

Alamo Rent-A-Car, Inc. and Teamsters Local 385, affiliated with International Brotherhood of Teamsters, AFL-CIO. Cases 12-CA-16972, 12-CA-17969, 12-CA-18121, 12-CA-18122-4, and 12-CA-18857

September 30, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On September 14, 1999, Administrative Law Judge Lawrence C. Cullen issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the General Counsel filed an answering brief.

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 except as modified here,³ and to

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

² In the absence of exceptions, we adopt the judge's finding that the Respondent's Regional Director of Operations Bill Decker violated Sec. 8(a)(1) by equating union activities with disloyalty in a conversation with employee Fernande Lynn Edwards on December 4, 1994. We need not pass on the judge's conclusion that Decker unlawfully solicited grievances from Edwards because such a finding would be cumulative of other unfair labor practice findings and would not affect the remedy here. For the same reason, we need not pass on whether Respondent's shift manager, Kevin Guarnsey, made an unlawful statement to Edwards about disloyalty on January 9, 1995.

Additionally, Member Cowen finds it unnecessary to pass on the following allegations because the remedies for any violations would be cumulative in this case: (1) City Manger Raja Assal's alleged interrogation of employee Edwards on January 9, 1995; (2) Assal's alleged threat to Edwards during this same conversation, that the Respondent would bargain from scratch or would take a regressive bargaining posture; (3) City Manager Hans Hutwalcker's alleged interrogation of employee Fernando Altamirano in March 1996; and (4) Hutwalcker's alleged solicitation of grievances from employee Jose Perez in March or April 1996.

Finally, Member Cowen does not pass on the General Counsel's argument, set out by the judge in sec. II.A.2 analysis, in agreeing with the judge that the Respondent violated Sec. 8(a)(1) when it impliedly threatened employees with the loss of wages and benefits if they chose union representation.

³ In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(1) by supporting employee-led "Roundtable" meetings, we rely on evidence that the Respondent used these meetings as part of an unprecedented effort to solicit employees' grievances with a promise to remedy them. In fact, after the first meeting, grievances were reported by the antiunion employee leadership to City Manager Steve Raffio, who informed them of those he could remedy and those he could not address. In finding this violation, we do not rely either on the Respondent's permitting employees to attend these meetings off premises

adopt the recommended Order as modified and set forth in full below.⁴

1. The Respondent excepts, *inter alia*, to the judge's denial of its motion to defer to a non-Board settlement agreement in lieu of further proceedings. It is well settled, however, that the Board is not required to give effect to all settlements reached between parties. As explained in *Independent Stave*, 287 NLRB 740, 741 (1987), the Board's power to prevent unfair labor practices is to be exercised in the public interest, and therefore the Board can refuse to be bound by any settlement that does not further the purposes of the Act. In determining whether to approve a settlement,

the Board will examine all the surrounding circumstances including, but not limited to, (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.⁵

Here, there is no fraud or duress alleged. There is also no evidence of previous misconduct by the Respondent. However, the evidence relative to the first and second *Independent Stave* factors weighs heavily against approving the non-Board settlement agreement. With respect to the first factor, only one of the four individual discriminatees approved the agreement, and the General Counsel strongly opposes it. With respect to the second factor,

during work hours or on the Respondent's reimbursement of food and drink expenses from the meetings.

In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(3) by issuing a written discipline and 3-day suspension of Linda Sconyers on April 7, 1996, we find further evidence of animus, proving discriminatory motivation, in Raffio's April 10, 1996 expression to Sconyers of his disappointment with her union activities, and in Raffio's May 28, 1996 statement to Sconyers that her organizing activities would "cripple" her career.

⁴ We shall modify the judge's recommended Order in accordance with *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Ferguson Electric Co.*, 335 NLRB 142 (2001). In accord with the General Counsel's exceptions, we shall add to the judge's recommended Order and notice references to the dates of certain violations as well as the traditional remedial injunction against further violation of employees' Sec. 7 rights "in any like or related manner." Finally, we shall substitute a new notice that includes introductory language revisions in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

⁵ *Independent Stave*, *supra* at 743.

the settlement fails to address substantial portions of the case. It fails to remedy any of the alleged 8(a)(1) violations and it only partially remedies two of the alleged 8(a)(3) and (1) violations. Under these circumstances, we find that the judge reasonably denied Respondent's motion to defer to the parties' settlement agreement.

2. We find merit in the Respondent's exceptions to two 8(a)(1) findings by the judge.

The judge found the Respondent's manager, Karen Soyk, threatened the futility of bargaining when she indicated to employees at a January 1995 meeting that the Union would negotiate the same benefits package that employees already had. Soyk was explaining the Respondent's benefits plan called FAMPACT to employees. Employee Edwards credibly testified, "She [Soyk] explained that the FAMPACT has been there and they are now bringing it to employees. That the same benefits that we have in the FAMPACT, we have vacation, we have medical plan, we have 401(k), all the benefits we have in the FAMPACT will be the same benefits that the Union will negotiate for us. That is just like the contract the Union will get for us."

Nowhere in this credited testimony is there the slightest suggestion that the Respondent would not negotiate in good faith with the Union about the various benefits mentioned or that the Union could not secure a different or better benefits package through bargaining. Soyk's personal prediction about the results of bargaining cannot reasonably be viewed as a threat that no other outcome would be possible. We dismiss this complaint allegation.⁶

The judge also found that the Respondent violated Section 8(a)(1) of the Act by engaging in surveillance of the election activities when a police deputy, employed by the Respondent as a guard, entered the polling area. Contrary to the judge, we find that the evidence concerning this brief incident is too ambiguous to warrant an unfair labor practice finding. We dismiss this allegation as well.

3. Finally, we find merit in the Respondent's exceptions to one of the 8(a)(3) violations found by the judge.⁷

⁶ Contrary to their dissenting colleague, Members Cowen and Bartlett find that a statement found unlawful in *Aqua Cool*, 332 NLRB 95, 96 (2000), i.e., that "employees were unlikely to win anything more at the bargaining table," is not comparable to the statement at issue here. Quite simply, we do not view Soyk's remarks as reasonably suggesting any cap on what could be obtained in good-faith bargaining. Furthermore, we do not agree that other unlawful statements about bargaining made by other officials at other times would so affect employees' perception of Soyk's remarks that they would reasonably tend to believe she was threatening the futility of bargaining.

⁷ Contrary to their dissenting colleague, Members Liebman and Bartlett find, in agreement with the judge, that the Respondent's supervisor, Lovejoy-Flairty, unlawfully warned Fernande Lynn Edwards on

He found that the Respondent discriminatorily disciplined employees Altimirano and Edwards for taking an extended dinner break on May 15, 1996. While we agree with the judge that the General Counsel has met the initial burden of proving antiunion motivation for the discipline of two prominent union supporters, we conclude that the Respondent has met its rebuttal burden of showing that it would have taken the same disciplinary action even in the absence of union activity.

Indeed, the judge himself found that the imposition of discipline "was not inconsistent with the requirement of the policy set out in FAMPACT regarding dinner breaks." Contrary to the judge and our dissenting colleague, we find the lack of evidence of any previous disciplinary actions for taking excessive dinner breaks does not undercut the Respondent's legitimate defense here, in the absence of anything more than sheer speculation that prior infractions must have taken place and that the Respondent countenanced them. We therefore dismiss the 8(a)(3) allegation concerning this disciplinary action.

ORDER

The National Labor Relations Board orders that the Respondent, Alamo Rent-A-Car, Inc., Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employee grievances and impliedly promising to remedy them in order to discourage employees from engaging in activities on behalf of the

July 13, 1996. They find no basis in the dissent for the assumption that Respondent's animus against prominent union activists had dissipated in the wake of the Union's second election defeat. Furthermore, the Respondent failed to present any independent evidence of the alleged customer complaint, and Lovejoy-Flairty provided no explanation for why Edwards received no notice of the warning, which Lovejoy-Flairty admittedly placed in the employee's file to permit acceleration of future discipline. Under these circumstances, Members Liebman and Bartlett find that the alleged customer complaint underlying the warning was a mere pretext for retaliation against Edwards for supporting the Union.

Contrary to his colleagues, Member Cowen would not find that the Respondent violated Sec. 8(a)(3) of the Act by the warning that Supervisor Ginger Lovejoy-Flairty issued to employee Fernande Lynn Edwards in response to a customer complaint. Lovejoy-Flairty issued this warning on July 13, 1996, about 2 months after the Union had lost the second of three elections here. Edwards denied that she ever received it. While admitting that she did not have a specific recollection of her conversation with Edwards about this warning, Lovejoy-Flairty testified that she "probably wrote 30 or 40 of these a month" based on customer complaints. Clearly, based on Lovejoy-Flairty's testimony, it was common for the Respondent to issue such warnings when customers complained about poor service. There is also no evidence here linking this discipline to Edwards' union activities in the organizing campaign that had just ended in failure. In these circumstances, Member Cowen would find that the General Counsel has failed to establish the requisite elements of a prima facie case that Edwards' warning violated Sec. 8(a)(3). He therefore would dismiss this allegation of the complaint.

Teamsters Local 385, affiliated with International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

(b) Interrogating employees concerning their support for, activities on behalf of, or membership in the Union, or any other labor organization.

(c) Threatening employees that their support for, activities on behalf of, or membership in the Union constitute disloyalty.

(d) Soliciting employees to monitor the union activities of other employees.

(e) Threatening or impliedly threatening employees with the loss of benefits, wages, and working conditions if they should choose the Union as their exclusive collective-bargaining representative;

(f) Implying to employees that it is futile for them to select the Union as their exclusive bargaining representative.

(g) Informing employees that should they select the Union as their exclusive collective-bargaining representative, the Union would have to bargain for the terms and conditions of employment that the employees already have.

(h) Denying early leave privileges to employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

(i) Disciplining employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

(j) Suspending or discharging employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

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

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

(a) Within 14 days from the date of this Order, offer Linda Sconyers immediate and full reinstatement to her former position or, if such position does not exist, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole, with interest, for any loss of earnings or other benefits she may have suffered as a result of the discrimination against her in suspensions on April 27, 1996, and from April 22, 1997 to April 28, 1997, and in her discharge on April 28, 1997, to the date of the Respondent's offer of reinstatement, with interest.

(b) Within 14 days from the date of this Order, make José Perez whole for any loss of earnings or benefits he may have suffered as a result of his unlawful discipline and suspension on June 11, 1996.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline taken against Fernande Lynn Edwards on July 13, 1996, against José Perez on June 11, 1996, and against Linda Sconyers on April 27, 1996, and April 22-28, 1997, and her unlawful discharge on April 28, 1997, and within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful discipline, suspensions and/or discharge actions will not be used against them in any way.

(d) Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(e) Within 14 days after service by Region 12, post in its Orlando, Florida facility copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by it for 60 consecutive days thereafter 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 December 7, 1994.

(f) Within 21 days after service by Region 12, 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.

MEMBER LIEBMAN, dissenting in part.

Unlike my colleagues I would affirm the judge's findings (1) that the Respondent violated Section 8(a)(3) by its written discipline against employees Fernande Lynn Edwards and Fernando Altamirano, and (2) that it violated Section 8(a)(1) by implying to employees that it

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

would be futile for them to select the Union as their bargaining representative.¹

1. *The Discipline.* My colleagues acknowledge that the General Counsel has met his initial burden to prove that hostility to employees' union activity was a motivating factor for the discipline of Fernande Lynn Edwards and Fernando Altamirano, two admittedly prominent union supporters. However, they find that the judge erred in concluding that the discipline was unlawful. In their view, the Respondent has met its burden to affirmatively show that the discipline would have occurred even in the absence of the employees' union activity. I disagree.

My colleagues make two fundamental errors regarding the judge's application of *Wright Line*² principles. First, they mistakenly rely on the judge's introductory comment that the discipline "was not inconsistent with the requirement of the policy set out in FAMPACT regarding dinner breaks." The judge himself concluded, based on the crediting of relevant testimony, "that there was no hard and fast rule for the taking of dinner breaks." On these facts, the judge clearly found that employees, who were paid on an incentive basis, were granted some leeway regarding the permitted meal periods. The judge's reliance on the absence of evidence that employees were ever disciplined for taking excessive dinner breaks provides direct support for his conclusion that there was no such strict rule. Thus, the judge correctly concluded that the Respondent failed to meet its burden to establish that the employees had engaged in misconduct that could have provided a basis to justify lawful discipline. Notably, the Respondent places no reliance on FAMPACT to support its exceptions to this violation.

The second defect in my colleagues' analysis is their assumption that the existence of a relevant FAMPACT policy, whatever it might be, suffices to establish the Respondent's defense. The mere showing that there was a possibly legitimate reason for the discipline is insufficient to meet the Respondent's affirmative *Wright Line* burden. As the Board stated in *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984):

¹ I join my colleagues to the extent that they have affirmed the majority of the 8(a)(3) and (1) violations found by the judge in this case. I join Member Bartlett as to the added rationale for finding that the warning given to Edwards on July 13, 1996, violated Sec. 8(a)(3). In addition, I concur in my colleagues' decision not to pass on certain other unfair labor practice allegations that are duplicative of other violations. Finally, I also agree with the dismissal, for reasons stated in their decision, of the alleged surveillance by a policy officer employed by the Respondent who momentarily entered the election area.

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

Thus it is now clear that in rebutting the General Counsel's prima facie case—that the protected conduct was a "motivating factor" in the employer's decision—an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct.

Accord: *Westchester Lace, Inc.*, 326 NLRB 1227 (1998). Here, the Respondent admittedly could not show that its discipline was consistent with any disciplinary practice when faced with similar misconduct. The question is not, as my colleagues suggest, whether the record demonstrates that the Respondent actually countenanced similar infractions. Rather, the question is whether the record demonstrates that the Respondent would have disciplined Edwards and Altamirano, absent their protected activity. As did the judge, I conclude that the Respondent failed to carry its burden of proof.

2. *Futility of Representation.* I would also affirm the judge's finding that the Respondent's manager, Karen Soyk, unlawfully implied to employees that it would be futile for them to select the Union as their bargaining representative. In late January 1995, Soyk conducted a meeting with employees at which she compared the benefit plans available to employees with what the Union could negotiate with the Respondent for the employees. The judge credited testimony that Soyk told employees, "all the benefits we have in the FAMPACT will be the same benefits that the Union will negotiate for us. That is just like the contract the Union will get for us." The judge concluded that Soyk's statement was unlawful because it was designed to convey to employees that there was nothing to gain by the selection of the Union, as they would receive no more than the benefits they were already receiving. This conclusion is fully warranted and is supported by the Board's decision in *Aqua Cool*, 332 NLRB 95, 96 (2000) (statement by Kachadurian to Tetrault that employees were unlikely to win anything more at the bargaining table).

My colleague's claim that there is not "the slightest suggestion that the Respondent would not negotiate in good faith with the Union or that the Union could not secure a different benefits package" is inaccurate. The majority's conclusion that the manager's statement was merely a personal opinion is likewise not based on the evidence. The facts show that Soyk made these comments during a formal campaign meeting with employees concerning the Respondent's current benefit structure, and that she made a clear pronouncement that "the contract the Union will get for us" will reflect only the benefits the Respondent currently made available to employ-

ees. Soyk's comments occurred in the context of somewhat more serious threats made by Shift Manager Juline Paul the prior month, that employees would lose their benefits if they bring in the Union, and those made by City Manager Raja Assal earlier that same month, that employees, "know what will happen if a union comes in, you guys are going to lose your benefits and the union will have to start from scratch." My colleagues have affirmed that these earlier threats were unlawful. In that context, they erroneously conclude that Soyk's statements were lawful because "there is no suggestion that the Respondent would not negotiate in good faith." They ignore repeated prior statements by other managers clearly revealing that the Respondent had no intent to fulfill its obligations under the Act to negotiate in good faith if the employees chose to be represented by the Union. Where employees have already been threatened with loss of benefits if they select the Union as their representative, it also makes no sense for the majority to assert that Soyk did not state that the Union could not secure a different benefits package through bargaining. Given the context, and given what Soyk did state, the violation is clear. What Soyk did not state is no basis for reversing the violation found by the 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT solicit employee grievances and impliedly promise to remedy them in order to discourage employees from engaging in activities on behalf of the Teamsters Local 385, affiliated with International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate employees concerning their support for, activities on behalf of, or membership in the Union, or any other labor organization.

WE WILL NOT threaten employees that their support for, activities on behalf of, or membership in the Union constitute disloyalty.

WE WILL NOT solicit employees to monitor the union activities of other employees.

WE WILL NOT threaten or impliedly threaten employees with the loss of benefits, wages, and working conditions if they should choose the Union as their exclusive collective-bargaining representative.

WE WILL NOT imply to employees that it is futile for them to select the Union as their exclusive collective-bargaining representative.

WE WILL NOT inform employees that should they select the Union as their exclusive collective-bargaining representative, the Union would have to bargain for the terms and conditions of employment that the employees already have.

WE WILL NOT deny early leave privileges to employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

WE WILL NOT discipline or suspend employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

WE WILL NOT discharge employees because of, or in retaliation for, their union activities, sympathies, or affiliation.

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, within 14 days from the date of the Board's Order, offer Linda Sconyers immediate and full reinstatement to her former position or, if such position does not exist, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and WE WILL make her whole, with interest, for any loss of earnings or other benefits she may have suffered as a result of the discrimination against her in suspensions on April 27, 1996, and from April 22 to 28, 1997, and in her discharge on April 28, 1997.

WE WILL, within 14 days from the date of the Board's Order, make José Perez whole for any loss of earnings or benefits he may have suffered as a result of his unlawful discipline and suspension on June 11, 1996.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discipline taken against Fernande Lynn Edwards on July 13, 1996, against José Perez on June 11, 1996, and against Linda Sconyers on April 27, 1996, April 22-28 and 28, 1997, and WE WILL, within 3 days thereafter, notify each of them in writing that this

has been done and that the unlawful discipline, suspensions and/or discharge actions will not be used against them in any way.

ALAMO RENT-A-CAR, INC.

Dallas Manuel II, Esq., for the General Counsel.
Robert L. Murphy, John Bolanovich, and H. Eric Hilton, Esqs.
(Stokes & Murphy), of San Diego, California, Windmere,
 Florida, and Atlanta, Georgia, for the Respondent.
Richard Siwica, Esq. (Egan, Lev & Siwica), of Orlando, Florida,
 for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This consolidated case was heard before me on March 8, 9, and 10, 1999, in Orlando, Florida. The complaint as amended was issued by the Regional Director for Region 12 of the National Labor Relations Board (the Board or the NLRB), and is based on charges filed by Teamsters Local Union 385, affiliated with International Brotherhood of Teamsters, AFL-CIO (the Charging Party or the Union), and alleges that Alamo Rent-A-Car (the Respondent or the Company), violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The complaint is joined by Respondent's answer wherein it denies the commission of any violations of the Act and asserts certain affirmative defenses thereto. Additionally, Respondent filed at the hearing a Motion to Defer to a Settlement Agreement in Lieu of Further Proceedings Upon a Complaint and for Summary Judgment, which was denied by me. This motion refers to a settlement agreement reached between the Respondent and the Charging Party which resolved only part of the complaint allegations which span several years and three elections and did not require the posting of a Board notice.

On the entire record, including the testimony of the witnesses and exhibits submitted and after review of the briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, Respondent admits, and I find that at all times material herein during the 12-month period preceding the filing of the complaint, Respondent has been a corporation with an office and place of business located in Orlando, Florida, where it has been engaged in the rental and leasing of motor vehicles, that during the past 12 months, Respondent has in the course and conduct of its business operations, purchased and received at its Orlando, Florida facility goods and materials valued in excess of \$50,000 directly from outside the State of Florida, derived gross revenues in excess of \$500,000, and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent denies, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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

1. December 1994 meeting of Respondent's director of operations, Eastern Region, Bill Decker, with former rental agent Fernande Lynn Edwards

Facts

Fernande Lynn Edwards testified she was called into a meeting with Bill Decker on December 7, 1994. (The meeting was held in the office of Karen Soyk who is Respondent's assistant city manager/family wellness specialist for the Orlando facility. Decker's office is located at Respondent's corporate office in California but he makes frequent visits to the Orlando facility which is part of his Region.) This was a one-on-one meeting. Decker initiated the conversation by asking Edwards how they (management) were treating her at the office. She responded that she was being treated fine but some of the managers needed to go back to training as they were treating the employees "real bad." Decker then told her that there was a rumor passed on to the corporate office by the Orlando city director, Ed Terry, that the rental representatives were threatening to bring in a third party. She asked what was meant by a third party and he responded that this was a union. She told him she knew nothing of this. He then asked her whether anyone had approached her with a card to sign and she said no. During the course of this meeting they also discussed an anticipated employee bonus which had been drastically reduced and Decker explained that this was dependent on how the Company performed. Near the end of the meeting, he asked her whether as a loyal employee, if someone approached her, she would be willing to let them (management) know. She told him no, she would not do that to her coworkers. During the course of this meeting Decker took notes. He told her that anything discussed, would stay in the room and he would not mention her name. He also stated that he was going to get to the bottom of it (the union campaign) because they (management) wanted them to stay as an Alamo family.

Decker testified he traveled to Orlando frequently as it is the largest city in his region. He testified that he was not aware of any union activity in early December 1994, and did not become aware of it until he received a letter from the NLRB. He testified that during the end of 1994 and the beginning of 1995, he traveled to Orlando at least every 2 weeks in general to discuss team leader meetings and Respondent's open door policy and ensure they were functioning properly but he did not attend these meetings himself. He admits meeting with employees in December 1994, but denies meeting one-on-one with any employee.

Analysis

I credit the testimony of Edwards as set out above, some of which is not specifically rebutted by Decker. I found Edwards' testimony to be specific and straightforward and truthful. Ed-

wards was a leading union adherent who served as a union observer during the secret-ballot election held in Case 12–RC–7807 on April 10, 1995. I reject Respondent’s argument that she is a disgruntled former employee whose testimony should not be credited because she was discharged for taking a job with the Hertz rental agency during a leave of absence from Respondent.

I find that circumstances of calling a leading union adherent into the one-on-one meeting and inquiring initially as to how she was being treated and then interrogating her concerning whether she had knowledge of the union campaign, whether she had been approached to sign a union card and whether she had actually signed a card, and then moving on to solicit her to monitor and report the union activities of her fellow employees on the basis of loyalty all combine to establish the violations of Section 8(a)(1) of the Act as alleged in paragraphs 6(a), (b), (c), and (d) of the complaint. I find that under these circumstances Respondent through its agent Decker solicited grievances from Edwards and impliedly promised to remedy them in order to discourage employees’ union activities and thereby violated the Act. I find the interrogation of Edwards by Decker concerning her union activities and those of her fellow employees was also violative of the Act. It is also clear that Decker equated union activities with disloyalty on the part of its employees, a violation of the Act. Decker’s solicitation of Edwards to monitor and report the union activities of her fellow employees was also a clear violation of the Act.

2. Shift Manager Juline Paul’s meeting with Fernande Lynn Edwards

Facts

Fernande Lynn Edwards testified that on about December 18, 1994, she was in a one-on-one meeting with Shift Manager Juline Paul. She testified that Paul “started talking about our benefits at Alamo, how we have good benefits and we are trying to bring a union that will take away our benefits.” Edwards asked Paul whether she had “been in a union before and she told me no.” Edwards testified, “I said so how you know they are going to take our benefits?” “She tell me that’s the way it work. When a union come in, they take everything off the table, they leave the table empty, and they start from scratch. And we might not get what we already have.” Paul did not testify and Edwards’ testimony is thus un rebutted. Respondent asserts that it was unable to find Paul after a diligent search.

Analysis

I credit the un rebutted testimony of Edwards, whom I found to be a reliable witness. While it is true as Respondent asserts in its brief, that a statement to an employee that in a collective-bargaining situation, employees may get more or less or the same wages and benefits than those they already have, may be found to be lawful, it may also be unlawful depending on the wording and emphasis of the statement. When such a statement is made by an employer it sends up a red flag to the employees that they may lose their benefits or that bargaining will be futile. An employer runs the risk of violating the Act unless it is clearly explained that the employees may obtain more or less or the same wages and benefits than they then currently have. In

the instant case I credit the testimony of Edwards that Paul was emphasizing and threatening that the employees would lose their benefits. Even allowing for some breakdown in communications between Paul and Edwards, I find that the crux of what Paul was conveying to Edwards was the employees would suffer a loss of benefits if they selected the Union as their collective-bargaining representative. As the General Counsel argues in his brief, a “bargaining from scratch” statement can reasonably be understood to be a threat by an employer “to unilaterally discontinue existing benefits prior to negotiations or to adopt a regressive bargaining posture designed to force a reduction of existing benefits for the purpose of penalizing the employees for choosing collective representation,” citing *Textron, Inc. (Talon Division)*, 199 NLRB 131 (1972); *Saunders Leasing System*, 204 NLRB 448 (1973); *Lear-Siegler Management Service*, 306 NLRB 393 (1992). This is in sharp contrast to the situation where an employer clearly sets out that the exigencies of bargaining do not automatically guarantee improvements in wages and benefits. *Computer Peripherals, Inc.*, 215 NLRB 293 (1974); *Coach & Equipment Sales Corp.*, 228 NLRB 240 (1977). I thus find as alleged in paragraph 7 of the complaint that Respondent violated Section 8(a)(1) of the Act when it impliedly threatened employees with the loss of wages and benefits if they chose union representation.

3. Statements by City Manager Raja Assal and Shift Manager Kevin Guarney to Fernande Lynn Edwards while riding in a company van returning from a representation hearing on January 9, 1995

Facts

Edwards testified that she attended the NLRB representation hearing in Case 12–RC–7807 on January 9, 1995, and was transported to and from the hearing by a company van driven by City Director Raja Assal and that Shift Manager Kevin Guarney also rode in the van. Edwards testified that on the return to Respondent’s facility, Guarney said to her that she was not one of them. She asked what he meant and Guarney said he had seen her “talking to the Union people.” City Manager Raja Assal then said, “. . . you knew about the Union all along. You were just pretending.” Edwards responded that this is a free country. Edwards testified that during one of the breaks at the hearing she had briefly talked with Union Counsel Richard Siwica and Danny (Pete) Peterson, who was then Union President.

Respondent contends that after diligent search, it is unable to locate Guarney and that Assal was in Lebanon with his ill father and unable to attend the hearing as a result. It further argues that Guarney was not named in the amended complaint, and that the statements attributed to Guarney and Assal do not constitute a violation of the Act.

Analysis

I credit the un rebutted testimony of Edwards as set out above. I find that Respondent violated Section 8(a)(1) of the Act by the statements made by Respondent’s agents equating Edwards’ support of the Union with disloyalty to Respondent which clearly constituted a threat to Edwards’ job security.

4. City Manager Raja Assal's discussion with Fernande Lynn Edwards on the morning of January 9, 1995

Fernande Lynn Edwards testified that on the morning of January 9, 1995, when she had returned from vacation, she went to the counter to work. Assal called her and said he wanted to talk to her. He then asked her what was going on and told her he had heard that the employees were bringing a union in. She initially told him she did not know what he was talking about. He then said you have a hearing with the Union downtown. She then said, "all right." He then said, "[Y]ou guys are trying to bring a Union. And you guys have good benefits and you know what will happen if a union comes in, you guys are going to lose your benefits and the union will have to start from scratch. I said, well, let the people decide that. If they want a union, let them bring a union. And he told me you know the other companies that have union, they didn't negotiate the bonus. I said, well, if the reps want a union, they can negotiate the bonus also. He told me I hope you know what you're getting yourself into."

Respondent contends that Assal's comments regarding "bargaining from scratch" are not unlawful and relies on an affidavit filed by Assal wherein he asserted that the purpose of his meeting was not to work any benefits or wages out of the agreement in reference to the FAMPACT agreement prepared by Respondent.

Analysis

I credit the testimony of Edwards as set out above. I find the inquiry by Assal of Edwards regarding the Union was designed to obtain information as to what the employees expected to get as a result of union representation. I find this constituted unlawful interrogation in violation of Section 8(a)(1) of the Act. I also find that Respondent violated Section 8(a)(1) of the Act by Assal's threat that the employees would lose their benefits and would have to bargain from scratch which telegraphed the message that their benefits could be discontinued prior to bargaining or that Respondent would take a regressive bargaining posture in retaliation for their selection of the Union as their collective-bargaining representative. *Lear-Siegler Management Service Corp.*, 306 NLRB 393 (1992).

5. Assistant City Manager/Family Wellness Specialist Karen Soyk's comments to employees regarding bargaining in January 1995

Facts

The General Counsel, in reliance on testimony developed in the cross-examination of assistant city manager/family wellness specialist, Karen Soyk, contends that Soyk violated Section 8(a)(1) of the Act by her testimony that she told employees the Company had the right to bargain over wages and bonuses at ground zero; that "you start at a basis and you negotiation [sic] for everything from there." However, in her testimony immediately preceding the quoted testimony, in response to the General Counsel who asked her if she had stated that bargaining for rights and benefits "began from scratch?" Soyk did not admit making that statement. Rather, she testified, "I believe I said they could start—you—you could—I remember I used to say

you could wind up with the same, you could wind up with more, you could wind up with less, it all depends on how negotiations go."

Analysis

I find no violation of the Act by Soyk's testimony in the overall context of her answers to the General Counsel's questioning. Rather, I find she clearly testified that she presented the alternative outcomes of collective bargaining. You can obtain more, less, or remain the same. She did not admit using the phrase, "bargaining from scratch." She testified, "I think the term I would have used is ground zero. You start at a basis and you negotiation [sic] for everything from there. That was my understanding." See *Histacount Corp.*, 278 NLRB 681 (1986).

6. Soyk's meeting with employees in late January 1995

Facts

Fernande Lynn Edwards testified that in late January 1995, she attended a meeting held by Karen Soyk with several employees. During this meeting Soyk compared the Respondent's benefits plan called FAMPACT with what the Union could negotiate with Respondent on behalf of the employees. Edwards testified, "She explained that the FAMPACT has been there and they are now bringing it to employees. That the same benefits that we have in the FAMPACT, we have vacation, we have medical plan, we have 401K, all the benefits we have in the FAMPACT will be the same benefit that the Union will negotiate for us. That is just like the contract the Union will get for us." Soyk, who testified at the hearing did not specifically acknowledge conducting meetings with employees in January 1995, other than adhering to an open door policy by responding to questions raised by employees.

Analysis

I credit Edwards' testimony which was essentially un rebutted as Soyk did not directly refute it. I find that Soyk's comments were designed to convey to the gathered employees that there was nothing to gain by the selection of the Union to represent them as they could receive no more than the benefits they already had under the Respondent's FAMPACT benefits package. Thus Respondent violated Section 8(a)(1) of the Act by conveying to the employees the message that it was futile to select the Union as their collective-bargaining representative. See *Child's Hospital*, 308 NLRB 340 (1992).

7. Assistant City Manager Hans Hudtwalker's interrogation of employee Fernando Altamirano

Facts

Former rental agent Fernando Altamirano testified concerning interrogation he was subjected to by assistant city manager Hans Hudtwalker in about March 1996. Altamirano testified that he began to actively solicit union cards in late February or early March 1996, and within 2 weeks of this Hudtwalker began calling him into his office and interrogating him as to his union activities and urging him to help the Company instead of the Union during the union campaign. Altamirano testified, "I

used to come in and he used to just signal me to come into his office. I stayed in his office and [sic] immediately start talking about, you know, the Union. And he used to say, you know, Fernando—he speaks Spanish. He’s from Peru. I’m from Ecuador. And in Spanish he used to tell me to (Spanish word), stop this bullshit, its not going to take you anywhere. He said don’t fight the company. We know that you’re a leader and you—you should use your leadership to lead the company, to be on the company side, and don’t fight against—no fight the company. You’re not a follower, so we know that you are one of the leader Unions—Union leaders.” Altamirano testified that this occurred almost every day commencing in early March until May 16 when he was given a written counseling review.

Hudtwalker testified in response to questions propounded by Respondent’s attorney that he had never interrogated employees concerning their support for and activities on behalf of the Union. He testified that he did not know who was pro Union or against the Union. On cross-examination he testified in response to questioning by the General Counsel that he did not know who the union supporters were although he was the city manager of the Orlando facility, which was the second highest level of management at that facility. He also testified that he did not believe that Fernando Altamirano supported the Union. In response to a question from the General Counsel as to whether he had any belief concerning Altamirano’s sentiments, he testified, “No, we never talk about the Union with him, with anyone. So there is no way for me to know.”

Analysis

I credit the specific and detailed testimony of Altamirano which was forthright and unwavering on cross-examination over that of Hudtwalker which was merely a denial of the legal conclusion that he had interrogated employees. I further found his testimony that there was no way for him to form a belief as to Altamirano’s sentiments concerning the Union, to be unreliable. I thus find that Respondent violated Section 8(a)(1) of the Act by the interrogation of Altamirano engaged in by its agent Hudtwalker as set out above.

8. The videotaping of employees engaged in handbilling on behalf of the Union

Facts

Former rental agent Linda Sconyers, a leading proponent of the Union who was engaged in handbilling on behalf of the Union while she was on suspension between April 7 and 10, 1996, testified as follows:

Q. [Counsel For The General Counsel] Now during the time that you just referenced that you had been suspended and were handbilling, do you recall seeing anybody with a video camera?

A. Yes.

Q. Tell me about that? Who did you see with it?

A. I saw Victor Gonzales. He was—appeared to be video-taping us while we were leafleting. He had it up to him. He was behind the bushes, directing it to myself, Laurie Kelly, and I believe Lynn Edwards was out there as well. And he was outside with Karen Soyk was with him.

And he was behind the bushes. But he could see us directly. He could see us. You could tell that he could see us.

Q. Can you describe where Victor Gonzales and Karen Koyk [sic] were standing in comparison to where you and the others that were handbilling stood? [Fn.]

A. Okay. He was on Alamo property, in-between where the bus loading zone was and the employee parking lot. He was in-between there. It was probably, I don’t know, twenty feet, thirty feet. I really don’t know how long it was, but it was, you know, maybe—

Q. For how long did he appear to be taping?

A. Thirty minutes to an hour. I didn’t really time it, but I was watching him watch us. So it was probably close to an hour.

Q. Prior to Mr. Gonzales and Ms. Soyk showing up with the camera, what if any incidents of violence are you aware of that took place in the handbilling area?

A. There was never any violence. Never saw any violence.

Q. Do you recall whether there were instances where the Union efforts were blocking traffic getting into or out of the facility?

A. We never blocked any traffic. It was—well, that, we weren’t allowed to block the traffic. You had to pass it out and then they had to leave or they could pull over to the side of the road and take a leaflet and talk with us if they wanted to.

Q. How many employees would you say passed through the handbilling area while Mr. Gonzales and Ms. Soyk had the camera out?

A. I would say probably—it was during a shift change, because we were out there most of the day. So I would say if it was during the shift change, probably fifty or sixty employees maybe. Maybe more.

[Fn.] Fernande Lynn Edwards also testified that Victor Gonzales and Karen Soyk were the two (2) managers who videotaped them. [TR 623–624.]

Former employee Lynn Edwards who was also handbilling at the Respondent’s facility testified there was no violence and no cars were blocked by the handbillers.

The Respondent contends that the videotaping was lawful as it had received complaints from employees that the individuals engaged in handbilling were blocking entry of their automobiles as they arrived for work. Steven Raffio, Respondent’s senior city director at the time of the handbilling testified that as a result of the handbilling, he authorized the videotaping of the handbilling activities by Respondent’s managers for “a day or two, at the most.” He testified that shortly after the handbilling occurred, several employees came to his office and brought him the handbills. He testified that some of the employees “were very upset” and told him that the individuals engaged in the handbilling “were blocking some entry rights of the cars.” He was aware of the need for a boundary for the handbilling and asked the “local sheriff representative to help us define that boundary.” He authorized the videotaping “in case we ever

needed to—to prove that there was some trespassing on our property and therefore, causing problems entering and exit” He never saw the tape and does not know “if we actually completed any taping.” He testified that when he observed the handbilling the persons engaged in the handbilling were standing about 200 yards away from the main entrance and were standing alongside the street. He testified further that there were no instances of violence or vandalism on the part of the persons engaged in the handbilling.

Assistant City Manager/Family Wellness Specialist Karen Soyk testified that she had received complaints from at least two employees, Denise Ferrara and another employee that the individuals handing out flyers would stand in front of the cars to make them stop. She accompanied Sales Manager John Poanessa with a video camera to videotape these activities on one occasion. The videotaping lasted 5 to 15 minutes. The parking lot was not a segregated lot, but was used by employees and visitors including vendors who also complained that they were being stopped. She was asked to videotape the activity and she, herself, did the videotaping for a short period of time and there was “nothing going on. There were no cars coming or going.” They then went back into the building and did not videotape again. The videotaping occurred after the sheriff determined what was private property.

Analysis

I find under the circumstances of this case that Respondent did not violate the Act. I credit Soyk and Raffio concerning the reports they had received of cars being blocked by the individuals engaging in handbilling. I find that the videotaping was of limited duration as Soyk testified and was a direct response to these reports but was discontinued as soon as it was determined that no blocking of cars was occurring. I find that Respondent had a legitimate interest in ensuring that its employees and vendors were not impeded in their entry to Respondent’s premises to work and conduct their business respectively. I credit Raffio’s testimony that he authorized the videotaping for purposes of making a record in the event of blockage of access to Respondent’s facility. In its brief General Counsel argues that I should draw an adverse inference from Respondent’s failure to question employee Denise Ferrara as one of two employees who Soyk asserted had complained of union representatives blocking traffic. However, I decline to do so as General Counsel had an opportunity to inquire into this with Ferrara as well but chose not to do so. The mere use of videotape is not a per se violation and I find that under these circumstances, was not unlawful. See *Sonoma Mission Inn & Spa*, 322 NLRB 898, 902 (1997), but see *Randell Warehouse of Arizona*, 328 NLRB 1034 (1999), and discussion of *F. W. Woolworth Co.*, 310 NLRB 1197 (1993).

9. Solicitation of grievances by Shift Supervisor Will Padilla-Pagan with the implied promise to remedy them to discourage employees’ union activities

Facts

Former employee and rental agent Sandra O’Dowd testified that shortly after the filing of a second petition by the Union to represent the employees in March 1996, Shift Supervisor Will

Padilla-Pagan began to conduct team meetings which he held about once a month. Prior to March 1996 she had only attended “zero to one” team meeting. At these meetings Padilla-Pagan “wanted to know employee gripes, employee complaints, things that would make the work place better, make us happier.” Employees complained “about scheduling, at that time, and complaints with the bonuses, and favoritism a lot and he said that he would discuss all that with his bosses.” Initially there were only two other employees at the meeting. Subsequently other departments were incorporated into the meetings, at which management “just wanted to know the gripes and complaints.”

Analysis

I credit O’Dowd’s testimony which was un rebutted as Padilla-Pagan was not called to testify. I find that Respondent through its agent Padilla-Pagan, was soliciting grievances from these employees with the implied promise to remedy them in order to discourage their support of the Union and thereby violated Section 8(a)(1) of the Act. O’Dowd’s testimony establishes that Respondent initiated these meetings shortly after the commencement of the union campaign and in anticipation of the upcoming election.

10. Interrogation of employees by Hans Hudtwalker concerning their support for the Union and solicitation of grievances by Hudtwalker with the implied promise to remedy them in order to discourage union support

Former employee, José Perez, testified that he became an active volunteer for the Union during the 1996 campaign, and spoke with the union organizer in late December 1995 or early January 1996, and then began handing out union authorization cards and the managers became aware of his participation in the union campaign. In late February 1996, Hudtwalker told Perez that he was very disappointed with him and that he knew why. Perez responded that it was because he was standing up for his rights and Hudtwalker did not reply. Subsequently in March or April 1996, Perez was called into Hudtwalker’s office for a one-on-one meeting with Hudtwalker who closed the blinds and door which he had never done before. Hudtwalker then questioned him as to why the employees “were calling the Union back.” Perez told him that the employees “were very upset about the fact that the bonuses were being changed dramatically, the fact that we were asked to shuttle (move cars around the facility) for extended periods of time, which also cut into our income, and that the less time we spent on the counter, the less money we made.” Hudtwalker told him that they should all do things for the good of the Company even if they were not in their job description so the Company could move forward.

Hudtwalker testified and did not deny having met with Perez in his office but denied having closed the blinds. He denied asking Perez about issues with respect to the union campaign or having ever told Perez that he was disappointed with him.

Analysis

I credit the detailed and specific testimony of Perez who testified in a forthright manner and did not attempt to embellish his testimony but demonstrated excellent recall of his meeting with Hudtwalker. I reject Respondent’s contention that Perez

was not a credible witness because he is a disgruntled former employee discharged by Respondent for alleged dishonesty. I thus find that Respondent violated Section 8(a)(1) of the Act through the interrogation of Perez by its agent Hudtwalker and Hudtwalker's solicitation of grievances with the implied promise to remedy them in order to discourage union activities.

11. Alleged surveillance of employees' union activities at the Doubletree Hotel in Orlando, Florida

Facts

Sandra O'Dowd testified that she attended a meeting at the Doubletree Hotel in Orlando, Florida, with Union Representative Laurie Kelly and two other employees, Fernande Lynn Edwards and Linda Sconyers in early April 1996. She testified she saw Regional Vice President Eduardo Coloma and Corporate Director Victor Gonzales in the lobby when she arrived for the meeting. She also saw three other rental agents including Kevin Day. The other rental agents asked her why they had not been invited to the meeting.

Former rental agent Fernande Lynn Edwards testified that on this occasion, she and Union Representative Laurie Kelly were taking care of opening a room at the hotel for the union meeting and were at the front desk of the hotel obtaining the keys to open the room and she saw a car pull up and saw Gonzales and Coloma taking luggage out of the trunk. Coloma came to the desk to check in and Union Representative Kelly inquired whether he was staying at the hotel and he replied that he was staying for the week. Edwards and Kelly obtained the keys and went upstairs to the room for the meeting. Neither Coloma nor Gonzales came to the area where they were holding the meeting.

Regional Vice President Coloma testified that during the period in question he was based at Fort Lauderdale (Florida) and frequently traveled to Orlando which was in his area of responsibility. He recalls the incident when he saw Kelly as he was checking in at the Doubletree and testified that Gonzales was with him as he had picked him up at the airport. The record is unclear as to the presence of the other rental agents as no party chose to question then rental agent Kevin Day, who was a shift supervisor at the time of this hearing when he was called by Respondent to testify concerning another allegation.

Analysis

I find that the General Counsel has failed to establish that the Respondent was engaged in surveillance of its employees' union activities. The testimony of rental agent Edwards clearly establishes that Coloma was in the process of checking into the hotel. There is no evidence of any actions taken by Coloma or Gonzales which would support a finding of surveillance engaged in by either of these individuals. I credit the testimony of Coloma which was un rebutted concerning his presence at the Doubletree Hotel. I find that this allegation should be dismissed.

12. Alleged solicitation of grievances by City Manager Steve Raffio with the implied promise to remedy them in order to discourage employees' union activities, threats by Raffio of the loss of wages if employees select the Union as their bargaining representative and threats by Raffio of the futility of the selection of the Union as their bargaining representative

Facts

On about April 10, 1996, Linda Sconyers returned from a 3-day suspension issued to her on April 7, 1996, and was asked by City Manager Steve Raffio to meet with him in his office, she testified as follows:

Q. [Counsel for the General Counsel] Okay. And when you returned to work on April 10th, 1996, at any time did you have occasion to speak with Mr. Steve Raffio?

A. Yes, I did. It was at lunch time. I clocked out for lunch. I was getting ready to go into lunch and he says do you have a few minutes, I'd like to talk to you. I said sure. We walked in and—and I told him, you know, I felt that was a good opportunity for me to tell him how unfairly I felt that I was treated, being disciplined [April 7, 1996 suspension] on something that I didn't actually do. And he said that he was standing behind the manager's decision to do that, that I was insubordinate. And then he told me how disappointed he was with me. How he took it personally. How it hurt him to see me out there passing out leaflets to the people that worked out back, the shuttlers. Because I wasn't just trying to talk to the rental agents, I would speak to anybody, because actually the shuttlers needed it more than we did. They were being, you know, treated worse than what the rental agents were. So I was leafletting to them and telling them about their rights, where I could help, seeing if there was interest there. And he—he just said he took it to heart and he was real disappointed. He did not like that at all, you know, which made me feel very uncomfortable, feel bad. It scared me, because I figured, oh, boy, here comes some more, you know, because he was the city manager. He never spoke with me hardly until the campaign started. I was there eight years before he would, you know. Once the campaign started, then, oh, Linda, come on in, I want to talk to you.

Q. Do you recall anymore of the specifics of what you discussed?

A. Yes. He told us that we would have to start at the ground level. If—if a Union came in, that he would play hardball. That they wouldn't negotiate. That we could lose the open door policy. We could lose our benefits, you know. I mean it was—it was pretty scary.

Q. Was—was there any reference to your father in this conversation?

A. Yes. He thought that my father was putting me up to it, because my father had been a Union sympathizer and, you know, kind of supported what I was doing. And he said if your father is putting you up to this, you know, you really—you should think twice. You shouldn't be—

you shouldn't be doing this. And I just—my father wasn't telling me to do it. He just was telling me to be careful, because Alamo was a big company.

....

Q. What, if any, portion of this conversation related to problems as you saw them at Alamo?

A. Problems as I saw them? There were so many problems with—

Q. Well, I'm just simply asking do you recall whether any part of the conversation related to that?

A. Well, he asked me if I had any [problems with working at Alamo]—what he could do to make changes. And I would tell him that I didn't have a lot of problems, that there was other issues, like the vacation time, and seniority, and—and issues that some of the employees had. But, you know, that was about it.

Raffio was called as a witness and testified in response to questions by Respondent's counsel that he had not solicited employee grievances and promised to remedy them in order to discourage union activity as alleged in the complaint. He also testified in answer to questions by Respondent's counsel that he had not threatened employees with loss of wages and benefits if they selected the Union as their bargaining representative and that he had not told employees that it was futile for them to select the Union as their bargaining representative.

Analysis

I credit the detailed and specific testimony of Sconyers concerning the comments of Raffio when he called her into his office following her return from her suspension. I find that Respondent violated Section 8(a)(1) of the Act by Raffio's solicitation of employee grievances with the implied promise to remedy them in order to discourage employee's union activities and by threatening employees with the loss of wages and benefits if they selected the Union as their collective-bargaining representative, and by impliedly telling Sconyers that it would be futile for employees to select the Union as their collective-bargaining representative.

13. Alleged solicitation of antiunion support by City Manager Steve Raffio in mid-April from employees by granting them time off and compensating them for their time to attend employee meetings away from Respondent's facility where employee complaints and grievances were discussed

Facts

The evidence supports a finding that Respondent lent its support and backing to efforts by several employees who wished to have meetings to discuss the union campaign and its perceived adverse effect on relations among the rental agents. These meetings occurred between mid-April and late May 1996, at the poolside lounge of the Orlando Airport Hilton Hotel. There were two meetings which came to be known as the "Roundtable Meetings." They were held by rental agents Deneen Grove, Denise Ferrara, and Lorna Mediema. Deneen Grove testified she met with management representatives to discuss the meetings prior to initiating them and told them she wanted to give the employees an opportunity to address prob-

lems without the intervention of a third party (a union). There were approximately 50 employees at the first meeting conducted by Grove and 25 employees at the second meeting conducted by Ferrara. Respondent permitted large numbers of rental agents to attend these meetings even during busy work times in contrast to its normal practice of only permitting employees to leave early when the rental counters were not busy according to the testimony of rental agent Sandra O'Dowd whom I credit. Furthermore, Deneen Grove testified that Victor Gonzales reimbursed Lorna Mediema for the drinks and food which she had purchased for the employees who attended. At these meetings the employees discussed problems in the workplace and after the first meeting Grove, Ferrara, and Mediema met with Raffio and presented a list of issues raised at the meeting. Raffio informed them of those he could remedy and those he could not address. Grove testified she communicated Raffio's response to the other rental agents. Linda Sconyers testified that Respondent's supervisor, David Hall, urged her to attend the roundtable meeting.

Raffio denied having reimbursed Miedema for the food and drinks or having deviated from its practice of not permitting rental agents to be absent from their duties on the rental counters when they were busy. I credit the testimony of Grove, O'Dowd, and Sconyers.

Analysis

I find that Respondent violated Section 8(a)(1) of the Act by its support of these meetings which were used to foster Respondent's position that the employees did not need a third party (the Union) to represent them. Clearly, these meetings were designed to elicit antiunion support and interfered with the Section 7 rights of the rental agents to determine for themselves whether they wanted to be represented by the Union.

14. Hans Hudtwalker's alleged solicitation of grievances with the implied promise to remedy them in order to discourage employee's union activities

Facts

Linda Sconyers testified that in about mid-April 1996, Hans Hudtwalker called her into his office for a one-on-one meeting and "he asked me if there was anything that he could do to help me through, if there was anything—any of the issues that I would have. What could he do to make things better. And I just told him I didn't know of anything at this point." Hudtwalker testified that he has never solicited grievances or promised to remedy them but was not questioned concerning this meeting with Sconyers.

Analysis

I credit the specific testimony of Sconyers as set out above. Hudtwalker's testimony did not address this meeting and I find her testimony concerning it is un rebutted. I find that Hudtwalker's inquiries of Sconyers were designed to solicit grievances with an implied promise to remedy them in order to discourage employees' union activities and that Respondent violated Section 8(a)(1) of the Act thereby.

15. Alleged threat of the loss of previously enjoyed working conditions in the event the Union became their bargaining agent and the solicitation of employee grievances with the implied promise to remedy them in order to discourage employees' union activities in late May 1996, by Respondent's agents

Facts

Approximately a week before the May 28, 1996 election, Christopher Terrell, Esq., former legal counsel of Respondent, conducted meetings with about 10–15 employees at Respondent's facility. Karen Soyk was present for Respondent. The meeting lasted an hour and Terrell discussed the Respondent's benefit program, FAMPACT, and compared it with the labor agreement at Hertz Rental Car Company with the Union in an hour-long meeting. Linda Sconyers testified as follows concerning this meeting

Q. [Counsel for the General Counsel] And can you tell me what was said about FAMPACT and who said it?

A. Well, Chris was telling us that the FAMPACT was, indeed, an agreement that we had through Alamo that outlined our benefits. It outlined our rights. But we didn't think that it was a contract. He kept saying it was a contract. And we wanted to know where it would say that it's a contract, as it would say it's a FAMPACT or a personal agreement is what we thought it was, and it didn't outline in it everything to protect our rights necessarily. It would just say you are entitled to, you know, maybe a break, or you're entitled to this, but it didn't always—it didn't work all the times. Because if you were disciplined and you wanted to go through the FAMPACT and appeal your disciplinary action, you never could. You could ask for it, but it never—it never was established. Because when I was suspended, I would ask for it. They never got back with me. Nothing was ever done with the FAMPACT. You couldn't appeal.

Q. Okay. What else do you recall being said about FAMPACT?

A. Okay. Well, he said once it's gone, if the Union would come in and they'd have to negotiate a different contract, that would be gone, and you'd have to start at ground zero, you could lose everything, and that they would not be negotiating. We'd start at zero and once it's gone, it's gone. And they wouldn't negotiate with us, that we would lose our benefits. We would lose the open door policy. We couldn't talk to the managers. We'd have to go through shop stewards, or go through a Union member in order to talk to our managers. We could lose our benefits. We would lose 401K, dental plans. Scheduling would have to be bid instead of regular, like we would have regular schedules. They said you would have to bid for your schedule, if a Union came in. That's basically—

Q. And during this conversation, was there any reference to the Hertz Corporation?

A. Okay. That would be Chris Terrill was telling us. And—Karen was in there listening, so I assume that it was like a managerial meeting as well. Chris said that there

was things in the Hertz contract that wasn't—I mean there were things in the FAMPACT that wasn't in the Hertz contract, so we would—we would lose that. And he was kind of knocking the Hertz contract, saying that they didn't have the things that—that the FAMPACT did, and that Alamo was a good company, and that we should be thankful for what we have now and not seek anything more, because we would get less.

Terrell testified at the hearing that he told the employees that if the Union were selected by the employees, bargaining would start from scratch and that Respondent's attorney would bargain hard and that he discussed the give and take of bargaining and that Respondent would seek concessions for any item that the Union sought on behalf of the employees. He compared the Hertz contract with Respondent's FAMPACT and noted certain items in FAMPACT that were not in the Hertz contract. He recalled an employee named Linda who explained the difference between a union contract and FAMPACT which was not negotiated with a union but does not recall what if anything he responded to her. He denied ever having threatened employees with loss of previously enjoyed working conditions in the event the Union became their bargaining representative. He also denied having solicited grievances from any of the employees or having promised them either expressly or impliedly to remedy employee grievances to discourage them from voting for the Union.

In addition to the meeting held by Terrell, Respondent's primary outside legal counsel Arch Stokes held a meeting with employees about a week later prior to the election. Former employee José Perez testified as follows:

Q. [Counsel for the General Counsel] Tell me what you recall of the first meeting that you attended? If you can try to identify the time period and who said what during the meeting?

A. Well, most of the three meetings were held, I'd say, in the months of March, and April, May. The one that mostly strikes me is—is the one that I attended in—in May where there we about twenty, maybe twenty-five employees present, and talking about the FAMPACT which had been signed a couple of months before. I don't remember exactly when. And he was—Arch was talking about the fact that he was an honest individual, and that he represented the company, and the company was very concerned about our Union activities. And then he started talking about FAMPACT and he held up the booklet, and said this is something that the company has agreed between the company and employees, stating all the benefits that the employees had with respect to the company and what the company expected from the employees in return. And he went into some theatrics of saying, but if we all get the Union in here, took the book, threw it on the floor, this is all trash. We start from the ground zero and we will not have any of that. And that if the Union came in, basically, he would keep from any of that being accepted again. Basically, there wouldn't be any rights whatsoever and—and he would fight vehemently to avoid those rights from being given back to the employee.

Q. Was there any reference during this conversation of his position regarding negotiating with the Union?

A. Yeah, he definitely said that he would be the one involved with the negotiation as far as Alamo's side and that no way would we get what we had.

Linda Sconyers testified concerning the meeting held by Stokes as follows:

Q. [Counsel for the General Counsel] Now who do you recall conducted the second meeting [that you attended]?

A. Yes. The second meeting was a few days later. That was held by Arch Stokes. And it was a little bit shorter, maybe an hour.

Q. Okay. And which managers were present?

A. Okay. In that one, there was Steve Raffio and Victor Gonzales, which sat on one side of me, and Ed Coloma on the other side of me, which was extremely, you know, to have the two corporate managers sitting each on a side of you, Steve Raffio at the door, and the Arch Stokes in the front, and then there was like six or seven other employees, rental agents in there.

Q. Where did this meeting take place?

A. That was upstairs in the training room.

Q. And what was the topic of discussion at this meeting?

A. Arch Stokes was telling us that it was a contract, that we had rights in this contract. That it is better than what the Hertz contract is. He was making a comparison. He was very aggressive. I—I tried to ask questions. He would cut me off every time I'd try to ask a question. Another girl asked where does it say it's a contract and he raised his voice, said it's—you could have a contract written on the side of a cow. He says you don't need—it doesn't have to say contract on it, but it's an agreement. And—and this is something that Alamo has provided for you, so you don't need to seek representation. And if you do seek representation, you know, we will not negotiate. We won't—we won't even come to the tables. And then he changed his tune and said but I'll be the one that negotiates, and we will start at ground zero, and you will get nothing. We will play hard ball. You will lose everything and you will never get anything out of this company more than what you have already with the FAMPACT. And he literally threw the Hertz contract. Once your benefits are gone, he threw it across the room, raised his voice, and I—I finally intercepted and said why are you intimidating us? Why—if I had any reasons to go to the Teamsters in the beginning, I certainly have more reasons now, because I'm being intimidated. I feel threatened, you know. I've got two manager[s] on each side of me. And at that point, Steve Raffio takes him out and speaks to him for a few minutes, because I was on the verge of tears. He comes back in a few minutes later and he said—he apologized. He says I didn't want to get that, you know, he said I'm passionate for the FAMPACT because I wrote it and it took me six years to put it into effect. And he says I don't—don't like to see people throwing it out or discuss-

ing this in a bad way, because you have good benefits. And it wasn't too long after that he closed the meeting, because he had to fly out somewhere, and he left.

Stokes testified that he had discussed FAMPACT at the meeting he held with the employees but denied having thrown the Hertz contract on the floor or having said he could write a contract on the side of a cow. He denied saying in that meeting that Alamo would not negotiate with the Union. He denied threatening the employees at that meeting with a loss of previously enjoyed working conditions in the event the Union became their bargaining representative.

Analysis

I credit the testimony of Sconyers and Perez as set out above. I found their testimony to be cogent, specific, and in the case of the meeting held by Stokes to be mutually corroborative. I have considered the testimony of Terrell and Stokes and conclude that while their manner was mild at the hearing, it was not in these meetings where they stressed that they would bargain hard on behalf of the Respondent and that the employees would lose existing benefits if the employees chose union representation. I credit the versions of these meetings as testified to by Sconyers and Perez and find that Respondent, through its agents Terrell and Stokes threatened and intimidated the employees with loss of existing working conditions. The throwing of the contracts on the floor engaged in by Stokes is indicative of the intimidation of the employees that occurred at this meeting. I find that this conduct as argued by General Counsel in his brief, reasonably tended to intimidate, restrain, and coerce employees in the exercise of Section 7 rights. I find that Respondent threatened their employees with the discontinuance of existing benefits prior to negotiations and a regressive bargaining posture designed to reduce existing conditions of employment in retaliation for selecting the Union as their bargaining representative and thereby violated Section 8(a)(1) of the Act. See *Lear-Siegler Management Service Corp.*, 306 NLRB 393 (1992); *Taylor-Dunn Mfg. Co.*, 252 NLRB 799 (1980); *Coach & Equipment Sales Corp.*, 228 NLRB 440 (1977).

I find that General Counsel has not established that Terrell and Stokes solicited employee grievances at these meetings by their comparison of FAMPACT with the Hertz contract and will recommend the dismissal of this allegation.

16. Alleged surveillance of employees on the day of the election on May 28, 1996

Facts

Fernande Lynn Edwards, who was the Union's observer for the morning session of the NLRB election held on May 28, 1996, testified as follows:

Q. [Counsel for the General Counsel] Can you tell me about that?

A. I remember it was about three hours after we started voting.

Q. When did the polls begin?

A. 7:00.

Q. So this was about 10:00 in the morning?

A. Yeah, close to 10:00 or 10:30.

Q. Okay.

A. A police officer opened the door. There—the agent was leaving the polling area and the police officer opened the door and come in. And I was not allowed to talk. So the board agent asked him what are you doing here? And he said he’s here for the election. And the board agent said I didn’t call for police officer. And he said, no, you didn’t, but Alamo hired me for the election. And the board agent said I don’t need you and you need to leave right now. And he left.

Edwards further testified that the Orange County’s deputy drove away in an official police vehicle. She was familiar with officer Fred Sams who does part-time work as a guard for Respondent and it was not him. She did not know the identity of the deputy who entered the polling area. At the hearing the General Counsel issued a subpoena duces tecum seeking documents to reflect the identity of security personnel retained on the date of the election on May 28, 1996. The legal counsel for Respondent supplied the General Counsel with information at the hearing identifying the deputy as Paul Logan of the Orange County Sheriff’s Department. General Counsel then moved to amend paragraphs 5 and 28 of the complaint to include the name of Paul Logan. Respondent’s counsel then moved to dismiss paragraph 28 of the complaint. General Counsel urges that Respondent should not be permitted to benefit from misinformation given to the Regional Director by Respondent’s counsel Terrell during the investigation of the charge. Terrell testified at the hearing that Sams was the officer on duty at its premises on that date. He testified further that when he was told by the Board agent conducting the election, he found the officer who told him that he walked into the building to check it because it was not normally occupied.

Analysis

I find that the amendment to the complaint was proper and that Respondent’s motion to dismiss paragraph 28 should be and it is denied. I note also that the version given by Terrell does not square with the testimony of Edwards who testified that the officer said he was there for the election. I credit Edwards. I find that the evidence supports a finding that the officer was there to monitor the election activities. The effect of such action was to intimidate employees in the exercise of their Section 7 rights and Respondent violated Section 8(a)(1) of the Act by engaging in surveillance of the election activities by the entry into the polling area by the deputy.

17. Alleged surveillance of employees by Victor Gonzales in a Denny’s restaurant in Orlando, Florida

Facts

According to the testimony of Linda Sconyers on April 9, 1997, she and Fernande Lynn Edwards met with Union Representative Laurie Kelly in a Denny’s restaurant to discuss an upcoming union campaign to organize Respondent’s employees. While seated at the restaurant, she observed Corporate Director Victor Gonzales enter and sit at a table behind some flowers about 6 feet away. They then cut their meeting short and went to pay their bill and Gonzales also got up and came

behind them and spoke to Kelly and asked what she was doing in town. Kelly replied she was there for a meeting with Hertz to discuss a contract and offered to organize the Respondent and he replied “no thank you.” Edwards testified that she was then employed with Hertz and they were talking about the Hertz contract negotiations and that she and Sconyers also discussed the employees at the Respondent. The meeting lasted an hour to an hour and a half. She did not keep track of the time. At some point during the meeting she observed Victor Gonzales sitting about two tables away from them behind some flowers, a distance of about 6 feet. The meeting lasted about 10 or 15 minutes. When they were waiting to pay the cashier, Gonzales walked up and said hello and asked Kelly what she was doing there and she said she was negotiating the Hertz contract.

Analysis

I find that the General Counsel has failed to establish that Gonzalez engaged in unlawful surveillance of the participants in the meeting at the restaurant. As the Respondent argues in its brief, it is unlikely that Gonzalez would have appeared at a public restaurant other than by chance. There is no evidence that this meeting was other than a chance meeting. I find the evidence does not support a finding that Gonzalez was engaged in surveillance of the participants in this meeting. I will recommend that this allegation be dismissed.

B. The 8(a)(3) Allegations

1. The bathroom and break policies

Facts

The complaint alleges that in or about mid-January 1995, Respondent changed the employee bathroom and break policy because of its employees’ engagement in concerted activities in support of the Union and to discourage them from engaging in these activities. Fernande Lynn Edwards testified that prior to the advent of the union campaign and a hearing (representation) in early 1995, employees were permitted to take unlimited breaks throughout their shifts dependent on the demands of the business and without permission from management. In early February 1995, Respondent changed its break policy or practice. Edwards testified that Shift Supervisor Terry Roudebush announced the change to the rental agents.

Q. [Counsel for the General Counsel] Okay. How did it change?

A. One of the managers came down one afternoon from managers’ meeting and he said listen folks, that’s how it’s going to be from now on, you guys are going to have two five or ten minutes breaks[s] to go and smoke, or drink your coffee, or go to the bathroom, and one thirty minutes break for your lunch, and that’s it, period. And I—I tell him, and I say when did that happen? And he said it’s not from me, that’s from above, from high above.

Q. And who was this manager?

A. Terry Rodabush[sic]. He was a shift supervisor.

She testified that the new policy was enforced for a period of 2 weeks. She testified that on one occasion during the 2-week period the policy was enforced, Shift Supervisor Clyde Booth

grabbed her by the hand as she was approaching the restroom and asked her where she was going and she replied that she was going to the restroom. He asked her if she had asked permission and she said no and he let her go.

In response to this allegation, Respondent's city manager at the time, Karen Soyk, testified she recalled a meeting with Senior City Director Steve Raffio and "a couple of other people" to address complaints by non-smokers that smokers were taking more breaks than nonsmokers. She testified that Raffio asked what they could do to make the break policy fair for everyone. She also testified that there was a problem with managers "having to run off of the counter to find rental agents going to the restroom, going to the—the break room, going out back where they smoked, to gather people up as the business—as the customers, . . . accumulated in our lobby." She maintained that there had been a policy that employees needed to ask permission to go to the restroom but that it had not been adhered to by the employees and management responded to this in January 1995 by limiting employees to two 15-minute breaks and a lunchbreak.

City Director Steve Raffio testified that Respondent instituted a policy in the summer of 1996, to prevent the abuse of smoking breaks by putting a dot next to employees' names to keep track of the number of breaks taken by employees. He testified that nothing changed with respect to breaks in January 1995, and that he is unaware of how any limitations could be put on restroom breaks.

Respondent called Jeffrey Willow who was a supervisor in 1995 as a witness. He testified that because of the large number of rental agents (60–70) assigned to the rental counter, it was difficult to monitor their breaks and that breaks were assigned and a "little tick" would be put next to their name after they had taken their break. He testified that the enforcement of this policy did not depend on the employees' union affiliation. Supervisor Deanna Kilburn testified that the rental facility is packed with 200–300 people on a busy day.

Analysis

I credit Edwards' testimony which was un rebutted as Roudebush was not called to testify. I also credit the testimony of Soyk, Willow, and Kilburn which was also un rebutted. I find that Raffio was mistaken concerning the timeframe when the policy was implemented but do credit him that the focus was primarily on smoking breaks. I find that the evidence is insufficient to establish a violation of the Act. I find that the sudden nature of the change coming on the advent of the Union campaign standing alone may give rise to a suspicion of discrimination but does not establish a prima facie case that the change was a retaliatory response to the union campaign and that Respondent violated Section 8(a)(3) and (1) of the Act thereby. Assuming arguendo that a prima facie case of a violation of the Act has been established, I find that the Respondent has rebutted the case by the preponderance of the evidence based on the credited testimony of Soyk, Raffio, Willow, and Kilburn, *Wright Line*, 251 NLRB 1083 (1980).

2. Alleged denial of early leave privileges to employee Fernando Altamirano

Facts

Former rental agent Fernando Altamirano testified that rental agents were regularly permitted by Night Shift Manager Vince Fauci to leave work early upon request on the night shift when business was slow. Fauci came on duty the last hour of Altamirano's shift. Preference was on the basis of departmental seniority and Altamirano was the senior rental agent on the shift and was regularly allowed to leave early. However in March 1996, he told Fauci that he was a union supporter whereupon Fauci began to regularly refuse his requests to leave early and to call him "ugly" while permitting other rental agents less senior than he, to leave early and responding to his requests by saying, "[O]h no, you can't go home, you're ugly." He complained to Hans Hudtwalker on four to five occasions and was assured that the matter was taken care of but this treatment by Fauci continued. When he was issued a warning for leaving early for lunch and he met with Hudtwalker and Soyk to discuss the warning, he again complained of Fauci's treatment of him but the treatment continued until he was discharged in August 1996. Fauci was not called to testify and Hudtwalker and Soyk were not questioned concerning this allegation. I credit Altamirano's testimony which was un rebutted.

Analysis

I find that the General Counsel has established a prima facie case of discrimination against Altamirano by denying him early leave privileges because of his support of the Union. Respondent had knowledge of Altamirano's support and immediately after his disclosure of his union affiliation to Fauci, he was denied early leave privileges and berated by Fauci. Respondent's animus toward the Union and its supporters has been established. The sudden denial of early leave privileges to Altamirano coupled with the taunting engaged in by Fauci, in view of Respondent's knowledge of Altamirano's union support and Respondent's antiunion animus clearly establishes a prima facie case that Respondent's denial of early leave to Altamirano was motivated by its animus toward the Union and its supporters. The failure of Respondent's management to respond to Altamirano's complaints lends further support to the finding of a violation. I find that Respondent has failed to rebut the prima facie case by the preponderance of the evidence. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by the denial of early leave privileges to Altamirano, *Wright Line*, supra.

3. The issuance of written discipline and 3-day suspension of Linda Sconyers

Facts

Linda Sconyers was the leading union adherent, during the course of the three union campaigns, having initiated the original contact with the Union and having openly solicited union authorization cards and challenged management agents during captive audience antiunion campaign meetings held by Respondent's

agents. Sconyers was employed by Respondent from November 1988 until her discharge in April 1997. She was a cashier less than a year and then became a rental agent for the remainder of her employment until her discharge. In November 1994, she and Fernande Lynn Edwards and two other employees met and decided to seek union representation. They met with union representatives in November 1994, received union authorization cards and union literature and commenced forming an organizing committee. She attended a representation hearing in December 1994, and testified on behalf of the Union's position in that hearing. She was an observer on behalf of the Union at the election held on April 10, 1995. After that election resulted in a loss for the Union, she kept in contact with the Union and in March 1996, she began to again organize on behalf of the Union, obtaining union authorization cards, and passing out union fliers to employees on many occasions.

On April 7, 1996, Respondent's shift manager, Deanna Zuke-Kilburn, issued a written discipline and a 3-day suspension to Sconyers for alleged insubordination. As a rental agent Sconyers was required to wait on customers as they approached the counter at Respondent's facility. Sconyers testified,

I was renting one day and I was waiting on customers. And Deanna came up to me and asked me to call next, which I'd already told them, you know, called next, but whether they didn't hear me or whether they were just slow coming up to the counter, I don't know what the case was. And she came up, she says why don't you call next. I says I did call next. And I says and I kind of feel like you're harassing me, because I've waited on forty contracts already, because she knew that I was involved in the Union and I felt like she was watching me. And she says, well, make it fifty. I just said okay, and as she was walking away, I said you need to really be paying more attention to the people that aren't on the counter. And she just kind of ignored me and walked on.

Barbara Meeker, who is employed as a rental agent by Respondent and who was working at the counter a distance of a computer away from Sconyers on this date, testified that it was very busy and that José Perez walked by and spoke briefly to Sconyers. Zuke-Kilburn then approached Sconyers and told her to stop talking and call next for another customer. Sconyers said that she had already written 40 contracts and asked her to pick on someone else or to stop hassling her. Zuke-Kilburn replied "[W]hy don't you make it fifty." Sconyers then called "next" and a customer approached her but someone else called the customer and Sconyers then called "next" again and went back to renting. She testified that Sconyers had followed orders. She further testified that Sconyers "did not ever say anything about a need for higher pay." She also testified that rental agent Deanna Grove was "not working anywhere near us" at this time. José Perez testified that on this occasion, he and Sconyers were renting and he went over to pick up a contract that was being printed. Sconyers had just called for a customer and as he picked up his contract they talked and were both told to keep renting by Zuke-Kilburn. Sconyers said that she already had rented forty contracts. Zuke-Kilburn said "let's make it fifty."

Shift Manager Deanna Zuke-Kilburn testified that there were customers waiting and Sconyers and José Perez were standing by the printer talking while customers were waiting and she asked them to call "next" for the next customer in line. Perez pulled out a contract and said that he had a customer and she said "fine, Linda." Sconyers said, "I've already written forty contracts." I said, "Well, you still have time to work, let's make it fifty." Sconyers "turned around and said pay me more money." "I said, "[W]ell, if you rent more cars, you'll make more money." Sconyers then walked over to her computer. It took 30 to 40 seconds for Sconyers to call "next" after their conversation. Shortly thereafter Senior City Director Steven Raffio came to her and asked her what had happened as some of the other rental agents had complained to him that some of the employees were not treated fairly because "they were union." She told him what happened "and at that point, he decided, as well as with David (Wolfe), that this was insubordination." Sconyers was suspended for 3 days for insubordination.

Respondent introduced a statement that had been made by rental agent Deneen Grove concerning the conversation between Sconyers and Zuke-Kilburn. At the hearing she testified that she had no recall of this conversation although she did acknowledge having written the statement at the time. In the statement she said, "Linda [Sconyers] was just standing behind counter and we had four ropes of customers. Linda stated—pay me more money and I will call next. Deanna said if you call next you will make more money. She stated she made her money today and was tired—she said you are still on the clock—please call next."

Analysis

I credit the version of this incident testified to by Zuke-Kilburn as corroborated by the memo written by Grove and find that Sconyers did tell her to pay her more money in response to the order to call the next customer. I find however that the issuance of discipline to Sconyers was discriminatory and that Raffio seized on this incident to retaliate against Sconyers because of her support of the Union. I thus find that the General Counsel has established a prima facie case that the discipline was motivated by Respondent's animus against Sconyers' known union activities and that Respondent thereby violated Section 8(a)(3) and (1) of the Act. I find it has not been rebutted by the preponderance of the evidence, *Wright Line*, supra.

4. The issuance of written discipline to Linda Sconyers on May 12, 1996

Facts

Sconyers testified that on May 12, 1996, she woke up and got out of bed shortly before 8 a.m. to get ready for work as she normally did to arrive at her starting time of 9 a.m. When she stepped out of bed she was unable to stand on her right foot. She called into work and went to the hospital and was off work for 2 days. Respondent issued her a written verbal discipline for not calling in 2 hours prior to the start of her shift at 9 a.m. in accordance with its policy set out in its FAMPACT employment agreement which it has employees sign. The discipline was signed by Deanna Zuke-Kilburn. The discipline states that she called in at 8 a.m. and notes that her start time was 9 a.m. The discipline notes that when she returned to work, there was a doc-

tor's note for 2 days. Sconyers testified the discipline was never discussed with her and she was unaware of it prior to her later termination. Zuke-Kilburn testified she has no recollection of the discipline.

Analysis

I find that the General Counsel has established a prima facie case that the discipline was motivated in part by Respondent's animus against the Union and its supporters. Respondent's animus against the Union has been well established by the record in this case as has its knowledge that Sconyers was a leading supporter of the Union. Moreover, Sconyers testified that she had been warned after the second election in 1996, by Raffio that if she engaged in another union campaign, it could be crippling to her career. I credit Sconyers' testimony that she was not apprised of the issuance of the written discipline at the time of its issuance which assertion was not rebutted by Zuke-Kilburn who testified she has no recollection of it. I find the discipline of Sconyers under the circumstances of her medical condition was pretextual. I find that the Respondent has failed to rebut the prima facie case by the preponderance of the evidence and that it violated Section 8(a)(3) and (1) of the Act by the issuance of the discipline, *Wright Line*, supra.

5. The discharge of Linda Sconyers

Facts

Linda Sconyers was suspended for 5 workdays on the afternoon of April 22, 1997, by Raja Assai for refusing to shuttle cars that morning and was told to report back to work on April 28 at which time she was discharged by Raffio for the same offense. As established in this record Sconyers was the leading union advocate during three election campaigns and had been warned by Senior Director Steve Raffio on May 28, 1996, after the second election which the Union lost that he would not tolerate another union campaign. Sconyers testified as follows:

Q. [Counsel for the General Counsel] Do you recall a conversation—after the election on May 28th, 1996—

A. Oh, yeah.

Q. Do you recall a conversation with Mr. Raffio?

A. Yes. I had a conversation with Steve Raffio after the election, the second time that we had lost. And I remember him telling me, you know, it's going to be work as usual, no more problems. I hope we never have to go through another campaign. And he said that he would not go through a third campaign. That if I had any ideas at having a third campaign, that it would be crippling to my career and that, you know, he would not have it. He would not [sic] see to that.⁵⁶ That's why I was so nervous when I found out that Joy—or Deborah Williams had gone in there and told him everything. And then I thought, [sic] oh, boy, we're just at the beginning of this campaign. He's really going to get me, you know.

Q. Now where—the conversation that you were just referring to, how so on after the election did that occur?

A. After the second election? It was like the day after. The day or two after. It was right after it. Because I—I can remember going in and feeling, you know, we lost an-

other Union campaign. How am I going to be able to work in here with these managers. It's already bad enough, it's going to get worse. There had been a lot of people talking that everybody that was a Union supporter is going to be out of here, you know, and I just was waiting for the axe. And he, basically, reinforced that, because he told me he would never, you know, wanted to go through another election. And he would, personally, not go through a third election. He let—made it very clear to me. And I remember those words. It will cripple your career. And I thought how awful. That's an awful way to tell somebody that's going to cripple your career. It was just, you know, terrible.

Q. Where did the conversation take place?

A. That was in his office. Right—right outside his office, in the front.

Q. Was anyone else present?

A. I didn't see anyone else present, no.

⁵⁶ General Counsel moved for correction of page 540, line 11 of the transcript to reflect that Linda Sconyers testified that Raffio said: "He would see to that." This motion is granted.

Sconyers testified concerning the morning of April 22 as follows:

Q. [Counsel for the General Counsel] [Upon identifying GC-14 Sconyers stated:]

A. Okay. This is the very last time that I was disciplined for insubordination.

A. What happened was I went in on that morning on the 22nd. And I was asked by Fred, he was a supervisor, to shuttle.

Q. Is his—do you know him also as Farid Giahi?

A. Yes. Yes, we called him Fred.

Q. Do you know what his position was?

A. He was a manager, I think, in the sales—sales manager.

Q. Okay.

A. And he asked me to shuttle. I—I had just gotten there. It was only—it was like 8:00 or 9:00 in the morning. I had just gotten there. He says I need you to shuttle. I said okay. I had \$40 in my purse. I stuck the \$40 at the bottom, because I didn't have a locker and I put it in the drawer, you know, at the bottom so nobody could get into it, started walking around to go outside with Fred. I had high heels on, a skirt, pantyhose. I told him, I says this is really bad, I just got here this morning. I'm in high heels. I'd really feel more comfortable if I had tennis shoes and shorts, or, you know, it's tough to come in, in the mornings, and shuttle. I was not insubordinate, but discussing that I didn't really want to shuttle, but I would. I was on my way out the door with him and he says, you know something, Linda, I understand. I think I have enough people. You can go back out front.⁵⁰ And I did. I went back out front, because there was a line forming, and I started renting. I stayed out front all day, other than just when I had my lunchbreak that day, and rented contracts all day long.

Q. And which, if any, part of that conversation involved Mr. Raja Assal?

A. Okay. Raja never talked to me that morning. I never even saw Raja in the morning.

⁵⁰ Farid Giahi, who testified, did not directly deny that he told or implied to Sconyers that she did not have to shuttle [Tr. 588].

Sconyers testified that in the afternoon of April 22 she was called into a meeting in Raja Assal's office and met with Assal, Ginger Lovejoy-Flairty, and Jeff Willow. She testified as follows:

Q. [Counsel for the General Counsel] [After discussion about whether Schacht could remain the room, Sconyers stated:]

A. So we sat down and he handed me this, and he [Raja Assal] said that I was insubordinate, I didn't shuttle for him. And I told him, I says I never heard you tell me to shuttle. I never had any conversation with you. And he said yes, you know, I asked you to shuttle and you—you did not do it for me. And Jeff Willow that was standing there, in there, too, he's a supervisor, said that he went like this to me and said that—

Q. Let the record reflect that you are waving?

A. Right, he [Jeff Willow] told me that he [Raja Assal] was waving to me. And I said I never saw him wave to me the whole time I just stayed out there and rented. And he said that, you know, I was suspended. I an investigation.⁵¹

Q. Who is the he that Jeff Willow was referring to that waved to you?

A. Jeff Willow said that Raja had waved to me, to get my attention, to like hail me over to him, I guess, when they wanted me to shuttle. But I never saw anybody wave to me. And Raja, I didn't ever [sic] have a conversation with Raja. I had spoken with Fred earlier that morning about shuttling.

Q. Okay. Now between—I'll ask you this, when did you return to work?

A. I returned to work—

Q. Or did you return to work?

A. No, I didn't. I had to call—I had to call them, because he said to call either himself or Karen Soyk. I believe that was on the 28th. And—

Q. Who is the he?

A. Raja Raja [sic] asked me to call him or Karen Soyk, which I did on the day that they told me to call them, which is the 28th.

⁵¹ Record evidence establishes that upon being suspended on April 22nd she was not permitted to return to Respondent's facility until April 28, 1997, a six (day period; her return was only to finalize her discharge [Tr. 547, GC-15(a-b), GC-16(a-b)]. Sconyers was scheduled to work five (5) of those six (6) days [Tr. 548-549].

The General Counsel points to inconsistencies in the testimony of Farid Giahi who testified on direct examination as follows:

Q. [Counsel for the General Counsel] . . . You testified that on April 7th, 1997, that Linda Sconyers—that you had asked her to shuttle and that she refused. You didn't provide any specifics of that conversation on—on direct examination so I want to give you an opportunity to tell me exactly what you said and exactly what she said.

A. All I asked—I didn't ask specifically to Linda. There was a group of rental agent[s], and I asked them, I need some shuttlers and, and Linda said she won't do it because she's not properly dressed. And I just didn't—I didn't say no. I didn't say yes. I just walked straight to my boss's office.

Q. Where were the group of agents that you asked to shuttle? Where were they standing?

A. They're standing the same place behind the counter, where the customers come in.

. . . .

Q. Okay. When you were speaking with Linda and you—when she responded after you asked for employees to shuttle, did she offer any explanation for why she was uncomfortable shuttling that day?

A. When I was talking to group of rental agent, I mean I wasn't specifically talking to Linda, I was [talking] to all of them. Linda told me she needs to know in advance so she can dress properly. And her biggest thing, I think, was her shoes is not comfortable. That is I think she said. But she says she's not dressed properly and we need to give her advance notice if we are expecting her to do something different than renting cars.

Q. Okay. And you understood that to be a refusal to shuttle cars, is that correct?

A. Yeah.

The testimony of Shift Supervisor Kevin Day is particularly noteworthy. Day testified on direct examination by Respondent's counsel that Raja Assal came out to the counter and said he needed some assistance shuttling and the agents began to disperse. Some customers began to filter through the line and Sconyers called next. At that time Assal came back out to the counter and said, "Didn't I ask everybody to shuttle." Day responded, "You know, Linda did call next, called the next customer up. He (Assal) walked off the counter and I went right behind him." On cross-examination, Day testified as follows:

Q. [Counsel for the General Counsel] Then why is it that—

A. He [Raja Assal] asked for volunteers. He said, well, we need to go out and go shuttle cars. He didn't say I need—specifically I need everybody that's on the counter right now to come out and shuttle.

Q. Okay. So then Linda Sconyers was not ordered to go out and shuttle cars, isn't that true?

A. It was more of a general, you know, I need help shuttling cars. There were no names specifically given, I need you, you, you, and you.

Q. And everyone other than Ms. Sconyers left to go shuttle cars?

A. Everybody else filtered off the counter.

Q. And then Ms. Sconyers went to handle the very next customer, correct?

A. She did call next.

Q. Okay. The customer needed to be serviced. You admit that, correct?

A. Yes.

The General Counsel notes in his brief the following:

In Raja Assal's absence, the Administrative Law Judge accepted written statements from him as an offer of proof of what he would have testified to had he been present [Tr. 595-596, R-37, R-38.] Assal documented the April 22nd incident in a memorandum to Sconyers' personnel file, dated April 30, 1997 [R-38]. Therein Assal states that after Farid Giahhi asked Sconyers to shuttle cars, she refused and he raised his hands up and asked Linda to shuttle [R-38]. Different from any other account, Assal states that 'Linda walked towards me and said I am not going to shuttle because I have a skirt on' and at 'at that point Linda walked away and called next to a customer who was in line' [R-38].

The General Counsel argues that Sconyers had been observed by Victor Gonzales on April 9, 1997, in a meeting with Laurie Kelly, International Representative for the Teamsters Union and had held a union meeting at her home on April 16, 1997, which one of the employees in attendance informed the senior city director of on either the next day or two based on the testimony of Sconyers which I credit. He argues that Respondent produced no evidence of prior discipline issued to its employees for not shuttling cars and notes the inconsistencies in the testimony of its witnesses as to whether Sconyers was given a direct order to shuttle cars. General Counsel contends that Raffio set out to suspend Sconyers in order to stem the third union campaign as he had previously threatened Sconyers he would not tolerate another campaign and that this ultimately culminated in her discharge by Assal.

Analysis

I find that the General Counsel has established a prima facie case that the Respondent's suspension and discharge of Sconyers was motivated by its antiunion animus and its attempt to stem a third union campaign by getting rid of the leading union supporter. I find the circumstances of this incident support a finding that Sconyers was suspended and discharged because of her known union activism and her efforts in leading a third campaign. I find that Respondent seized on this incident to rid itself of the leading union supporter. I find that the Respondent has failed to rebut the prima case by the preponderance of the evidence. Respondent violated Section 8(a)(3) and (1) of the Act by its suspension and discharge of Linda Sconyers, *Wright Line*, supra.

6. Written discipline issued to Fernande Lynn Edwards and Fernando Altamirano on May 17, 1996

Facts

Fernande Lynn Edwards and Fernando Altamirano received written discipline from Hans Hudtwalker on May 17, 1996, for leaving the rental counter to take their dinner break without

informing their supervisor, failing to punch out for the break, and for exceeding the 30 minutes allowed for the break. Edwards testified that if business was slow and a manager was present, the rental agents would tell the manager that they were taking their break and that if no manager was present, they would merely take their break.

Edwards related the events of the evening of May 15, 1996 as follows:

Q. [Counsel for the General Counsel] What happened on May 15th?

A. We—that day we wasn't very busy. And we were slow for like over half an hour, and we were on the counter talking. And I told Fernando do you want to go on break now? It was about close to 7:30. And there wasn't any supervisor on the counter to ask, you know, I'm taking my break four minutes early. So we took our break and we went to 7-Eleven across the street, about five minutes away. We get a sandwich to eat.

Q. Do you—did you get sandwiches out of a machine or—

A. We get a sandwich out of the machine and came right back.

Q. Okay. And where did you spend the balance of your meal break?

A. In the break room.

Q. And on May 15th, 1996, did you punch out for your break?

A. No.

Q. Why not?

A. Because it wasn't mandatory to punch out for our break. That's what management told us. Because it is taken automatically from our paid hours.

....

Q. And how long did your take your break for?

A. We were back before 8:00.

On May 17th Edwards was called into a meeting with Hans Hudtwalker and Ginger Lovejoy-Flarity and issued a written discipline. She related this incident as follows:

Q. [Counsel for the General Counsel] Tell me who said what during this conversation?

A. Well, when I walk in, he had some papers on his desk. And he told me I don't want you to think that I am picking on you, but an incident happened on the 15th. You took your break—he said I took my break—I took an hour break and that is not tolerated by the company. I told him, no, I didn't take an hour break. I said I left close to 7:30, and there wasn't any manager on duty on the counter to ask if I can leave four minutes early, and I was back before 8:00 in the break room. He told me, no, that my—rental showed that I had a rental before 7:00. I told him we didn't—we wasn't busy on the counter, that's why I left four minutes before—before my break time.

Q. Did he say how he became aware that—of your rental time records?

A. Yes. He said a manager told him that they couldn't find me, and my last rental was ten to 7:00. And I rephrase again to him, tell him we was not busy on the

counter. We was not busy for over half an hour, so that's why.

Q. And did—do you know if he named the manager that he had spoken with?

A. Yes. He said he talked to Michael Thompson.

Q. And do you know Mike Thompson's position, at the time?"

A. Yes. He was our corporate sales trainer.

Q. Did you have—on May 15th, 1996, after you returned from your break, did you have occasion to see Mike Thompson at any time for the—during the balance of your shift?

A. Yes. He was on duty.

Q. And did he indicate in any way that he'd been looking for you?

A. No.

Hans Hudtwalker testified he relied exclusively on Thompson's account of this when he issued discipline to Edwards. He initially testified it was busy that evening but later testified he could not recall whether it was busy or slow. Respondent did not call Thompson's and Edwards' testimony of the events is thus un rebutted.

Fernando Altamirano had gone to lunch with Edwards on the evening of May 15, 1996, and was also issued written discipline for leaving the rental counter early and for failing to notify Thompson prior to leaving. Altamirano testified that it was routine to "just take 30 minutes break without clocking out . . . because they dock us 30 minutes from our time anyways." He further testified there was no rule in place requiring agents to ask permission to take their dinner break and that no such rule was ever enforced. Altamirano testified that on the evening of May 15 he and Edwards took their dinner break together and left about 7:25 p.m. before their scheduled time of 7:30 p.m. because it was slow and that they returned shortly before 8 p.m. At the time they left there was no manager on the rental counter. Additionally he had been working in the returns area because it was slow prior to leaving for his break. When he returned from dinner he heard that Shift Manager Mike Thompson was looking for him. He spoke with Thompson later that evening and inquired why he had been looking and Thompson said, "Oh, that was not important." Hudtwalker who was then the assistant city director, was not involved in monitoring breaks but testified he relied on information from Shift Manager Thompson's account. He had no independent knowledge of the reason for the issuance of the discipline and did not have any recollection of his conversation at the time he issued the discipline to Altamirano. Hudtwalker had not previously disciplined employees for taking their breaks early, failing to clock out or failing to notify a supervisor before leaving on a scheduled dinner break. As Thompson did not testify, Altamirano's testimony of the events of the evening of May 15 is un rebutted except for the notes made on the report prepared by Thompson. In the note Thompson wrote that on May 15, 1996, at 7:05 p.m., he noticed that Altamirano and Edwards were not on the counter and searched for them to no avail. They showed up at 8:10 p.m. He asked Altamirano where they had been and he replied, "on break." He asked when they had gone and Al-

tamirano replied, "7:25 p.m." Thompson said he had been looking for them since 7:05 p.m. Altamirano said they had been in returns. Thompson said this was not possible as he had looked repeatedly in returns as well as everywhere else. Thompson reports he decided not to get into a confrontation with Altamirano who stuck to his story until he had an opportunity to talk to Karen Soyk and Steve Raffio.

Analysis

I find the General Counsel has established a prima facie case that the written discipline of Edwards and Altamirano was motivated by antiunion animus because of their support of the Union. I find the Respondent has failed to rebut the prima facie case by the preponderance of the evidence. I credit the testimony of Hudtwalker that he made the decision to issue the discipline to these employees after Shift Manager Thompson reported that he was unable to find these employees for an hour far in excess of their allotted dinner break and that they had not asked permission of their shift manager and had not punched out. I find that his reliance on the information received from Thompson was not inconsistent with the requirement of the policy set out in FAMPACT regarding dinner breaks. I do not credit Altamirano's and Edwards' testimony that they were only gone for a half-hour for their dinner break. I do not credit Hudtwalker's testimony that he had no idea whether Edwards and Altamirano and Edwards were union supporters. It was widely known that these two employees were in the forefront of the union campaign. Edwards and Altamirano had been the subject of threats for their union involvement. I credit their testimony that there was no hard and fast rule followed for the taking of dinner breaks. Respondent employed 70 rental agents but produced no evidence of any employees having been previously disciplined for taking excessive dinner breaks, failing to punch out, or obtaining the permission of supervisors prior to taking their break. Hudtwalker, who was the assistant city director, was unable to cite a single instance of prior discipline issued to a rental agent for a violation of the policy. This is not to say that there may not have been restrictions. However as established in the record employees were paid on an incentive basis and the record indicates, particularly with permitting early leaves when business was slow, that there was some leeway permitted with the lunch periods also as testified to by Altamirano and Edwards.

I thus find that Respondent's animus to the Union and its supporters has been established in this record as has its knowledge that Altamirano and Edwards were leading supporters of the union campaign who had been warned by Respondent's management of adverse consequences of their continued support of the Union. These employees were the recipients of adverse job actions by the issuance of the written discipline issued to them shortly prior to the election scheduled for May 28. I accordingly find that Respondent violated Section 8(a)(3) and (1) of the Act by the issuance of the written discipline to them, *Wright Line*.

7. Written verbal warning issued to Fernande Lynn Edwards regarding a customer complaint

Facts

On July 13, 1996, Ginger Lovejoy-Flairty issued a written notification of a verbal warning for a customer complaint to the personnel file of Fernande Lynn Edwards. Edwards testified at the hearing that she had never received the warning and had never been apprised of it or had any discussion with Lovejoy-Flairty or anyone else regarding the customer complaint. Lovejoy-Flairty testified that she had no recollection of discussing the warning with Edwards but conceded that the effect of the issuance of the warning would have been to permit acceleration of further discipline. The substance of the complaint was that Edwards had pressured a customer to purchase unwanted insurance for her rental car although she contended she was fully insured.

Analysis

I find that the General Counsel has established a prima facie case that the discipline was motivated in part by Respondent's animus toward the Union and its supporters. Edwards was a known leading union supporter who was the subject of threats by management because of her union support and who had been previously issued discipline because of her union activities. Edwards testified she never discussed the matter with anyone and her testimony was un rebutted as Lovejoy-Flairty had no recall of discussing the matter with her. The adverse job action issued to Edwards under these circumstances supports the inference that the discipline was issued to Edwards because of her support of the Union. I find that the Respondent has failed to rebut the prima facie case by the preponderance of the evidence, *Wright Line*, supra.

8. The discipline and 3-day suspension of José Perez

Facts

José Perez, a known union activist, received a written discipline and a 3-day suspension issued by Hans Hudtwalker on June 11, 1996. The purported reason given for the discipline was that Perez honored a Latin American rental plan which the customer did not qualify for as he had a State of Georgia USA drivers license. Perez testified concerning the practice and the occurrence on which the discipline was based as follows:

Q. [Counsel for the General Counsel] I hand you General Counsel's Exhibit 23(a) and (b) [June 11, 1996 discipline] . . .

A. Okay.

Q. Can you identify that document?

A. Okay. Yes, this was a reprimand that I got on June the 11th, basically for renting a car to a customer, originating from South American, under a South America plan code. From what I remember, it was usually not procedure to accept that kind of a plan code under a driver's license originating in the United States. We had to have a driver's license originating from South America or international driver's license originating from the same country that they are from, and they had to have airline tickets originat-

ing from that country. What I did here was basically I had rented him a car with a driver's license from Georgia. And the reason I did that, because—I think it would be in the statement that I asked him for a license from that country and he didn't have one. So I said, well, no problem, we'll just go on with what we have to do. Prior to that, on several occasions, not only I but quite a few other employees did that on normal. It wasn't anything out of the ordinary to do that.

Q. Was there any particular manager that knew that employees were doing that and permitted them to do it?

A. Oh, yeah. Quite a few of the managers said it was okay. There was—on this occasion, Hans told me that John Poanessa, who was the sales manager, on some—I don't know how long before that he had already been promoted to a different office, but he said it was okay to go ahead and rent under those circumstances, and when they didn't have it, you couldn't do anything about it, you had to just go on with it and—and go on renting the car.

Perez testified concerning the disciplinary meeting with Hudtwalker as follows:

Q. [Counsel for the General Counsel] Okay. Tell me what was said?

A. Well, he [Hudtwalker] said that John Poanessa was an awesome manager, very caring person, but he sometimes did things that weren't by the book. And—and since certain employees had asked that everything be done by the book and that we needed to follow procedure in basically everything, we had to stop doing this from now on.

Q. Is there anymore that you recall of the conversation?

A. Well, one thing I said, well, that's—that's fine, that's hunky-dory, but I believe that at least if—if you're going to write me up on something like that, I should have been at least told that this wasn't supposed to be done anymore, and we've got to write you up on it. Basically, left it at that.

Q. How, if in any way, did Mr. Hudtwalker indicate that other employees would be informed of your actions?

A. Oh, he—he did say that at that moment he would inform other employees about it. And I later found out that most of the employees were working on that shift were being told by Ginger Lovejoy[-Flairty], one of the other managers on—on the—in the office, that I was being reprimanded for this very situation and that we could no longer do that anymore.

Hudtwalker testified that he did not remember the details of his conversation with Perez during the disciplinary meeting. He testified he did not remember whether or not he told Perez he was going to apply the rules more strictly. He also testified he did not remember whether he had ever disciplined any other rental agent for taking a driver's license that was not consistent with a rental plan code. He denied also that he was aware that Perez was a union supporter.

Analysis

I find that the General Counsel has established a prima facie case that the issuance of written discipline and the 3-day suspension to José Perez was motivated by antiunion animus directed against a known union supporter. The Respondent's animus toward the Union and its supporters has been amply established by the extensive record of violations found in this case as well as the interrogation of Perez engaged in by Hudtwalker as found supra in this decision. Hudtwalker's testimony that he did not know that Perez was a union supporter is not credible and is rejected in its entirety. Moreover as argued by the General Counsel, the entire tone of the conversation wrecks of pretext and disparate application of policy against union supporters. Hudtwalker's reference to "since certain employees have asked that everything be done by the book" was a clear reference to union supporters. The sudden enforcement of a policy against Perez which had previously not been enforced is indicative of Respondent's efforts to discourage union activities of its employees by the issuance of discipline. I find that the Respondent has failed to rebut the prima facie case of discrimination by the preponderance of the evidence, *Wright Line*, supra.

CONCLUSIONS OF LAW

1. The Respondent 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. The Respondent violated the Act as set out in the foregoing decision.

4. The above unfair labor practices in connection with the business of the Respondent have the effect of burdening commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent violated the Act, it shall be ordered to cease and desist therefrom and to take certain actions including the rescinding of the unlawful discipline, suspensions, and the discharge of Linda Sconyers and the issuance of written discipline to Edwards and Altamirano, the verbal warning to Edwards and the written discipline and 3-day suspension of Perez and purging the record of all references to these unlawful disciplines. I recommend that Linda Sconyers be offered reinstatement to her former position or to a substantially equivalent position if her former position no longer exists, without prejudice to her seniority or other rights or privileges previously enjoyed or to which she would have been entitled in the absence of the discrimination against her from the date of her discharge. I also recommend that Respondent make the discriminatees whole for any loss of earnings and benefits they may have suffered as a result of the discrimination against them. These amounts shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest shall be computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[Recommended Order omitted from publication.]