Anheuser-Busch, Incorporated *and* International Brotherhood of Teamsters, Local Union No. 1149. Cases 3–CA–21796, 3–CA–21906, and 3–CA–22112

December 19, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On July 7, 2000, Administrative Law Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Anheuser-Busch, Incorporated, Baldwinsville, New York, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

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

APPENDIX

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

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

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 refuse to allow a requested steward to represent an employee absent extenuating circumstances, in violation of the employee's rights under Section 7 of the Act.

WE WILL NOT threaten or discharge an employee if he or she engages in concerted protected activity, including speaking at corporate communication meetings.

WE WILL NOT threaten an employee with reprisal for filing charges with the Board.

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

ANHEUSER-BUSCH, INCORPORATED

Beth Mattimore, Esq., for the General Counsel.
James W. Bucking and *Arthur G. Telegen, Esqs.*, of Boston, Massachusetts, for the Respondent.
Michael A. Kafoury, Esq., of St. Louis, Missouri, for the Respondent.
Mimi C. Satter, Esq., of Syracuse, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Syracuse, New York, on March 8–10, 2000. The charge in Case 3–CA–21796 was filed by the International Brotherhood of Teamsters, Local Union No. 1149 (the Union), on March 1, 1999. The charge in Case 3–CA–21906 was filed by the Union on April 29, 1999. The charge in Case 3–CA–22112 was filed by the Union on September 8, 1999. On December 2, 1999, the Regional Director for Region 3 issued an Order further consolidating cases, second amended consolidated complaint and notice of rescheduled hearing (the complaint). The complaint alleges that Anheuser-Busch Incorporated, of Baldwinsville, New York (Busch or Respondent) engaged in certain conduct in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). Respondent filed a timely answer in which it denies that it has violated the Act, but admits certain allegations including the jurisdictional allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed

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

[2] Chairman Hurtgen does not pass on the issue of whether employee Brian Meany was insubordinate at Respondent's corporate communications meeting, to the extent that Meany spoke about contract issues at that meeting. In this regard, Chairman Hurtgen notes that Respondent began its meeting by saying that there would be no discussion of contract matters. However, even if Meany were insubordinate at this meeting, this would not privilege Respondent's postmeeting broad admonition to Meany that he would be fired if he were to "ever speak again at a communications meeting."

[3] We shall modify the judge's notice to employees to conform with the Board's standard language.

by the Respondent, the Charging Party, and the General Counsel on or about May 16, 2000, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with its principal office and place of business in St. Louis, Missouri, inter alia, operates a brewery in Baldwinsville, New York. This brewery is the facility involved in the instant proceeding. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and the Issues to be Decided

The Respondent has 12 breweries throughout the United States. All of the production employees and most of the maintenance employees at each of these breweries are represented by the Teamsters Union. The representation at each brewery is joint, between the national "Brewery Conference" and the appropriate local of the International Brotherhood of Teamsters. At the Baldwinsville brewery, the employees are jointly represented by the Brewery Conference and Teamsters Local 1149.

In Baldwinsville, Respondent recognized the Union immediately on its purchase of the facility from Schlitz, hired all its employees, and negotiated a successor contract. The last contract between the Respondent and the Teamsters expired on or about February 28, 1998. The contract was extended to March 27, 1998. Negotiations for a new contract had begun in November 1997 and continued through September 1998. Prior to September, in July 1998, Respondent indicated to the Teamsters that it would likely implement its last offer, and held out the offer of an arbitration process that would survive implementation. In September it did implement its last offer. At the time of the implementation, some breweries accepted Respondent's proposed arbitration offer. Others, including the Baldwinsville brewery, did not. The Baldwinsville brewery ultimately did accept the procedure, but at a time following the matters involved in the instant complaint. Hence, these matters are not subject to arbitration.

Most of the issues involved in the complaint arose at a time following Respondent's implementation of its final offer, and when there was no contract or arbitration agreement in place at the Baldwinsville facility. Certainly at least some of Respondent's unionized work force at Baldwinsville were unhappy with this situation. This unhappiness appears to be the driving force behind the events which led to this proceeding.

Other than arising in a atmosphere affected by the status of the contract negotiations, the alleged violations of Section 8(a)(1) of the Act are discrete acts having no real relationship to one another and will be discussed separately below. The complaint alleges at paragraph VI:

> a. On or about December 16, and 17, 1998, Respondent denied the request of its employee Patrick Lamirande to be represented by a Union representative of his own choosing, during interviews.
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> b. Respondent employee Patrick Lamirande had reasonable cause to believe that the interviews described immediately above would lead to disciplinary action being taken against him.
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> c. On or about December 16, 1998, Respondent conducted the interviews described above with its employee Patrick Lamirande, even though Respondent had denied the employee's request for the Union representation of his choosing.

The complaint further alleges in paragraph VII:

> a. In or about early February 1999, Respondent by Art Lux, assistant bottling, shipping and packaging manager, and Daniel Robinson, supervisor, threatened an employee (Joseph Rimualdo) with unspecified reprisals for engaging in the protected concerted activity of filing safety grievances.
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> b. On or about February 12, 1999, Respondent, by Mark Sammartino, brewmaster, and M. Larry Harmon, human resources manager, threatened an employee (Brian Meany) with discharge for engaging in the protected concerted activity of voicing opinions about collective-bargaining negotiations at a corporate communications meeting.
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> c. On or about February 12, 1999, Respondent, by Mark Sammartino, threatened an employee (William Parks) with unspecified reprisals for engaging in the protected concerted activity of voicing opinions about collective-bargaining negotiations at a corporate communications meeting.
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> d. On or about August 25, 1999, Respondent, by Art Lux, threatened an employee (Joseph Rimualdo) with unspecified reprisals because the employee had given testimony to the Board during a prior investigation.

B. Resolution of the Issues Raised by Paragraph VI of the Complaint

The sole issue raised by this complaint allegation is whether an employee is entitled under *Weingarten*[2] and subsequent Board cases, to request and be provided a specific union representative in a situation where *Weingarten* applies. The Region, the Charging Party, and the Respondent agree that Respondent and the Union have resolved this issue for the future by mutual agreement that Respondent will honor an employees request for a specific representative if that person is available. However, no party to this proceeding was willing to settle this portion of the case or withdraw it, so I will make findings on the facts presented.

Patrick Lamirande was a production operator for Respondent at its Baldwinsville, New York facility from June 3, 1993, until

[1] Respondent filed an unauthorized reply brief, to which the General Counsel and the Charging Party object. It is stricken.

[2] 420 U.S. 251 (1975).

he was discharged on April 14, 1999.[3] In mid-December 1998, as pertinent, management in his department included Assistant Beer, Packaging and Shipping (BP&S) Managers Art Lux and Ken Silva, and BP&S Supervisor Mark Burlingame.

Lamirande had just been elected to be a union steward, with his term to commence in January 1999. The election involved three candidates for two positions. Lamirande, Joe Sankowsiki, and incumbent steward, Fred Vogel, were these candidates. The other incumbent steward, Dan Finn, did not run. Lamirande and Sankowski were elected to a term commencing in 1999 and Vogel lost his position.

At the time of the incidents in question, there were two stewards on duty, Dan Finn and Fred Vogel. There is no evidence to suggest that either steward was less than competent in the performance of steward's duties. Lamirande testified that he personally believed Finn to be a better steward. Finn testified that though Vogel was a good steward, that he, Finn, was more aggressive.

On December 15, 1998, Lamirande engaged in certain conduct that allegedly endangered employees of a contractor working in the facility and hampered the work of the contractor, adverse to the interests of Respondent.[4] This conduct ultimately resulted in Lamirande's suspension for 2 weeks. As we are not litigating the lawfulness of the suspension, suffice it to say Lamirande's adverse conduct was serious and that everyone involved in the incident was aware of the potential consequences of his actions. They were certainly of a nature that discipline was a certain consequence in the event Respondent believed Lamirande had taken the actions he was accused of taking.

1. Events of December 16

Having allegedly engaged in this conduct, Lamirande was approached on December 16 by Mark Burlingame and Art Lux. There are as many versions of what occurred in this meeting as there were participants. As I will find at a later point, the variations do not bring into question the credibility of the participants on any material point nor do they affect my ultimate findings to any significant degree.

According to Lamirande, Burlingame asked if Lamirande had a problem with the contractors working in the facility. According to Lamirande, he denied having a problem. Burlingame recited the contractor's allegations against Lamirande. Lamirande asked if Burlingame were accusing him of taking the alleged actions, and Burlingame said he was. Lamirande testified that he then asked to see his shop steward, naming Dan Finn.

Burlingame remembered approaching Lamirande at 11:15 a.m. He asked Lamirande what was going on and Lamirande immediately said he was not talking without a union steward. Burlingame and Lux moved away and Burlingame called line Supervisor Manny Ramirez on his radio and told him to bring a steward to him. Burlingame did not remember specifying which steward to bring, but testified it would have to have been Vogel because he knew that Finn was at lunch. Lux testified that they specifically asked for Vogel because they knew Finn was on break. Finn takes lunch at 11 am regularly and at 11:15 a.m. would be on lunch break. His lunch period would normally end at 11:30 a.m.[5]

When Vogel arrived, he talked with Burlingame.[6] Burlingame testified that he told Vogel what Lamirande had been accused of doing. The three then went to Lamirande. Lamirande immediately asked for Dan Finn. Burlingame testified that he told Lamirande that Finn was at lunch and they needed to get to the bottom of the situation. Burlingame said he remained business like while Lamirande got rude.[7] After a few questions that Lamirande refused to answer, Burlingame gave him a final chance to answer. According to Burlingame, Lamirande said, "]B]lah, blah, blah, blah." Burlingame told Lamirande that it was 11:45 a.m. and he should go home.

Vogel remembers speaking briefly with Burlingame and then privately with Lamirande. According to Vogel, Lamirande said, "No offense against you Fred, but I would like to see Dan Finn because he is aware of my situation." Vogel went back to Burlingame and asked him to try to get Finn to represent Lamirande. Burlingame, looking upset, said that Vogel was there and they were going to proceed. Vogel reiterated his request to get Finn. However he stayed as Burlingame began asking Lamirande questions. Lamirande steadfastly refused to answer them, repeating that he wanted Finn present. Vogel remembers the meeting ending with Burlingame stating that he was giving Lamirande a direct order and that if he did not settle the matter immediately, he was being sent home for insubordination. Lamirande continued to refuse to answer questions and continued to request the presence of Finn. He was sent home.

Vogel then went to lunch. Vogel testified that he passed Finn who was working, and told him about the interview with Lamirande. Finn testified that after Vogel had told him what happened, he went to see Burlingame and asked why he was not called to represent Lamirande. Burlingame told him that he had assumed Finn was at lunch. Finn told him he had assumed incorrectly, and that Burlingame had violated Lamirande's *Weingarten* rights by not releasing Finn to represent him. Finn added that Burlingame could have asked Ramirez over the radio if Finn were at lunch. Burlingame shrugged and the meeting ended. Burlingame denies having this conversation with Finn and I credit his denial. The charge from which this complaint

[3] There is no nexus asserted between the events involved in this proceeding and Lamirande's termination.

[4] All dates in the remaining portion of this section of the decision are in 1998, unless otherwise noted.

[5] Finn testified that he heard the radio call for Vogel about 11:35 a.m., after he was back at work. Vogel testified that on more than one occasion, he has represented an employee on his lunchbreak. Finn testified that he too had represented an employee on his lunch break. On at least two prior occasions Vogel had been called to represent an employee who requested another steward. In each case, the Respondent denied the request and Vogel represented them. Vogel regularly represented employees in investigatory meetings.

[6] Vogel testified that he was working that morning and heard his name spoken on his radio. Almost immediately thereafter, at about 11:25 or 11:30 a.m. in the morning, Supervisor Ramirez came and took him to a meeting with Lux, Burlingame and Lamirande.

[7] According to Lamirande, though Burlingame had begun their conversation in a business-like manner, Burlingame became angry and agitated.

allegation arises concerns Lamirande's suspension. No *Weingarten* violation was raised by the Region until after the Region refused to issue complaint over the suspension. No one, other than Finn, even claimed to have accused Respondent of violating *Weingarten* rights while the incidents in question were taking place.

2. Events of December 17

The next day, Vogel came to work and encountered Howard Ormsby, acting business agent for the Union that day. He told Ormsby about the events of the previous day and asked that Ormsby find Lamirande and talk with him. Vogel was then told to report to the office for a meeting. Lamirande reported to work on December 17 and his supervisor informed him that he was to report to the office for a meeting. Before he went to the office, he ran into Ormsby. Lamirande informed Ormsby about his predicament and asked that Ormsby accompany him to the meeting. He also told Ormsby that he wanted Dan Finn at the meeting. Lamirande testified that he still wanted Finn to help even after he had secured Ormsby's representation. He draws a distinction between Ormsby's and Finn's roles. He testified that Finn was elected by the membership to represent them in grievances and Ormsby was elected to deal with the month-to-month business of the Union. According to Lamirande, Ormsby did not get involved in the grievance procedure in his role as acting business agent. On the other hand, the acting business agent or business agent is involved at step 2 of the Busch's grievance procedure and should be experienced in such matters. Further, Ormsby had previously served as a shop steward at Busch's Baldwinsville facility.

Ormsby and Lamirande started for the office. They encountered Dan Finn who informed them he was not being summoned to represent Lamirande.[8] With this knowledge, they went to the meeting. When they arrived, present were Vogel, Burlingame, Lux, and Ken Silva, assistant bottling, shipping, and packaging manager. The men greeted one another, then Ormsby requested that Dan Finn be present. Silva left the room at this point, returning about 5 minutes later with word that Finn would not be called. Ormsby asked again for Finn and Silva refused the request.[9]

Silva testified that in response to Ormsby's request, he told Ormsby that this was an investigatory meeting and Vogel was already there. Silva said he did not see the need to get Finn. Ormsby pressed the issue and Silva called Baldwinsville Human Resources Manager Larry Harmon to discuss the request. They decided that since Vogel had handled the matter the day before, he would continue to handle it.[10] Silva testified that he had been told by Lux that Vogel was picked because Finn was at lunch.

Lamirande was asked questions tracking the contractor's allegations. Both Ormsby and Vogel participated in the meeting, asking questions and representing Lamirande. The meeting ended with Burlingame telling Lamirande that he had no defense to the allegations and he would be disciplined. I cannot find in the record where either Lamirande, Vogel, or Ormsby ever articulated any reason why they wanted Finn to represent Lamirande.

3. Conclusions

In *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 256 (1975), the Supreme Court held that an employee had the right to union representation at "an interview which he reasonably fears may result in his discipline." The Court feared that a "lone employee" confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors." Id. at 262–263. The presence of "[a] knowledgeable union representative" would protect the employee from being overpowered by the employer and assist the investigation. Id. at 263.

All parties agree that Lamirande was in a *Weingarten* situation December 16, 1998, when he was confronted by Lux and Burlingame. They were clearly going to conduct an investigatory interview that could clearly result in discipline. Lamirande asked for union representation and got it promptly. The question presented by the evidence and complaint is whether *Weingarten* and its progeny require the employer to provide a specifically requested steward rather than one of its choosing.

It is not altogether clear whether Lamirande had requested Finn when he first asked for union representation or whether he first asked for Finn after Vogel arrived. For the purposes of this decision, I am assuming and find that he did ask for Finn before a steward was called. Burlingame did not call Finn to the meeting because he believed Finn was at lunch. I find nothing in the record to raise a doubt about the truthfulness of this reason. Finn was scheduled to be at lunch at the time a call for a steward was made. Thus, Respondent had a logical reason for selecting Vogel to represent Lamirande. There is no evidence in the record to suggest that Vogel was not a competent steward. He was duly elected to the steward position by the workers and was experienced in the job.

If this issue is decided by the Board on appeal, I believe it should be clear that this is a straightforward question concerning the limits of an employee's rights under *Weingarten*. There is no evidence that Respondent had any ulterior motive in using Vogel at both meetings. There is no question in my mind that Lamirande received adequate representation from Vogel in the meeting of December 16 and from Vogel and Ormsby in the meeting on December 17.

[8] Finn testified that on this date at 7:15 a.m., he was relieved on his job and told to see Lamirande in the warehouse. He met Lamirande who told him what had happened the previous day. Finn next met Ramirez about 8 a.m. and Ramirez told him that he was going to be in a meeting about Lamirande at 9 a.m. Just before 9 a.m., Ramirez returned to tell Finn that he, Ramirez had just been told that Finn was not going to the meeting. At this point, he saw Lamirande and Ormsby and informed them that he was not being released to go to the meeting. I believe that Finn told Lamirande and Ormsby he was not going to the meeting. I do not credit and do not believe the remainder of Finn's testimony set out in this footnote. It does not comport with the testimony of Ormsby or Lamirande.

[9] Vogel remembered Silva telling Ormsby that Finn was not available.

[10] Burlingame testified that he initially made the decision to have Vogel at this meeting because he had been at the meeting the previous day. Vogel already knew what the accusations were and in Burlingame's estimation, was "up to speed" on the issues.

The General Counsel asserts on brief that Respondent's past practice was to honor employees' requests for specific stewards in a *Weingarten* setting. I do not believe this to be true. Vogel testified that on two occasions in which an employee he was called to represent asked for another steward, that request was denied. Counsel for the Union and Respondent agreed on the record that subsequent to the incident in question, the parties agreed that in the future, an employee's request for a particular steward would be honored unless the steward requested was unavailable. This understanding was not shown to be in place on December 16 and 17. Therefore, I find that Burlingame did not violate past practice when he called Vogel instead of Finn.

The parties have cited a number of cases dealing with the involved issue in slightly different factual situations. It appears to me that by adoption of the decisions of various administrative law judges, the Board, without comment has broadened the rights of employees under *Weingarten.* In *Pacific Gas & Electric Co.*, 253 NLRB 1143, 1143 (1981), the Board was faced with a situation where the respondent had two facilities, a powerplant and a tank farm, in which its employees worked. The facilities are about 20 minutes apart by car. Respondent refers to the powerplant as the onsite facility and refers to the tank farm as the offsite facility. Each site has two union stewards. The practice of the Respondent was to provide the onsite stewards to employees working in the power plant and the offsite stewards for employees working at the tank farm. When a powerplant employee (Green) requested a tank farm or offsite steward (Lee) for an investigatory interview, the Respondent refused and provided an on site-steward instead. The Board found Respondent's action lawful. It stated:

> On these facts, the Administrative Law Judge concluded that Respondent did not violate Section 8(a)(1) of the Act by refusing Green's request for Lee's representation. For this finding, he relied on *Coca-Cola Bottling Co. of Los Angeles*, 227 NLRB 1276 (1977). In that case, an employee requested representation by a vacationing steward even though the employee knew that another representative was available. The meeting occurred on Friday afternoon and the vacationing steward was not due back until the following Monday morning. The employer denied the employee's request for the absent steward and proceeded with the interview. The Board held there that where another union representative was available, but the employee did not request him, the employer did not violate Section 8(a)(1) of the Act by proceeding with the interview in the absence of a representative.
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> We agree with the Administrative Law Judge, that *Coca-Cola* is controlling here. Member Jenkins, however, dissents, as he did in *Coca-Cola*, since he believes that *Weingarten* requires an employer to provide the employee with the representative of his choice, regardless of how long the employer would have to delay the interview.
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> With all respect, our dissenting colleague's view seems to be inconsistent with both the legal and policy principles contained in *Weingarten.* The Supreme Court in *Weingarten* neither stated nor suggested that an employee's interests can only be safeguarded by the presence of a *specific* representative sought by the employee. To the contrary, the focus of the decision is on the employee's right to the presence of a union representative designated by the union to represent all employees. . . . Our interpretation of *Weingarten* must be tempered by a sense of industrial reality. We do not advance the effectuation of employee rights, or contribute to the stability of industrial relations, if we complicate the already complex scheme of *Weingarten* by introducing the notion that an employee may request this union representative instead of that one, perhaps from a far corner of the plant, and perhaps, in certain instances, contrary to the union's wishes. In the instant case, a duly designated union representative was ready, willing, able and present. We would inquire no further.

The Board's position in *Pacific Gas & Electric,* supra, is inferentially supported in *LIR-USA Mfg. Co.*, 306 NLRB 298, 305 (1992). Therein, in a case where the respondent provided a qualified representative other than the one specified by an employee in a *Weingarten* situation, the General Counsel conceded that by providing an available, qualified representative rather than the requested, less readily available representative, the Respondent met its *Weingarten* obligations.

The state of the law being examined here becomes less clear when one reads *Consolidation Coal Co.*, 307 NLRB 976 (1992). There the Board adopted without comment the decision of the administrative law judge. There a respondent denied an employee's (Knisely) request for representation by an experienced union representative (Tarley) who was present and forced the employee to instead choose representation from a group of committeemen, none of whom had ever represented an employee in an investigatory interview. The judge found Respondent's actions in this regard to violate the Act, citing *GHR Energy Corp.*, 294 NLRB 1011 (1989), where a similar violation was found, i.e., it was a violation of the Act to deny an employee his choice of representative, who in that case was from the International union and present, and force the employee to proceed with another representative. In the instant case it would not have been a violation of the Act if Respondent denied Knisely's request for representation by Tarley if Tarley was not present and to grant the request would force a postponement of the investigatory interview. See *Coca-Cola Bottling Co.*, 227 NLRB 1276 (1977). But in the instant case as in *GHR Energy* supra, the requested representative was present and ready to go forward. Hence, Respondent violated Section 8(a)(1) of the Act.

In *Kidde, Inc.*, supra, the Board adopted without comment the decision of the administrative law judge, who clearly believed that *Weingarten* and cases following clearly give the employee the right to select the person to represent him or her. The *Weingarten* issue in *Kidde, Inc.*, was only a relatively minor part of a major case involving significant unfair labor practices. The respondent refused an employee's (Simmons) request to have an International union representative (Roan) represent him in an investigatory meeting. Though Roan was present, the respondent refused the request and required Simmons to accept

representation by a shop steward. In any event, by adopting the judge's decision, the Board held:

> The General Counsel alleged that GHR on that occasion violated Section 8(a)(1) of the Act by denying Simmons' request for representation by a union representative of his choice. I agree. The Supreme Court and the Board have made clear that the right to request a specific union representative in this case rested with Simmons. In *NLRB v. J. Weingarten*, (citation omitted), the Court approved the Board's view that Section 7 of the Act gives an employee the right to demand union representation at investigatory interviews which he or she reasonably believes will result in discipline. Also, under *Weingarten*, 420 U.S. at 257–258, it is the employee, who is about to undergo the interview, who must request the representation. Further, when the employee makes the request, the employer must either grant it, give the employee the option of going on with the interview unrepresented or waiving the interview, or reject the request and end the interview. Absent is any provision allowing an employer to impose a union representative on an employee.
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> The Board's decision in *Coca-Cola Bottling Co.*, (citations omitted), suggested that the initiative for selecting a union representative lies with the employee. In that case, the Board held that if the employee requests a union representative, who is not available, the employer can reject the request and proceed with the investigatory interview without providing another representative or otherwise attempting to satisfy the employer's initial request. However, in *Coca-Cola*, the Board also recognized that in such circumstances an employee had the right to request alternative representation. *Coca-Cola*, supra at 1276.
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> Applying the foregoing teachings here, I find that Deutsch (employer) impaired Simmons' Section 7 right to specify the union representative he wanted to assist him at the interview on the morning of 17 July. Deutsch imposed steward Kimball upon Simmons, who was attempting to exercise his right under the Act to select the Union's International Representative Roan as his representative. As Roan was available, the interview could have proceeded without delay. That some of Kimball's work time might have been wasted if Deutsch had granted Simmons' request did not warrant Deutsch's rejection of that request. . . . I find that by Deutsch's refusal to permit Gail Simmons to exercise his right to select a union representative in accordance with the *Weingarten* doctrine, GHR violated Section 8(a)(1) of the Act. *Consolidated Freightways Corp.*, 264 NLRB 541, 542 (1982).

In the latest case cited by the parties, *New Jersey Bell Telephone Co.*, 308 NLRB 277, 282 (1992), the Board stated:

> The Judge concluded, and we agree, that when two union officials are equally available to serve as a *Weingarten* representative, ... the decision as to who will serve is properly decided by the union officials, unless the employer can establish special circumstances that would warrant precluding one of the two officials from serving as representative.

Although I would agree with the Respondent in this case that *Coca-Cola Bottling Co.*, supra, and *Pacific Gas & Electric Co.*, supra, clearly support its position that *Weingarten* does not give the employee the right to select a specific representative, that proposition has clearly been changed by the Board as set out above in *Consolidation Coal Co.*, supra, *New Jersey Bell Telephone Co.*, supra, and *GHR Energy*, supra. The law appears to me to be that in a *Weingarten* setting, an employee has the right to specify the representative he or she wants, and the employer is obligated to supply that representative absent some extenuating circumstances. Here there are no such extenuating circumstances for either the December 16 or 17 meetings. I have found at the outset that Lamirande requested Finn at a time before Vogel was called. The only reason advanced for not calling Finn was that he was at lunch. I do not think this reason is sufficient. If the meeting began at 11:15 a.m., as asserted by Burlingame, Finn's lunchbreak only had 15 minutes to go. Moreover, both Finn and Vogel testified credibly that they had been called away from breaks on previous occasions to represent employees. The short delay that would have occurred if Respondent had honored Lamirande's request, assuming Burlingame waited until Finn's lunch period was over, was not a sufficient reason to deny Lamirande the representation he wanted. There was nothing about the allegations against Lamirande that demanded instant attention. The only meaningful distinction I can find in the later cases I have cited and the Board's holding in *Pacific Gas & Electric Co.* deals with the matter of "availability." The later cases discussed above seem to stress the importance of fact that the requested representative was present when the request was made. In the instant case, no representative was present when Lamirande requested Finn. I do not believe that the fact that Finn was on lunchbreak for a short period of time makes him any less "available" than Vogel. Therefore, I find that Respondent violated Section (a)(1) of the Act when it denied Lamirande's December 16, 1998 request and refused to call Finn to represent Lamirande.

Respondent also violated the Act on December 17, when it again refused to call Finn to represent Lamirande. It is not sufficient to argue that Lamirande himself did not reiterate the request for Finn on December 17. He had already made it patently clear that he wanted Finn and no one else. That the request was voiced by Lamirande's representatives on December 17 does not change the fact that Lamirande had already made the request personally the previous day. Further, if Respondent had not unlawfully denied Lamirande's request of the previous day, Finn would have been representing him. It is also not sufficient to say that Respondent could deny Lamirande's request to have Finn represent him on December 17 by saying Lamirande had adequate representation. As pointed out by the Board in *New Jersey Bell Telephone Co.*, supra, that decision was for the union officials to make. No special or extenuating circumstances were offered for Respondent's failure to make Finn available on December 17. Respondent asserts that Vogel was the proper person to call as he had represented Lamirande the previous day and was "up to speed." This argument fails for two reasons. First, Vogel only was present the previous day because Respondent unlawfully refused to produce Finn. Sec-

ond, nothing was developed in the first meeting that would have brought Vogel "up to speed." Lamirande in that meeting flatly refused to answer questions. Further, Ormsby was not at the earlier meeting and he was Lamirande's chief spokesperson at the second meeting. It would have taken only minutes for Lamirande to give Finn his side of the story to bring Finn "up to speed." Finn had already been briefed by Vogel on what had occurred on December 16 and he was clearly available to represent Lamirande.

I, therefore, conclude that Respondent violated Section 8(a)(1) of the Act by refusing to provide Finn to represent Lamirande on December 17, 1998.

C. Resolution of the Issues Raised by Paragraph VII(b) of the Complaint

Paragraph VII(b) of the complaint alleges that on or about February 12, 1999, Respondent, by Mark Sammartino, Brewmaster, and M. Larry Harmon, human resources manager, threatened employee Brian Meany with discharge for engaging in the protected concerted activity of voicing opinions about collective-bargaining negotiations at a corporate communications meeting.[11] Respondent conducts annual, so-called corporate communications meetings with employees. It sends a senior corporate executive from the St. Louis headquarters who gives all of the employees at Baldwinsville a presentation of the company's performance versas that of its competitors and advises of the corporate goals for the near future. The executive will also discuss the Company's stock performance and its retirement plan. The presentation usually takes about 45 minutes. At the conclusion of the formal presentation, the executive entertains questions from the audience.

The employees are divided into three groups, each receiving the same presentation at separate meetings. In 1999, the corporate communications meetings were scheduled for February 11. The executive from St. Louis was Michael Harding, who had recently been promoted to the position of vice president of operations. Also present for the meetings were the Brewmaster Mark Sammartino, Plant Manager Brian McNellis, Human Resources Manager Larry Harmon, and managers from various other departments at the brewery.[12] At each meeting, Harding began his presentation by telling the employees that there would be no references to contract issues. He added the contract issues had been discussed enough so there was no need to discuss them further. He went on to say that Respondent was not trying to avoid the issue, but that it had spent all of 1998 extensively talking about it and it was not the topic of this year's meeting. He explained the purpose of this year's meeting was to discuss the Company's performance, the brewery's performance and initiatives. Aside from this guideline, no restrictions were placed on what could be raised in the question and answer portion of the meetings.

[11] All dates in this section of the decision are in 1999, unless otherwise noted.

[12] The brewmaster and plant manager are co-equals at the brewery and are the two top brewery executives.

1. Facts relating to Brian Meany's conduct at the February 11 communications meeting

Brian Meany has been employed for 16 years by Respondent in its brewing department. At the time of the 1999 communications meetings, he was and had been for some time a union steward in his department. Meany attended one of the three meeting conducted by Harding. When the question and answer session began, some employees raised their hands, were recognized, and asked questions. Two employees had asked questions before Meany was recognized and was given a microphone. Meany had not discussed what he planned to say with anyone before he spoke at the meeting. According to Meany, he began by asking Harding if morale concerned him. Harding gave an answer indicating that it was not a major concern. Meany then asked if it concerned him that Respondent had given a big party for employees and only 40 employees showed up. McNellis spoke up and said it was more than 40. Meany countered by saying it was only 30 or 35 and many were new-hires. Harding responded that they did not need to get into numbers. Meany then accused Respondent of inflating attendance at the party by giving free tickets to friends and neighbors of the brewery's management.

Meany then offered to tell Harding why employees did not attend the party. Meany said it was not a union thing, that employees did not go because they did not want to go. At this point Meany pulled out a legal pad from his briefcase. Harding admonished Meany to keep his comments brief. Meany began reading a list of 10 symptoms of an abused spouse. According to Meany, he had read two of them and his microphone was turned off. Some in the crowd asked to have it turned on and Harding asked if they wanted to hear more from Meany. According to Meany, the audience responded affirmatively. The microphone was turned back on and Meany finished reading his list. The purpose of Meany's comments was to draw an analogy between Respondent's treatment of its employees with the treatment of a spouse by an abusive spouse. Meany stated that the company's treatment of employees made them feel like they had on golden handcuffs. This is apparently a reference to the excellent wages paid by Respondent at Baldwinsville. Meany then told Harding that Respondent could not treat people like they had been treating them. Harding asked, "These people?" referring to the Baldwinsville management officials appearing with him. Meany said, "No, St. Louis." Meany put down his legal pad and ended by telling Harding he had a problem. According to Meany, the audience clapped approval and Harding asked the crowd if Meany spoke for them. Meany testified at least three people answered in the affirmative.[13]

Harding then reminded the employees how good their jobs were and how much money they made. Meany interrupted and said, "Like I was saying, honey, you have a roof over your head," again making an analogy to the abusive relationship he discussed in his list." Meany testified that he felt good at this point, having made his point with Harding.

[13] Brewmaster Sammartino did not remember Harding asking the audience if Meany spoke for them, but did not clearly deny it happened. I credit Meany.

Some other employees asked questions, then one employee showed a list which he represented to Harding as a list of the top 100 places to work, asking Harding why Respondent was not on the list. Harding pointed out how much money the employees made and noted they should be more concerned with the competition than what was being brought up in the meeting.

Meany managed to get recognized again by Harding and said that the contract problems were not about money. A supervisor Meany recognized stood and said, "If these people don't want to work, don't like it here, just get a job somewhere else." Meany mumbled something about the abusive spousal relationship toward the supervisor. He then said to Harding, "The problem with the contract is that you want us to leave the Union at the door." Meany pointed out an employee who Meany believed had been unfairly treated by management, losing a sick day for punching out one second early. He complained about a company practice of taking holiday pay away if an employee is one minute early leaving before a holiday or a minute late returning from one. He added, "[T]hose are like insurance to us." McNellis looked at him and said, "Nice speech Brian." The meeting ended and Meany was congratulated by some in the audience.

Brewmaster Sammartino testified that during Meany's speech, Harding asked him several times if he had a question. Meany ignored Harding's questions and continued reading about the symptoms of a battered spouse. Harding finally cut him off, saying he would listen to a question. According to Sammartino, Meany started shouting, saying Respondent was out to screw their employees. He referred to Respondent as a beater and a batterer of an abused spouse. After a few minutes, Harding firmly told him to sit down and Meany complied.

2. Facts relating to Meany's February 12 meeting with Brewmaster Sammartino

On the next day, February 12, Meany reported to work. Meany's version of what took place that day follows. On Meany's arrival, he was told by his supervisor and two others present to report to Sammartino.[14] He was advised by the supervisors to get a steward. Meany had never heard of anyone called to the brewmaster's office for discipline before this. Meany got fellow employee Carl Ritchie to go with him.[15] In Sammartino's office were Sammartino and Human Resources Manager Larry Harmon. Meany asked if this meeting was about the communications meeting the previous day. Sammartino said yes. Meany stated that the employees had a right to talk. Sammartino then said that current meeting was not a communications meeting, this was one for Meany to sit and listen. Sammartino told Meany that for the 3 years he had been Brewmaster, Meany has disrupted the annual communications meeting. Meany responded that he had not been disruptive for three years, only a year and a half. Sammartino referred to a pad and then said, "I want you to know that the work you do on the floor here does not outweigh the things you do in communication meetings. If you speak again at a communications meeting, you will be fired." Ritchie corroborated that Sammartino made this statement. I credit Meany and Ritchie for the proposition that Sammartino threatened Meany with discharge if he spoke again at another corporate communications meeting.

In the meeting with Sammartino, Ritchie supported Meany's view that employees could speak at communication meetings. Meany told Sammartino that if he had restrictions on him, he wanted them in writing. According to Meany, Harmon said, "You know what, you will be fired. Then the Union will go through the grievance procedure and what will happen will happen." Meany testified that at this point he believed he was going to be fired. He began telling them how much he loved to work at the brewery, but that they have a problem. According to Meany, Sammartino told him that whatever he had in his head he had to get it out. Sammartino said 90 percent of the employees love working at the brewery and he loves it. Meany started arguing that that was not what he heard on the floor, noting that Sammartino was never on the floor.

Meany again asked for something in writing. According to Meany, Harmon said that he had a representative with him so he knew what was said. Meany told Harmon, "Larry, you need to understand that when I speak I am a Union representative. And when I speak, I speak for the people I represent." He made a comment about the contract negotiations and the meeting ended.

Sammartino testified that he and Meany had had a troubled relationship for 3 years. According to Sammartino, Meany had made Sammartino's life difficult by contesting his authority on many occasions and by Meany's conduct in communications meetings. He considered Meany's actions the day before to the straw that broke the camel's back. Sammartino was upset with Meany and felt it time to state some expectations about his conduct and behavior. He told Meany that his behavior at the meeting was unprofessional and inappropriate. He continued, telling Meany that if he conducted himself in a similar fashion in the future, he would have him removed from the premises and if discipline were necessary, it would be given. Sammartino testified that he objected to Meany being derogatory, noting he did not heed Harding's direction to sit down or ask questions. He objected to Meany's yelling at Harding and being derogatory about management. He considered Meany's actions to be insubordinate. He did not issue discipline to Meany because he believed Meany deserved to first be given expectations of acceptable behavior.

3. Conclusions with respect to the threat of discharge of Meany

To find that activity is protected and concerted, the Board generally requires that the activity in question be taken (1) "with or on the authority of other employees" (as opposed to "solely by and on behalf of the employee himself") or (2) individually, but with the object of inducing group action or bringing "truly group complaints" to the attention of management.[16]

[14] Sammartino had been told by Harding to speak with Meany about Meany's conduct at the communications meeting.

[15] Sammartino indicated that he had Ritchie come with Meany. Ritchie had been a steward and was occasionally used as one in the absence of a steward. As noted earlier, Meany was a steward.

[16] The most common issue that arises in relation to the concerted analysis is that of prior approval by coworkers. Obviously, if, prior to acting, an individual secures the approval of his/her coworkers, the action will be concerted. However, even in the absence of prior authorization by other employees, if the purpose of the activity was to

Whittaker Corp., 289 NLRB 933 (1988); *Meyers Industries,* 281 NLRB 882 (1986). Nevertheless, the Board has consistently held, under the latter prong of the definition, that:

> employee questions and comments concerning working conditions raised at a group meeting by an employee clearly come within the definition of concerted activity under Board precedent.

Neff Perkins Co., 315 NLRB 1229 fn. 1 (1994), citing *United Enviro Systems,* 301 NLRB 942 (1991), and *Whittaker Corp.,* supra.

Once conduct is found to be concerted, it will be afforded the Act's protection, except in the narrowest of circumstances. Specifically, when conduct,

> is part of the res gestae of protected concerted activities, the relevant question is whether the conduct is so egregious as to take it outside the protection of the Act, or of such character as to render the employee unfit for further service.

Consumers Power Co., 282 NLRB 130, 132 (1986).

In *F. W. Woolworth Co.,* 251 NLRB 1111, 1112–1113 (1980), the Board found conduct protected despite the fact that an employee repeatedly and loudly insisted on speaking during a group meeting, contrary to the employer's policy prohibiting such, and in contravention of a direct order to cease interrupting by the speaker, the highest ranking manager in the plant.

In the instant case Meany's conduct was clearly not so egregious to take it outside the protection of the Act. When one holds a captive audience meeting with a period for questions and answers, one must expect questions or statements that one might not like. Meany addressed the issue of low employee morale and, based on the audience reaction, had the support of other employees. He mentioned the lack of a contract and a problem with an attendance rule as reasons for the low morale. Though he may have disregarded Harding's instructions to ask a question, or to sit down, nothing he did was anywhere near as insubordinate as the conduct of the employee in *F. W. Woolworth Co.,* supra. He certainly was not trying to take over the meeting or purposely disrupt it. Sammartino threatened to discharge Meany if he spoke again at a corporate communications meeting. This threat and the restriction it places on Meany's future activity, imposed because of his protected concerted activity, is in violation of Section 8(a)(1) of the Act. Having heard Sammartino testify, I really believe his overreaction to Meany's conduct in the communications meeting has its genesis in Sammartino's frustrations with Meany on several other occasions. As Sammartino testified, he believed there was a 3-year history of bad relations between him and Meany. However, he cannot rely on those bad experiences with Meany to justify a threat for engaging in protected concerted activity.

induce group action (even if ultimately unsuccessful) or bring "truly group complaints" to the attention of management, it will be concerted. *Whittaker Corp.,* supra at 933; *Meyers Industries,* supra, 281 NLRB at 886. Applying this rationale, when an individual speaks on a matter of common concern in a group meeting milieu, even without prior approval, a concerted objective is nevertheless inferred. *Whittaker Corp,* supra, 289 NLRB at 934.

D. Resolution of Complaint Allegation VII(c)

This complaint allegation alleges that on or about February 12, 1999, Respondent, by Sammartino, threatened employee William Parks with unspecified reprisals for engaging in the protected concerted activity of voicing opinions about collective-bargaining negotiations at a corporate communications meeting.[17] The meeting in question was one of the three held on February 11 by Harding.

1. Facts relating to William Park's conduct at the corporate communications meeting

William Parks has been employed by Respondent in the brewing department since January 1983 and was a shop steward during the year 1999. On February 11, he attended a different, but very similar corporate communication meeting to the one attended by Meany.

When the meeting entered the question and answer phase, one employee asked about early retirement and insurance. Parks raised his hand at some point shortly thereafter and was recognized by Harding. The question about early retirement had provoked laughter from the executives. According to Parks, he told Harding that he took offense. He said there was a serious morale problem. Parks said that he did not know what McNellis was telling Harding, but it seems that there could be better communications and morale. Parks said Harding should be concerned about morale as it affects productivity.

At this point Parks referred to August Busch III, Respondent's CEO, calling him a lunatic, a control freak, and a power freak. He said the executives who come from St. Louis cause the local executives to cringe. He commented the local executives are nervous and jerky until the St. Louis executives leave. He commented that the power August Busch wants is to have employees walk the walk he wants. He ended his tirade by telling Harding that there are a lot of people pissed off at the brewery. Parks then sat down.

After the meeting, Parks went to Harding and congratulated him on his promotion. Parks testified that at this one on one meeting, he urged Harding to look into the matter of morale. He added that the employees were hard workers, not door mats, and would like some respect which was lacking at the facility. McNellis was standing nearby and Park invited him to jump into the conversation. McNellis said nothing.

In addition to Parks's description of what he said, Sammartino testified that that Parks was yelling and gesturing. He referred to the managers at the brewery as being incapable of dealing with issues. Sammartino remembered Parks calling McNellis an asshole. He said the management team was out to screw the employees. Though agreeing that Parks made derogatory comments about August Busch III, an employee attending the meeting did not remember Parks cursing or calling anyone an asshole. I credit Sammartino.

2. Facts relating to Parks' meeting with Brewmaster Sammartino on February 12

On February 12, Sammartino came to work and found Parks sitting outside his office. Sammartino had not asked to meet

[17] All dates in this section of the decision are in 1999 unless otherwise noted.

with Parks, though he planned on calling him in later that morning. Sammartino greeted him and asked him what he wanted. According to Sammartino, Parks said he was sorry for the way he conducted himself the previous day. He told Sammartino that it was not his intention to embarrass Sammartino. Sammartino asked him what point he had been trying to make at the meeting as it was not clear. Parks finally explained that he did not understand and was upset with the company's absenteeism program. Sammartino explained why it was necessary.

Sammartino then told Parks that he had been out of line and that it was Sammartino's expectation that he would not conduct himself again in the manner he had in the communications meeting. He told Parks that if he had issues, he could discuss them with Sammartino at any time. Sammartino testified that the meeting ended on a friendly note. No discipline was issued to Parks because of his actions at the meeting.

Parks testified that he reported to work the next day and was congratulated on his speech by other employees. He was also instructed to report to Sammartino's office. He went to the office and found Sammartino sitting at his desk. According to Parks, Sammartino did not say anything for 20 seconds or so. Park asked if the meeting was about what had occurred the day before, and Sammartino indicated it was. According to Parks, Sammartino told him that there would be some "fucking corporate vice-president calling me and chewing my ass out." Parks said that he had not mentioned Sammartino's name at the communication meeting and was only talking about plant morale. Parks testified that Sammartino said he was going to be chewed out because what Parks said did not make him look good with his bosses. According to Parks, Sammartino said that St. Louis would want to know Park's name. Parks testified that Sammartino continued by saying that, "Fucking Brian Meany went off the deep fucking end again." Parks again reiterated that the whole plant was talking about morale. The meeting ended and Parks left, glad to leave he testified because Sammartino was really annoyed.

Parks gave two affidavits to the board. In each is a mention of the meeting with Sammartino. One states: "Sammartino, who was clearly upset, informed me that he was unhappy with my action at the prior day's communications meeting. He added that, as a result of my action, he was likely to be chewed out." The other affidavit states: "Sammartino stated that someone from St. Louis was going to chew him out based on my actions at the communications meeting." Neither affidavit mentions the word "fuck," or the word "ass." Sammartino did not tell Parks at this meeting that he was going to take any action against him and there is no evidence that he did.

3. Conclusions with respect to whether Respondent violated the Act

I credit Sammartino's version of the meeting over that given by Parks. The embellishment Parks felt obligated to make about this meeting in his testimony, as compared to his affidavits, indicates to me that Parks is not entirely credible. Nothing in Sammartino's version of the meeting amounts to sanctions or discipline given Parks for his behavior. I believe management has the right to express its displeasure at Parks calling the plant manager an "asshole" and the CEO of the Respondent a lunatic, a control freak, and a power freak. Sammartino did not go beyond expressing displeasure, and in no way disciplined Parks for his actions. I think it ludicrous to have Respondent post a notice saying it will not in the future voice displeasure at name calling by employees. Indeed, the Respondent's work rules prohibit such activity and provide for discipline for such conduct. I will recommend this complaint allegation be dismissed.

E. Resolution of Complaint Allegations VII(a) and (d) Relating to Joseph Rimualdo

The complaint alleges at paragraph VII(a) that in or about early February 1999, Respondent by Art Lux, assistant bottling, shipping, and packaging manager, and Daniel Robinson, supervisor, threatened employee Joseph Rimualdo with unspecified reprisals for engaging in the protected concerted activity of filing safety grievances. It further alleges in paragraph VII(d) that on or about August 25, 1999, Respondent, by Art Lux, threatened Rimualdo with unspecified reprisals because the employee had given testimony to the Board during a prior investigation.[18]

1. Joseph Rimualdo files safety grievances

Joseph Rimualdo has worked for Respondent for 13 years in the beer packaging and shipping department. He has been a union steward for 2 years. Rimualdo testified that in January 1999, there were a lot of safety issues in the plant. Employees would come to him and ask how to get safety issues rectified. According to Rimualdo, he documented these issues and spoke with the line supervisor about them. He mentioned Paul Marcuzey, Bruce Hoag, Denny Schuler, and T. J. O'Connell as supervisors he spoke with about safety issues. According to Rimualdo, the procedure for handling safety matters requires that they first be brought to the attention of the line supervisors. He told the supervisors that if the matters were not handled within a few days, he would file a grievance over them.[19]

According to Rimualdo, the safety issues were not addressed so he filed six safety grievances on or about January 28. Rimualdo testified briefly about each one and each seemed to relate to a legitimate safety concern. He testified that he had spoken previously to a supervisor about each of the problems addressed in the grievances and none had been satisfactorily fixed as of the date the grievances were filed.

According to Rimualdo, after the grievances were filed, he was called to the office of Fred Singler, Respondent's bottling, shipping, and packaging manager. Singler is responsible for 39 supervisors and 330 hourly employees. In his department, from top to bottom, there are assistant managers, shift superintendents, and first-line supervisors. Singler testified that in January he became aware of the grievances filed by Rimualdo. As luck would have it, he stopped by his secretary's desk and they were there. They were filed as "general" grievances which is a type of grievance that goes directly to step-two level, bypassing first line supervisors and any investigatory meetings. Grievances which fall into the general grievance category are those which involve matters across departments or involve the whole plant,

[18] All dates in this section of the decision are in 1999 unless otherwise noted.

[19] The Union files 200 to 300 grievances annually at Baldwinsville and in 1999, filed 211 grievances.

situations in which a first line supervisor would not have the power to resolve the matter.

In the grievance procedure in effect in January 1999 for safety matters, the matter grieved is first brought by the grievance to the attention of his or her immediate supervisor. If the matter is not settled in this fashion, it is brought to the employee's union steward, who meets with the area superintendent. If it is not resolved in this fashion, a grievance is filed. The meeting with the superintendent is typically the step-one level of the process. Singler testified that the grievances filed by Rimualdo were not of the type to be included in the general grievance category and could not bypass first line supervisors. With issues regarding safety, the Respondent has two rules, both requiring safety matters to be immediately brought to the attention of the first line supervisor who is to correct the problem. These rules are contained in the expired collective-bargaining agreement and in the Respondent's safety manual.

When Singler learned of the grievances, he called a meeting with Rimualdo and the two managers in whose departments safety issues had been raised. These men were Art Lux and Nick Alivero. Singler's testimony and that of Rimualdo vary over what happened at this meeting. I did not find Rimualdo to be a particularly credible witness and I did find Singler to be credible. I credit Singer's version of what happened over the testimony of Rimualdo in every regard.

Singler testified that he asked Rimualdo why he had filed general grievances rather than trying to get the problems solved with the line supervisors. According to Singler, Rimualdo said the company had shoved the contract down his throat and that he was only doing what he was told. Singler understood the first part of what Rimualdo stated as contract negotiations had been ongoing for some time and the Company had implemented its last offer. He did not understand the second part until a couple of days later when Steward Pat Lamirande filed nine more general grievances over safety issues.

Singler testified that Rimualdo said he had not spoken to any supervisor about the problems and had written them up as grievances rather than speak with supervisors. In this regard, the grievance forms have a line on which the grievant is supposed to name the supervisor involved in the grievance. Those lines are blank on the grievances filed by Rimualdo.[20] Singler reminded Rimualdo that safety issues are to be first brought to the attention of the line supervisors. He also pointed out that the general grievance process takes about a month or more to accomplish much more time than simply dealing with the problem with the supervisors.

Singler told Rimualdo if the matter could not be resolved by supervisors, then he, Lux or Alivero should be contacted and they would solve the problem. In this regard, he assigned Lux and Alivero to go with Rimualdo to inspect the problems set out in the grievances and resolve them. Singler testified that this process was carried out and within days all the safety problems were addressed. A meeting was held on the grievances 2 weeks later and they were resolved.

Singler testified that as the meeting ended, Rimualdo remarked, "I guess that's strike one against me," and sort of chuckled.[21] Singler replied, "There's no strikes, Joe." He then added that if there is a safety problem, they need to fix it, pointing out that general grievance procedure is not the way to do it as it encumbers the process.

2. Rimualdo is seen drinking a competitor's beer in a local bar

About 4 days after the meeting with Singler, Rimualdo was drinking beer in a tavern near the brewery. Art Lux came in and went to the bar. Rimualdo was drinking a Labatt's Blue beer at the time. Lux saw Rimualdo and came to him, saying," What are you drinking?" Rimualdo replied, "Labatt's Blue." Lux asked, "You are drinking a competitor's brand?" Rimualdo replied, "Maybe I will keep drinking it until we get a contract." According to Rimualdo, Lux then said, "This is two strikes. You got one for filing safety grievances and you got one for drinking Labatt's Blue." According to Rimualdo this was not a friendly conversation.

Lux testified that when he saw Rimualdo, Rimualdo was drinking a Labatt's. According to Lux, he asked, "What the hell are you drinking a Labatt's for? You work for Budweiser." Lux testified that Rimualdo responded, "No contract, no Bud." According to Lux, they talked awhile, then Lux jokingly said, "This looks like strike two," and they both laughed. Lux testified that strike one came from Rimualdo's comment in the grievance meeting. Strike two obviously referred to the Labatt's beer. After this comment, Rimualdo bought Lux a beer. Lux left for bowling shortly thereafter.

I have already indicated that I did not find Rimualdo credible. Based on testimony given in the next section of this decision, I do not find Lux credible either, except when his testimony is supported by other more credible witnesses.

The next day, Lux told other managers that he had seen Rimualdo at the tavern drinking Labatt's. He does not believe he told the managers about the two strike comment. Later, he saw Rimualdo in the office area. Rimualdo looked at him and said, "I'll deal with you later." Lux inquired what he was displeased about and Rimualdo said, "You got a big mouth. You told everybody." According to Lux, Rimualdo was upset about him telling people at the brewery that Rimualdo had been publicly drinking Labatt's. According to Lux, nothing in the conversation related to the grievance meeting or the strike two comment.

Silva testified that on this occasion, he overheard Rimualdo say to Lux, "I'll take care of you later." Lux asked what was his problem. Rimualdo replied, "The problem is that I'm drinking Labatt's beer down in the bar and, you're telling everybody about it." Silva came out asked Rimualdo if he was really drinking a competitor's beer in a bar. Rimualdo acknowledged that he was and that he could do whatever he wanted. Silva expressed his displeasure at a Busch employee drinking a competitor's beer and the matter was dropped.

Following this incident, Rimualdo testified that he was referred to in the plant by supervisors Art Lux and Dan Robinson as "two strikes." Rimualdo believed this term referred to his

[20] Rather incredibly, Rimualdo said he did not write in the names of the involved supervisors out of fear that they would get in trouble with higher management.

[21] Though Rimualdo denies making this comment, I do not believe him and credit Singler's testimony in this regard.

filing of the grievance and the beer incident. Rimualdo testified that he had a conversation with Robinson in which Robinson asked, "When you go to a tavern or bar, what do you drink? What do you order?" Rimualdo replied, "Labatt's Blue." Robinson commented, "That just tells me what kind of person you are." Rimualdo testified that several times thereafter, Robinson and Lux referred to him as "two strikes." These references displeased Rimualdo.

Robinson testified that he heard that Rimualdo was drinking a competitor's beer from an office employee. About a week later, Robinson saw Rimualdo and asked what beer he drinks when he is at a tavern. According to Robinson, Rimualdo got defensive and said, "[I]t's none of your fucking business, pardon my language." And then added, "A Labatt's." Robinson replied, "That tells me a little bit about you." Robinson was unaware that Rimualdo had at any time filed grievances with Respondent. Robinson credibly denied having any knowledge about the one strike, two strike matter. Lux testified that no one at the plant called Rimualdo two strikes. He denied ever calling him by that name. Rimualdo could not remember any specifics about being called "two strikes" in the plant and I do not believe it occurred.[22]

3. Conclusion with respect to the two-strikes allegation

I credit Lux, Silva, and Robinson to the extent their testimony differs from that of Rimualdo on the issue of "two strikes." Though Lux admitted the two strikes remark in the bar, strike one related to a remark made by Rimualdo in the grievance meeting. At that meeting, Singler assured Rimualdo that there were no strikes against him for filing the safety grievances. The operative comment and the one which obviously rankled Rimualdo was the reference to the Labatt's beer in Lux's subsequent comments to other members of management. Rimualdo's conversation with Lux and Silva the next day clearly reveal that his anger stemmed from plant personnel being told that he was drinking a competitor's beer in public, obviously something frowned upon by the Busch corporate culture. In any event, I do not find that Lux's comment about two strikes in any way constitutes a threat over the filing of grievances. I believe the comment was, and I believe it clear that Rimualdo understood it to be, criticism for drinking a competitor's beer in public.

4. The Lux threat to Rimualdo for filing ULP charges

The Union filed a charge alleging that Rimualdo was threatened with discipline for filing the grievances. The complaint allegations discussed immediately above stem from that charge. The hearing on this complaint allegation was originally set for hearing in September 1999. By August, it was known to Respondent and Lux that his two strike comment or comments were at the core of this issue.

On August 25, 1999, Rimualdo was working on a project with employees Art Alexander, Dwight Hart, and Supervisor Dan Tamulevich. The project required the employees to hand stamp dates on packages of beer. According to Rimualdo, Tamulevich was having a problem with a procedure necessary to complete the project. Rimualdo volunteered to complete the procedure. At this time, Art Lux came up to the group. According to Rimualdo, Lux looked at him and said, "You got to be careful what you say and what you do around this guy, he's bad news." Rimualdo at the time was working with ink, and there was ink on his hands. According to Rimualdo, Lux then said to him, "You got to be pretty good with having ink on your fingers." This comment referred to the fact that Rimualdo had recently been arrested at the brewery as a result of a domestic dispute with his ex-wife. This comment displeased Rimualdo.

Rimualdo then responded to Lux, saying, "I'm a good hearted guy." According to Rimualdo, Lux replied, "You're not a good hearted guy. You made it very tough for me, filing those charges with the NLRB. We'll see in September." The hearing on the NLRB charges was then set for September, but was postponed. Rimualdo described Lux as being mad and as further saying he would get even with him in some way. Rimualdo added that he did not discuss his marital problems with fellow employees and Lux's comments embarrassed him.

Lux denied Rimualdo's version of this meeting and testified instead that Supervisor Tamulevich handed Rimualdo a tool with ink on it and Rimualdo said, "I'm used to the ink, so it's no big deal." According to Lux, everyone laughed.

Tamulevich testified that he was having a problem setting up the date stamp and asked Rimualdo to help. Doing so, Rimualdo got ink on his hands. According to Tamulevich, Rimualdo joked that he should be getting used to this. He testified that the group of employees chuckled because they know of Rimualdo's recent arrest at the plant. Tamulevich testified that Lux was present, but confined his comments to questions about how the employees were going to accomplish the date stamping problem. Tamulevich denied that Lux directed any comments specifically to Rimualdo, and specifically denied that Lux made any reference to the NLRB charges.

Dwight Hart has been employed by Respondent since 1983. He testified that he was working with Tamulevich and Rimualdo on the stamping project. He testified that Lux said, "You have the right guy on this job." Rimualdo asked, "What do you mean by that?" Lux said, "You should have a lot of experience with ink pads." As he said this, Lux made motions with his hands simulating the taking of fingerprints. According to Hart, Rimualdo looked uneasy. This prompted Hart to ask Lux, "Why do you pick on Joe? He is a pretty good hearted guy." Rimualdo said, "Yeah, I'm a good guy. I've got a big heart." According to Hart, Lux looked at Hart and said, "He's made trouble for me with the NLRB."

Art Alexander is a 16-year employee at Baldwinsville. He corroborated Hart's version of the ink comments. He testified that he left at that point because Rimualdo appeared upset and he felt uncomfortable.

[22] Singler testified that Lux told him that he had called Rimualdo "two strikes" at a local tavern. He has not personally heard anyone call Rimualdo "two strikes." Harmon overheard the Lux, Rimualdo and Silva conversation. He remembers it involving teasing Rimualdo about drinking a competitor's beer at a tavern. Prior to this conversation, Harmon had learned that Lux had seen Rimualdo drinking Labatt's in a local bar. He testified that he had heard nothing about "strikes." The word did not come up in this conversation nor did any mention of the filing of grievances. Harmon testified that he is on the plant floor at least once a week and has never heard Rimualdo referred to as "two strikes."

Either Lux and Tamulevich or Hart, Alexander, and Rimualdo are lying. Though I still view Rimualdo's testimony with a great deal of skepticism, Hart and Alexander appeared totally truthful. They had nothing to gain and perhaps something to lose by testifying contrary to their supervisors. I credit them and thus Rimualdo in this instance. Neither Hart nor Alexander testified about the vague threat that Rimualdo testified that Lux directed at him after mentioning the NLRB charges. No one examined either witness about his omission in their testimony. Whether this was an omission on counsels' part or a concious decision, I do not know. I will accept Rimualdo's testimony in this regard, however. I believe Tamulevich and Lux are lying about the incident. If there was no threat there was absolutely no reason to lie. I find therefore that Lux threatened Rimualdo for filing charges with the Board over Lux's conduct earlier in the year.

It is well settled that resort to the Board's processes and the filing of charges, regardless of whether they are ultimately meritorious, is concerted protected activity. *Braun Electric Co.*, 324 NLRB 1 (1997), citing, *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 740 (1983), and *Roadway Express*, 239 NLRB 653 (1978) ("there can be no doubt that [filing charges] was protected by the Act."); *Equitable Gas Co.*, 303 NLRB 925, 936 (1991) (finding violation of Sec. 8(a)(1) where 'threats were premised . . . on the protected activities of filing charges and giving attendant supporting testimony under the Act"). Threatening to "get" an employee because he/she engaged in such activity is therefore a threat of reprisal and violative of the Act. See, e.g., *Armstrong Rubber Co.*, 273 NLRB 233, 235 (1984); *Donahue Beverages, Inc.*, 1999 NLRB 681, 583 (1972). By threatening Rimualdo with unspecified retaliation for filing charges with the Board, Respondent has violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, Anheuser Busch, Incorporated, of Baldwinsville, New York, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by:

(a) Refusing to allow a requested steward to represent an employee in violation of the employee's rights under Section 7 of the Act.

(b) Threatening to discharge an employee if he engaged in concerted protected activity, including speaking at corporate communication meetings.

(c) Threatening an employee with reprisal for filing charges with the National Labor Relations Board.

4. Respondent did not violate the Act in any other way alleged in the complaint.

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

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Anheuser Busch, Incorporated, Baldwinsville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to allow a requested steward to represent an employee absent extenuating circumstances, in violation of the employee's rights under Section 7 of the Act.

(b) Threatening to discharge an employee if he or she engages in concerted protected activity, including speaking at corporate communication meetings.

(c) Threatening an employee with reprisal for filing charges with the National Labor Relations Board.

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

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

(a) Within 14 days after service by the Region, post at its facility in Baldwinsville, New York, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 3, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 1999.

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

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[23] 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.

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