennings, Cadorette told him she was suppose to get off from work at a certain time and he told her she would have to wash the dishes from the dining room first. Jennings testified Cadorette broke the machine down about 17 to 20 minutes after 5 p.m. and that she should not have done so until 5:35 p.m.²¹ Jennings acknowledged he told Cadorette he "had to" write her up but added he always told his employees that when he warned them. Jennings testified he wrote all the hand written portion of the warning given to Cadorette and stated he only prepared one copy of the warning.

I credit Cadorette's account of her conversation with Jennings about the warning on January 1, 1990. Jennings was not very impressive as a witness. Furthermore, a close examination of the warning he contends was written entirely by him appears to have been written by more than one person. Furthermore, the copy of the warning given to Cadorette by Supervisor Cole appears to refute Jennings' testimony that he

only prepared one copy of the warning and wrote everything thereon himself.

Vice President Williams testified she alone made the decision to terminate Cadorette after reviewing her personnel file and "pondering" what to do about her conduct at the December 27, 1989 investigatory interview. She testified that "the straw that broke the camel's back" was the January 1, 1990 warning given to Cadorette. Vice President Williams said she prepared a dismissal letter, cleared it with her attorney, and then sent it to Manager Ford by Federal Express with instructions to hand deliver it to Cadorette. Williams said she did not consult with Ford before discharging Cadorette. Vice President Williams acknowledged this was the first occasion where she had sent a termination letter to an employee at this jobsite. She also stated this was the first occasion at this jobsite where she had utilized the expedited services of Federal Express to send a termination letter to an employee.

At the end of her work shift on January 9, 1990, Cadorette could not locate her timecard and as a result thereof went to Ford's office. At that time Ford gave Cadorette her termination letter. Cadorette left Ford's office without reading the letter. After reading it, she returned to Ford's office and:

I said, "Pat, this is one helluva a way to terminate somebody." I said, "I worked all day." I said, "You give me this letter terminating me." And I said, "That's not right. I want a copy of all my write-ups and all my timecards."

And I walked out and slammed the door.

The next day Ford provided Cadorette with the requested "write-ups" and timecards.

Cadorette's termination letter follows:

January 9, 1990

VIA HAND-DELIVERY

Ms. Kitty Cadorette
Route 3, Box 8A
Burton, SC 29902

Re: Termination of Employment

Dear Kitty:

On January 1, 1990, you received a written reprimand from your supervisor, York Jennings. The reason for said reprimand was your failure to comply with company orders. Because of our contract with the Marine Corps, you have been instructed that you should never break down your dishwasher until 5:30 p.m. However, on January 1, 1990, you broke down your dishwasher before 5:17 p.m.

Further, we received complaints regarding your conduct and attitude when dirty dishes were brought to your dishwasher at the time you were breaking down the dishwasher. I am also concerned about the fact that you did not clock out until over 1 hour after you did your breakdown.

Over the last few months, your work performance has consistently deteriorated, for example, in October, 1989, Supervisor York Jennings reprimanded you for failing to properly clean the dishwasher. Then on No-

¹⁸ Employees could not wear watches or other jewelry on their person.

¹⁹ It is undisputed that mealtime did not end until 5 p.m. on the date in question.

²⁰ Cadorette's written explanation is essentially the same as what she testified she told Manager Ford in their meeting.

²¹ Jennings said he learned that Cadorette had broken down the dish machine early in that one of the employees reported that fact to him.

ember 7, 1989, you received a written reprimand from Assistant Manager Terri Brown for defective and improper work performance at your work station.

Also, on November 8, 1989, Supervisor Roxanna Cole issued you a written reprimand for tardiness. Mrs. Cole also noted that tardiness on your part has been a reoccurring problem.

On December 22, 1989, Supervisor Isaac Chisolum, Sr. issued a written reprimand for defective and improper work performance, carelessness in performing your duties and poor housekeeping.

On December 28, 1989, you received a written reprimand from Project Manager Patricia Ford for unauthorized absenteeism from your duties, insubordination and disobedience of a direct order.

In addition, on December 27, 1989, Freddie Williams, Patricia Ford, attorney John Oxendine and myself informed you that you were being interviewed as part of an ongoing company investigation regarding the repeated disappearance and theft of various items from the company office. At said interview, I asked you how an original company document came to be in your possession. At that time, you informed me in a very harsh and disrespectful manner that someone had given it to you and that you were refusing to state who that person was. After I issued you a direct order and informed you that disobedience of said order would be considered a direct act of insubordination and would subject you to disciplinary action with the possibility of discharge, you then continued to disobey said order and refused to provide any additional information whatsoever.

Kitty, as a result of your conduct on January 1, 1990, I am convinced that it would be in the best interest of all parties concerned to terminate your employment relationship with Williams Services, Inc. I consider the action on January 1, 1990, standing alone, to be sufficient grounds for termination. As a matter-of-fact, after reviewing your personnel records, I have concluded that any one of the above-stated infractions warrant termination. It is the position of the Company that we have been more than fair to you and we have given you numerous opportunities to correct your conduct which you have apparently ignored.

Therefore, I have instructed Patricia Ford to discharge you immediately on this date.

Upon returning all Company property which has been issued to you, we will promptly issue your final paycheck.

Sincerely,
/s/ Maggie Williams
Maggie Williams
Vice President

e. Analysis and conclusions regarding the warnings given to and discharge of Cadorette

Whether the Company violated Section 8(a)(3) and (4) of the Act when it issued warnings on or about December 28, 1989, and January 1 and 9, 1990, discharged Cadorette turns on the motivation for its actions.

In *Wright Line*, 251 NLRB 1083 (1980), enf.d. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the

Board announced the following causation test in all cases alleging violations of Section 8(a)(3) turning on employer motivation.²² First, counsel for the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. If the General Counsel makes such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. Stated differently, an employer may avoid liability by demonstrating, as an affirmative defense, that "the same action would have taken place even in the absence of the protected conduct." The Supreme Court endorsed the *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400-403 (1983).

I am persuaded, for the following reasons, that counsel for the General Counsel has met her burden of demonstrating a prima facie case with respect to the warnings given to as well as the discharge of Cadorette.

Counsel for the General Counsel has established, and the Company does not dispute, that it knew or suspected Cadorette supported the Union. She was the employee who first contacted the Union and the very first union meeting for the employees was held at her apartment. She acted as a go-between for the employees and the Union. She was a member of the Union's in-plant committee and not only solicited her fellow workers to sign cards for the Union but also "confronted" two supervisors, Cole²³ and Leroy Foulks, and "got them to sign [union] cards."²⁴ Additionally, the Company does not dispute that it was notified by "Mailgram" on December 21, 1989, that the Union requested Cadorette be released from work on December 27, 1989, to attend a scheduled Board hearing in the underlying representation case.

Counsel for the General Counsel established by credible and/or undisputed evidence that the Company harbored hostility toward its employees' union activities. She did so by showing that supervisors interrogated employees about their union activities and that the Company's campaign literature contained threats of a reduction in pay if the employees selected the Union as their bargaining representative. The timing of the warnings (as well as the discharge) coming shortly after the scheduled representation hearing weighs in favor of a finding the Company's actions were unlawfully motivated. Perhaps the strongest indication the Company was unlawfully motivated in its actions against Cadorette was demonstrated by the fact the reasons it advanced for its actions against her were pretextual in nature.

Consideration will first be given to the warnings; however, all the Company's actions against Cadorette are inextricably intertwined.

The credited evidence simply does not support some of the information set forth in the disciplinary warning given Cadorette on December 28, 1989. Cadorette's credited testimony reflects Manager Ford told her she would get back with her about a replacement for her rather than for

²² The Board applies its *Wright Line* test in cases involving alleged violations of Sec. 8(a)(1) and (4) in which employer motivation is an issue. See, e.g., *Parker Laboratories, Inc.*, 267 NLRB 1174 (1983), *Book Covers, Inc.*, 276 NLRB 1488, 1491 (1985), and *Great Western Produce*, 299 NLRB 1004, 1005 fn. 8 (1990).

²³ Cole was Cadorette's immediate supervisor.

²⁴ These above-outlined activities all took place prior to the Union filing its representation petition on November 30, 1989.

Cadorette to report back to work after her break. Ford never got back with Cadorette. I am persuaded Ford did not get back with Cadorette because she learned from Supervisor Cole that Cole had gotten employee Connie Jenkins to fill in for Cadorette. Cadorette credibly testified, without contradiction, that Supervisor Cole gave her permission to be away from work on December 27. I note Ford did not specifically deny that Jenkins filled in for Cadorette during and after the time Cadorette attended the scheduled representation hearing on December 27. To the extent that the December 28 warning was based on the asserted fact that Cadorette did not give the Company the required 3-day notice of her pending absence, I note several things. First, the Company was undisputedly given 3 days' notice in that the Union requested on December 21, 1989, that Cadorette be released from work on December 27, 1989. Second, Cadorette also gave the Company, Manager Ford in particular, written notice approximately 3 hours before her departure that she would be absent and in doing so she was following an unwritten policy of the Company. To the extent the warning was based on Cadorette's failure to return to work on the December 27 at 11:59 a.m. and 12:36 p.m., as requested by Manager Ford, I note the following. First, Cadorette had permission from her supervisor to be away from work and she did in fact return to work at 1:34 p.m. Second, her presence was needed by the Union at the representation hearing until an agreement could be reached regarding the representation election at the Company. Furthermore, the Company, Manager Ford in particular, knew that Cadorette's presence at the hearing was necessary until all issues surrounding the election had been worked out inasmuch as she observed the Union's representatives conferring with Cadorette about employees' schedules and related matters.

In examining the situation surrounding the above warning, I note employees have no absolute right under Section 8(a)(1) and (4) of the Act to leave work to attend Board hearings. *Ohmite Manufacturing Co.*, 290 NLRB 1036 (1988). In *Ohmite*, the Board held the General Counsel has the burden of establishing an employer's refusal to allow employees to attend a Board proceeding was improperly motivated or that the employees demonstrated to the employer at the time of their request that they had a real need to attend a hearing before the burden would shift to the employer to either discredit the General Counsel's evidence or to show an overriding business justification for its refusal to allow the employees to leave work. I am persuaded the reasoning of *Ohmite* would apply to a situation, such as herein, where an employee is requested to return to work after already being at a Board hearing. Applying the guidelines of *Ohmite* to the facts herein, I find counsel for the General Counsel met her burden. Cadorette made the need for her presence at the hearing known to Supervisor Cole at the time she requested to be off and Cole accepted her reasons and obtained a replacement for her. Furthermore, Cadorette's role in assisting the Union was clearly demonstrated to Manager Ford before Ford asked her to return to work. The Company failed to establish an overriding business justification for Cadorette's early return to work on December 27, 1989, in that it had already obtained the services of another employee to fill in for her. That Cadorette was not needed on her job when she in fact return to work at 1:34 p.m. is demonstrated by the fact she was assigned to work in an area other than the one

she was regularly assigned to. I am persuaded the Company has failed to demonstrate it would have warned Cadorette on December 28, 1989, even in the absence of any protected conduct on her part.

Counsel for the General Counsel raised various concerns with respect to the warning prepared by Supervisor Jennings on January 1, and given to Cadorette on January 3, 1990, to warrant the conclusion, which I make, that the reasons for the warning were pretextual and that the Company was unlawfully motivated in giving her the warning. First, Cadorette's credited testimony establishes she did not break the dishwashing machine down on January 1, 1990, until 5:35 p.m. I note Supervisor Jennings testified the proper time to break the dishwashing machine down was approximately 35 minutes after the close of a meal. It is undisputed the meal in question closed at 5 p.m. on that day. The credited evidence establishes the juice machines could be, and were, cleaned by hand and/or by placing them in the dishwashing machine. Thus, even if the dishwashing machine had been broken down before the juice machines had been cleaned, no harm would have been done. There is no showing on this record that any instructions had ever been given to delay breaking down the dishwashing machine until the juice machines had been cleaned. Another troubling factor about the warning is there was more than one version of it. The fact Supervisor Jennings stated only one existed and that he filled it out in its entirety suggests something amiss about the warning. This is especially so in light of the fact there are two distinctly different handwritings on the warning. Finally, I note Supervisor Jennings did not even observe the alleged offense take place but rather just based the warning on what some employee allegedly reported to him without investigating the situation. Based on that unsubstantiated report Jennings stated he "had" to give Cadorette a warning. In summary, counsel for the General Counsel has demonstrated that this second warning, coming approximately 5 days after Cadorette attended the representation hearing on behalf of the Union, was unlawfully motivated especially in light of the fact the reasons for the warning have been shown to be pretextual. I am persuaded the Company has failed to demonstrate it would have given the warning even in the absence of any protected conduct on Cadorette's part.

It is clear from the known union activities of Cadorette taken in conjunction with the Company's overall antiunion animus and the fact it unlawfully warned her on December 28, 1989, and January 1, 1990, that the Company violated the Act when it discharged Cadorette on January 9, 1990.

First, the timing of the discharge is clearly suspect. Second, Vice President Williams made the decision to terminate Cadorette without consulting Site Manager Ford or with any other of Cadorette's immediate supervisors. The Board has long held that an inference of unlawful motivation is strengthened when an employer fails to consult with an employee's immediate supervisor before taking action against the employee. See, e.g., *Lancer Corp.*, 271 NLRB 1426 (1984). Vice President Williams' failure to consult with Manager Ford, Supervisor Cole, and/or Supervisor Jennings is particularly suspicious in light of her testimony that all disciplinary warnings did not carry the same weight with respect to discharge and that she evaluated all circumstances before discharging an employee. Third, this was the first time at this location that the Company had caused a discharge let-

ter to be delivered by an express service and then personally delivered to the employee being discharged. Such hurried actions and different methods suggests the Company was motivated by something other than just a desire to sever an employment relationship.

I agree with counsel for the General Counsel that a careful examination of the reasons for the discharge listed in the discharge letter taken in conjunction with Vice President Williams' testimony establishes the reasons were pretextual and that a motivating factor in the Company's decision to discharge Cadorette was her protected conduct.

The discharge letter, which is set forth in full elsewhere in this decision and will not be repeated here, reflects Williams considered the January 1, 1990 incident "standing alone" to constitute sufficient grounds for Cadorette's discharge but added that "any one of the above-stated infractions warrant[ed] termination." Counsel for the General Counsel established through cross-examination of Vice President Williams that her assertions were inconsistent with company policy generally.

For example, Vice President Williams testified any one of the incidents would have been sufficient to cause Cadorette's discharge "because they cost me money." When questioned further, however, she acknowledged she did not terminate employees everytime they cost her money because she did not "like to dismiss a person unless they [had] at least three (3) write-ups." When Vice President Williams was shown the personnel file of employee Jessie Gibbs which over the course of a year and a half, contained 10 warnings she, for the first time, indicated she only considered warnings for a 6-month period. When asked if any three warnings in a 6-month period would result in discharge, Vice President Williams said it would depend "on the nature of the warning[s]." When counsel for the General Counsel pressed Williams further asking if three performance related warnings in a 6-month period would result in discharge, Williams responded, "It depend[ed] on the type of performance. It might be a low level performance and not a high level performance." When asked whether a warning that related to failing to keep a machine clean and that also cost the Company money would result in discharge, Williams responded that it depended on the machine because "all machines don't cost you the same amount of money."

In another example, counsel for the General Counsel also confronted Vice President Williams with the personnel file of employee Cynthia Ford that contained five warnings for various performance related matters within a 6-month period. Vice President Williams in attempting to justify a lack of action against Ford explained away each warning. For example, she said Ford's warning, dated February 23, 1990, for "carelessness" was nothing more than "sort of a notation to pay closer attention to details" and was not "specific" enough. Williams explained that another warning given Ford on June 29, 1990, for "improper conduct" involved "an argument" with another employee and was not conduct "against the Company." Williams explained that a warning given Ford on May 29, 1990, which was for "tardiness" was "not a severe warning." Williams explained that a warning Ford received on May 4, 1990, for failure to properly clean a bubble machine and to pay more attention to detail could not be held against Ford "because she was doing what our general procedure was [at that time]." Finally, Vice President Williams

appeared to conclude that a warning given Ford on July 9, 1990, for improper conduct in that she "refused to do what she [was] ordered . . . to do" was excusable.

Counsel for the General Counsel further demonstrated through the testimony of Vice President Williams that the Company did not follow its general policy on discipline when it discharged Cadorette and that she was treated differently than others. In that regard, counsel for the General Counsel established that employee Susie Montgomery had received three warnings within a 6-month period but had not been discharged. Montgomery's warnings were "for failing to properly close out meal verification" on January 10, 1990; "for defective improper work," "not busing the tables fast enough," on March 27, 1990; and "for tardiness," on June 24, 1990. When confronted with Montgomery's record, Vice President Williams testified she liked to have "three (3) write-ups of the same thing" on an individual before she discharged such an employee. A review of the warnings Cadorette was actually given as outlined in her dismissal letter, reveals she never had three warnings "of the same thing."

In examining each specific matter in Cadorette's termination letter, I shall not discuss the December 28, 1989, or January 1, 1990 warnings inasmuch as both have been fully discussed elsewhere in this decision.

Cadorette's termination letter refers to a warning given in October 1989 by Supervisor Jennings for "failing to properly clean the dishwasher." There are a number of troubling aspects related to this alleged warning. First, the parties stipulated that Cadorette's personnel file does not contain any warning dated October 1989. That fact raises another troubling factor related to the termination letter in that Vice President Williams testified she made the "decision [to discharge Cadorette] based upon the number of write-ups that I saw in her file." However, Cadorette's file admittedly contained no such warning thus casting doubt on Williams claim she reviewed the warnings and prepared the termination letter therefrom. Vice President Williams further testified she did not discuss her decision to terminate Cadorette with any of Cadorette's immediate supervisors, therefore, one must infer she did not learn of the alleged October 1989 warning from Jennings at the time she prepared the letter. Jennings' testimony about the October 1989 warning he claims he gave Cadorette and another employee is simply unbelievable. Jennings testified he gave Cadorette and Leatha Johnson each a warning in October 1989 for not cleaning the dishwashing machine properly. He said he gave the two of them warnings because the U.S. Navy (Marine Corps) had written up the Company that same day based on Cadorette's and Johnson's failure to clean the dishwashing machine. Supervisor Jennings further testified he placed the two warnings on Manager Ford's desk in October 1989 but learned the next day after giving the warnings that the warnings had disappeared²⁵ from Ford's desk. Jennings claims he did not prepare duplicate warnings nor did he take any further action after learning the warnings had disappeared. The Company did not produce any "write-ups" from the U.S. Navy for any deficiencies in the dishwashing area for October 1989. All the above persuades me to draw an inference, which I do, that

²⁵ The parties stipulated that Leatha Johnson's personnel file does not contain any October 1989 warning of the nature or description testified to by Supervisor Jennings.

no such October 1989 warning for Cadorette exists, or ever existed, and that mention of such a warning in Cadorette's termination letter was simply an effort by the Company to justify its disciplinary actions against her.

It is undisputed that Assistant Manager Brown prepared a disciplinary warning for Cadorette on November 7, which warning was given to her on November 14, 1989. Cadorette refused to sign the warning. The warning was for an improperly cleaned dish room in that a machine was "left dusty" and "food was left on the shelf" as well as "[c]rumbs . . . on top." The warning reflected the area would thereafter be inspected by the site manager or assistant manager. In that regard, Assistant Manager Brown testified, "[t]his has been a problem [the Company] had during . . . inspections" of the dish room area. Although Vice President Williams testified anyone of the warnings mentioned in Cadorette's termination letter, including this one, could have resulted in her discharge, such had not been the practice of the Company. For example, Assistant Manager Brown testified the Company had received deficiencies from the U.S. Navy (Marine Corps) regarding the dish room area "several times" and that another employee in the immediate area where Cadorette worked had been given a similar warning; however, there is no showing that any further disciplinary actions were ever taken against that or any other employee as a result of these dish room deficiencies. Furthermore, employee Cinthia Ford had received five disciplinary warnings one of which related to a "failure to properly clean the bubble machine" nevertheless, she was not discharged. Again, and specifically with respect to this warning, the evidence clearly establishes the Company treated Cadorette differently than it did others and strongly suggests the Company merely seized on the warnings it actually gave Cadorette as a pretext for discharging her.

It is undisputed that Supervisor Cole gave Cadorette a disciplinary warning on November 8, 1989, for "tardiness." Cole wrote on the warning "Mrs. Kitty scheduled to work at 6:15 a.m. she came in at 7:37 a.m. this is no[t] the first time that she [has been] late." Although Vice President Williams asserted this warning, standing alone, warranted Cadorette's discharge, she subsequently acknowledged that employee Cinthia Ford had been given a disciplinary warning on June 29, 1990, for "tardiness," but it was "not a severe warning" and as such did not result in any disciplinary action beyond a warning being taken against employee Ford. Again, counsel for the General Counsel has demonstrated Cadorette was treated differently than other employees in similar situations.

It is undisputed that Supervisor Chisolum caused a disciplinary warning to be prepared on December 22, 1989, for Cadorette. Chisolum testified, without contradiction, "I went in and checked her area and I did find the scullery machine was not properly cleaned. I found garbage disposal had little small food particles around it and inside of it, and I checked the glass rack—a couple of glass rack[s] wasn't cleaned properly." Chisolum testified he and Assistant Manager Brown thereafter "checked some more" and found the floor "wasn't properly swept." The warning counseled that Cadorette "should pay close attention to detail in her work." As has been noted elsewhere in this Decision, Vice President Williams acknowledged employee Cinthia Ford had been given a warning on June 4, 1990, and admonished to "pay

attention to detail," however, employee Ford had not been terminated.

In summary, counsel for the General Counsel established with reliable evidence that Cadorette was treated differently than other employees and that the reasons advanced by the Company for her discharge were pretextual and seized on simply to rid itself of an employee it found, based on unlawful reasons, to be undesirable. The Company failed to meet its burden of showing Cadorette would have been discharged in the absence of any protected conduct on her part.²⁶

f. *Unilateral reduction in pay and change in rotating shift assignments*

The Company admits the complaint allegations that it unilaterally, and without notice to or bargaining with the Union, announced and implemented on March 20, 1990, a reduction in the hourly rate of pay for its employees and further on May 22, 1990, announced and implemented a change in its past practice and policy concerning rotating shift assignments.

In its defense of the unilateral wage reduction, the Company correctly notes the Union was not certified as the bargaining representative of its employees until April 6, 1990, and further that it had challenged the validity of the February 6, 1990, Board-conducted election. The Company in its posttrial brief contends:

Since the Union had not been certified and objections to the election were still pending, there is no way Williams Services could be expected to bargain with the Union.

The Company's position is without merit. First, I note it is well established that election results are not final until the certification is issued, e.g., *Trico Products Corp.*, 238 NLRB 1306, 1307 (1978). However, the Board in *Mike O'Connor Chevrolet-Buick-GMC Co.*, 209 NLRB 701 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975), created a narrow "act at your own peril" exception to this general rule in, as was the case herein, the initial certification context. In *Mike O'Connor*, the Board held that an employer acted at its peril in making changes in terms and conditions of employment during the period that objections to an initial certification election are pending. The Board further held that if the union is later certified, the employer's unilateral

²⁶To the extent the Company attempts to justify its actions against Cadorette based on her possession of a copy of the work schedule, I note the information on the schedule was basic, nonproprietary, and nonconfidential information that had been floating around the workplace for an extended period of time. I am persuaded the schedule incident was instigated by the Company in an attempt to bolster its decision to rid itself of Cadorette. I further note Cadorette was not disciplined in any manner for having the allegedly purloined document. To the extent the Company relies on the "very harsh and disrespectful manner" that Cadorette allegedly addressed Vice President Williams on December 27, 1989, I note the Board affords a wide latitude to employee comments made in the course of exchanges between management and employees over matters affecting employees. See, e.g., *Hawthorne Mazda, Inc.*, 251 NLRB 313, 316 (1980). The word "bullshit" allegedly used by Cadorette (I need not decide if she actually uttered the word) is the type profanity sometimes encountered when emotions run high in situations such as the one herein and depending on the circumstances, generally may not serve as justification to discipline employees. Here the alleged "harsh" language was not what motivated Vice President Williams to discipline Cadorette, rather, it was her protected conduct. Compare *Great Dane Trailers Indiana*, 293 NLRB 384 (1989).

changes will be found to have violated Section 8(a)(5) of the Act.

The Company also defends its unilateral wage rate reduction on the fact it is governed by the Service Contract Act. The Company asserts that under that Act it cannot agree to a wage adjustment without first obtaining government approval. Simply stated, the Company contends it was, and is, unable to engage in meaningful collective bargaining with the Union. Again, the Company's position is without merit. As noted elsewhere in this decision, the fact that an employer is a contractor subject to the terms of the Service Contract Act does not mean the Board will decline to assert jurisdiction over that employer. The Company herein is not exempt from Board jurisdiction, and thus from its bargaining obligations, under the principles of *Res-Care, Inc.*, 280 NLRB 670 (1986), and *Long Stretch Youth Home*, 280 NLRB 678 (1986). In those cases, both of which issued the same day, the Board reaffirmed and refined the test of *National Transportation Service*, 240 NLRB 565 (1979), for determining whether to assert jurisdiction over an employer providing services to or for an entity exempt from jurisdiction under Section 2(2) of the Act. The Board held the proper focus was on the extent of control retained by the employer over essential terms and conditions of employment, that is who had the "final say" concerning employees wages, and benefits, and on what degree of control the exempt entity exercised over the employer's labor relations policies. See also *Community Interactions—Bucks County*, 288 NLRB 1029, 1031–1032 (1988). In *Bucks County*, the Board summarized as follows:

We declined to assert jurisdiction in [*Res-Care*] because the exempt entity maintained strict, direct authority over its funding of wages and benefits by its approval of wage ranges, benefit levels, and wage and benefit amounts in the employer's proposed line-item budget, and by its retention of the right to disapprove any subsequent changes in employee compensation. . . . In contrast, we asserted jurisdiction over the employer in *Long Stretch* because the exempt entity there did not tie its funding of the employer directly to the employer's proposed wages and benefits, and it required only that the employer meet minimum standards for the wages and benefits it chose to pay its employees.

It is undisputed that the Company provides its services to an exempt entity, the U.S. Navy (Marine Corps). Nor is there any question that the Company is subject to the Service Contract Act. Navy Contract Administrator Barbara Griffin testified²⁷ the U.S. Navy conducts a wage determination survey "which sets the minimum wages" to be paid mess attendants at the facility involved herein. Griffin testified that when the Company was awarded the contract it paid its mess attendants \$6.50 per hour plus an additional 45 cents per hour for health and welfare benefits. Griffin stated that when the first option year "came up" for the Company a new wage determination was made in which the minimum wage rate was set at \$4.83 per hour. Griffin stated the Navy, however, continued to reimburse the Company \$6.50 per hour for the mess attendants. In light of the new wage determination, the

²⁷Robert C. Peterson, counsel for the Navy Office of the General Counsel, entered a limited appearance at trial on behalf of Griffin.

Navy subsequently determined the maximum it would reimburse the Company was \$6.50 per hour including all benefits. At that time (March 1990), Vice President Williams announced and reduced the rate of pay for the mess attendants to conform to the reduced amount the Company was being reimbursed and she did so without notice to, or bargaining with, the Union.

It is clear the U.S. Navy (Marine Corps) only establishes the minimum wage rate that must be paid by a contractor/employer, such as the Company herein, and that nothing precludes a contractor/employer from paying more than the minimum wage rate. The U.S. Navy does not appear to have any control over the amount paid to the mess attendants beyond the minimum wage requirement. The Company could have and did pay more than the minimum wage rate. According to Vice President Williams, the Company has a 3-percent profit margin built into its contract with the U.S. Navy. Thus, it appears the Company could have engaged in meaningful collective bargaining with the Union concerning the wage rate paid to the mess attendants.²⁸ I find its failure to do so violated Section 8(a)(5) of the Act.

Inasmuch as the Company offered no defense for its unilateral change in rotating shift assignments, I find its action in that respect violated Section 8(a)(5) of the Act.

B. Other Alleged Unilateral Changes

It is alleged at paragraphs 18(b), (d), and (e) of the complaint that on or about May 22, 1990, the Company announced and implemented changes in its past practices and policies regarding the requirement for a doctor's excuse by employees when absent for more than 24 hours; regarding job requirements and/or cross-training; and regarding its disciplinary procedures.

The Company asserts these alleged changes "did not occur" and that "any employee that believes a change has been implemented is mistaken."

It is undisputed that Company Consultant Cornelius King²⁹ spoke to the assembled mess attendants in late May 1990. Manager Ford was present at the meeting and responded to various comments, questions, and concerns of the employees.³⁰ According to the uncontradicted and credited testimony of employees Lorraine White and Lisa Moore, King told the employees their work schedules were going to be changed. Moore specifically testified:

Mr. King was telling us how schedules were going to start being rotated. If you work a.m. you were going to be working a.m. and p.m. Everyone would be working weekends and employees were asking him about their second jobs, what were they suppose to . . . do if they were going to rotate schedules. He said he wasn't con-

²⁸I find it unnecessary to discuss the overall control or lack thereof that the exempt entity exercised over the Company herein inasmuch as I am persuaded the Company could engage in meaningful negotiations with the Union.

²⁹Counsel for the General Counsel alleged that King was a supervisor and agent of the Company within the meaning of Sec. 2(11) and (13) of the Act. Counsel for the General Counsel failed to establish King met the requirements of either; however, as is discussed elsewhere in this decision, King had apparent authority to act on behalf of the Company.

³⁰Ford did not deny the events of the meeting as testified to by employees White and Moore. King did not testify nor was his absence explained in any manner.

cerned with that. He was just concerned with Williams Services

King told the employees they would also rotate positions. Some employees complained they had not been trained for all mess attendant positions. King responded they should have been. When employees further complained King told them they would be trained for what ever positions they were placed in. King also discussed absences for illnesses. King told the employees if they were out of work for an illness for more than 24 hours, they would need a doctor's excuse. King also told the employees that in the future before they were given a disciplinary report they would be counseled and given a chance to present their "side of the story."

Employee Moore testified that prior to the meeting with King, disciplinary warnings had always been prepared in final form before being shown to the employees.³¹

Employees Moore, White, and Cadorette testified they received no training when they went to work for the Company.

Employee White testified employees had their shifts rotated the very next week after King announced they would be rotated.

Project Manager Ford testified all employees were given training when the Company commenced providing services for the U.S. Navy (Marine Corps) including a 6-hour class offered by the U.S. Navy on "the way things have to be cleaned." Ford further stated that all employees had to be cross-trained and that cross-training had been in effect from the very beginning. Ford also testified there had been no change in the Company's practice or policy regarding doctor's excuses in that an employee "absent for more than two (2) days must bring back a doctor's excuse." Vice President Williams also testified there had not been any change in the policy on doctor's excuses for absences and that there had always been cross-training. She further testified King "had no authority to initiate any change" in policy that he was only to "report back" to her with "suggestions as to how to improve the operation."

I find the Company's contention, and its evidence in support thereof, that there has not been any changes regarding doctor's excuses, cross-training, or disciplinary procedures to be unpersuasive. First, the Company did not refute what employees attributed to Consultant King at his May 22, 1990 meeting with the employees. King told the employees they would have to provide a doctor's excuse after an absence of 24 hours. Manager Ford testified the practice from the beginning had been to provide such excuses after 2 days. Thus, it is clear King announced a change in that regard. In addition to the employees' testimony regarding King's comments on disciplinary procedures, it is clear from the disciplinary warnings actually given Cadorette that warnings were prepared in advance and employees were only permitted to write on the warnings if they refused to sign the warnings. Thus, when King told the employees they would be counseled and given an opportunity to present their "side of the story" before any discipline could issue, he announced a change from the Company's past practice. As to cross-training, I am persuaded by the employees' testimony referred to above that prior to May 22, 1990, employees had not been provided or

told they would be afforded cross-training. Accordingly, the Company, through King, announced a change in that regard.

Before concluding the Company violated Section 8(a)(5) of the Act by the above actions, I shall address the issue of whether King had actual or apparent authority to bind the Company. I am persuaded he had apparent authority to do so. The employees were asked to attend the meeting with King and were paid for time spent at the meeting. Manager Ford was present throughout the meeting and even made comments to the employees on matters covered by King. Ford at no time advised the employees King did not have the authority to bring about the changes he announced. Vice President Williams, after learning the content of King's comments, made no effort to disavow, change, alter, or correct what he had told the employees. One of the changes King said would take place did in fact occur the very next week.

Under these circumstances, I am persuaded employees at the meeting reasonably believed King was reflecting company policy and speaking for management. Accordingly, I conclude he had apparent authority from the Company and as such the Company is liable for his comments and actions. Cf. *Einhorn Enterprises*, 279 NLRB 576 (1986), and *Season-All Industries*, 276 NLRB 1247 fn. 1 (1985).

CONCLUSIONS OF LAW

1. Williams Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with discipline, including discharge, for attending a Board-conducted representation hearing; by interrogating its employees concerning their union activities; and by threatening its employees with a pay cut if they selected the Union as their bargaining representative, the Company has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By issuing written warnings to its employee Kitty Cadorette on or about December 28, 1989, and January 1, 1990, and by discharging her on January 9, 1990, because of her concerted protected and union activities and because she attended a Board-conducted representation hearing in Case 11-RC-5648 on December 27, 1989, the Company engaged in unfair labor practices in violation of Section 8(a)(3) and (4) of the Act.

5. By, on or about March 20, 1990, announcing and implementing: a reduction in the hourly pay rate of its employees, and by, on or about May 22, 1990, announcing and implementing: (a) a change in past practice and policy concerning rotating shift assignments; (b) a change in its past practice and policy regarding the requirement for production of a doctor's excuse by employees when absent for 24 hours; (c) a change in its job requirements and/or cross-training; and, (d) a change in its disciplinary procedure without notifying the Union and giving the Union the opportunity to bargain over such changes the Company has engaged in unfair labor practices in violation of Section 8(a)(5) of the Act.

³¹The warnings given Cadorette, for example, were prepared before they were given to her.

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

THE REMEDY

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

Having found the Company discriminatorily discharged its employee Kitty Cadorette, I shall recommend it be ordered to offer her immediate and full reinstatement to her former position of employment or, if her former position no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges previously enjoyed and make her whole for any loss of earnings she may have suffered by reason of the discrimination against her with interest. Backpay shall be computed in the manner as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³² I also recommend the Company be ordered to remove from its files any reference to her discharge or to the warnings it gave her on or about December 28, 1989, and January 1, 1990, and notify her in writing this has been done and that evidence of these unlawful actions will not be used as a basis for any future personnel actions against her.

Further, it is recommended the Company be ordered to reinstate the hourly pay rate in effect prior to its having unilaterally reduced that rate on March 20, 1990, and make whole all employees affected by the unilateral pay rate reduction. It is also recommended the Company be ordered to rescind its unilaterally changed policies concerning rotating shift assignments and the production of a doctor's excuse after only a 24-hour absence. It is further recommended the Company remove any discipline given employees as a result of the above changes and make employees whole, including where appropriate, reinstatement and backpay if employees were discharged or forced to quit their employment as a result of the above two changes. I shall recommend the Company be ordered, if requested by the Union, to rescind the changes in cross-training and disciplinary procedures it unilaterally implemented. Finally, it is recommended the Company be ordered to post a notice to its employees attached hereto as "Appendix" for a period of 60 days in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³³

ORDER

The Company, Williams Services, Inc., Beaufort, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their membership in, or activities on behalf of the Union, or because they engage in other protected concerted activities or because they attend Board proceedings.

(b) Unilaterally instituting, without first notifying and bargaining with the Union, changes in the hourly pay rate for employees; the requirement for the production of doctor's excuse by employees when absent for 24 hours; rotating shift assignments; cross-training procedures; and, disciplinary procedures.

(c) Coercively interrogating its employees concerning their union activities and desires; threatening its employees with pay cuts if they selected the Union as their bargaining representative; and, threatening its employees with discipline, including discharge, for attending Board proceedings.

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

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

(a) Rescind the pay reduction announced and implemented on or about March 20, 1990.

(b) Make whole all employees affected by the unilateral pay cut instituted on or about March 20, 1990.

(c) Rescind and cease giving effect to the May 22, 1990 changes regarding shift rotation, assignments, and the production of a doctor's excuse after only a 24-hour absence.

(d) Remove from employees' files all employee disciplinary reports and any other notices or warnings that were given as a result of the changes set forth in (c) above and notify in writing those employees affected that this has been done and that the evidence thus removed will not be used as a basis for future personnel action against them. If applicable, affected employees shall be made whole and/or reinstated.

(e) Rescind, on request of the Union, the unilateral changes instituted on or about May 22, 1990, concerning cross-training and disciplinary procedures for employees.

(f) Offer its employee Kitty Cadorette immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings, plus interest, suffered because of its illegal actions against her.

(g) Remove from its files any reference to the discharge of Cadorette or the warnings given her on or about December 28, 1989, and January 1, 1990, and notify her in writing that this has been done and that evidence of her unlawful discharge or the unlawful warnings will not be used against her in any way.

(h) 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 Order.

(i) Post at its Beaufort, South Carolina facility copies of the attached notice marked "Appendix."³⁴ Copies of the no-

³² Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

³³ 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.

³⁴ 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 for the Fourth Circuit." *Continued*

tice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon 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.

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

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge, threaten to discharge, or issue disciplinary warnings to our employees because of their activities on behalf of the International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization or because they attend Board proceedings.

WE WILL NOT interrogate our employees concerning their union activities or desires.

WE WILL NOT threaten our employees with a pay cut if they select the Union as their bargaining representative.

WE WILL NOT unilaterally reduce the hourly pay rate of our employees, change our practice and policy concerning the requirement for a doctor's excuse when our employees are absent for only 24 hours, change our practice and policy concerning rotating shift assignments, change our job requirements and/or cross-training policies, or change our disciplinary procedure, or any other terms or conditions of employment without first notifying and bargaining with International Association of Machinists and Aerospace Workers, AFL-CIO.

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 rescind the hourly pay rate reduction given our employees and WE WILL make them whole for the losses they suffered as a result thereof.

WE WILL rescind and cease giving effect to the requirement for a doctor's excuse after an employee has only been absent for 24 hours.

WE WILL rescind and cease giving effect to our unilaterally changed practice and policy concerning rotating shift assignments.

WE WILL, on request by the Union, rescind and cease giving effect to the changes in our cross-training policies and disciplinary procedures.

WE WILL remove from our employees' files all employee disciplinary warning reports and any other notices, warnings, or disciplinary actions given as a result of our unlawfully instituted above-listed policy and procedure changes and notify those employees affected that this has been done and that the evidence thus removed will not be used as a basis for future personnel actions against them.

WE WILL offer Kitty Cadorette, and any employee who was discharged pursuant to the illegally instituted policy and procedure changes, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice, to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting therefrom, less any net interim earnings, plus interest.

WILLIAMS SERVICES, INC.