

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ATLANTA BRANCH OFFICE
DIVISION OF JUDGES

KUMI MANUFACTURING OF ALABAMA, LLC.

and

Case No. 10-CA-37006

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW

John D. Doyle, Jr., Esq. for the General Counsel.
Marcel L. Debruge, Esq. and *Ronald W. Flowers, Jr., Esq.*
(*Burr & Foreman LLP*), of Birmingham, AL, for the
Respondent.
Mr. James R. England, of Vance, AL, for the Charging
Party.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in Birmingham, Alabama on March 12 and 13, 2008. The charge was filed by International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW (Union or UAW) on September 12, 2007 and the complaint was issued on January 30, 2008. It alleges that Kumi Manufacturing of Alabama, LLC (Respondent or KMA) (1) violated Section 8(a)(1) of the National Labor Relations Act, as amended (Act), by maintaining an unlawful solicitation rule,¹ and (2) violated Section 8(a)(1) and (3) of the Act by issuing a written warning to its employee Annie Kline on or about May 24, 2007 by issuing a suspension to Kline on or about July 16, 2007 and by discharging Kline on or about August 17, 2007 all because Kline engaged in activities on behalf of the Union and to discourage its employees from engaging in such activities. Respondent denies violating the Act as alleged in the above-described complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel and the Respondent, I make the following:

¹ Respondent maintains the following written work rule in its employee handbook, customarily distributed to employees:

In order to avoid work interruptions which interfere with successful production operations, KMA will not permit solicitations of any nature by an associate during work time, i.e. the time that the associate soliciting or the associate being solicited are actually supposed to be performing work duties; all solicitations must have the approval of Human Resources.

Persons not authorized by KMA will not be permitted on KMA property at any time to solicit or to distribute literature to KMA associates. [Emphasis added]

Findings of Fact

I. Jurisdiction

5 The Respondent manufactures Honda automobile parts at its facility in Clanton,
Alabama, where in the 12 months immediately before the complaint herein was issued, a
representative period, it purchased and received goods valued in excess of \$50,000 directly
from suppliers located outside the State of Alabama. The Respondent admits and I find that it is
10 an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act
and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

15 The following appears on page 3 in KMA's employee handbook, General Counsel's
Exhibit 4:

20 Alabama is a "right to work" state. This means that you have the legal right to work with
or without regard to union membership. The management of KMA want[s] you to know
that we believe that a union in our operation is unnecessary. We would prefer to deal
with each other directly, rather than through a third party. We will work hard to maintain a
cooperative, safe, and productive work environment based on open communication and
mutual trust.

25 According to the law, you have the right to belong to a union, or to decide against joining
a union. We sincerely believe a union in our operation would be a detriment, creating a
negative effect on our mutual success. Therefore, we will oppose any union organizing
effort by every legal and appropriate means necessary.

30 Klein, who was hired by KMA in July 2004, testified that on October 12, 2006 she was a
production operator working on the first shift; that after speaking with Jim Phillips, who is
employed by Honda and is assigned to KMA, she met with Meeks, Hideomi, who at the time
was the President of KMA, and Hideko Mitchell, who is the secretary of the President of the
Company; that she told Debbie Meeks, who is the Human Resources Manager at KMA,
35 Hideomi and Mitchell that the employees were being treated unfairly; that Meeks asked her if
she, Meeks, went out on the floor would the employees tell her the same thing she was telling
Meeks; and that she told Meeks that she doubted that the employees would because Meeks
was a vengeful person.

40 Meeks testified that to the best of her recollection in June 2006 she did attend a meeting
with Kline where Kline said that she, Meeks, was vengeful; that the gist of the meeting was Kline
asking when they were going to have roundtable meetings, when is Phillips coming back and
you are vengeful; and that Kline did not bother to share why she believed she, Meeks, was
vengeful.

45 On cross-examination Meeks testified that she did not remember the discussion leading
up to Kline saying that she, Meeks, was a vengeful person.

50 On October 31, 2006 Kline, according to her testimony, telephoned Rick England who is
an organizer for UAW. Kline testified that she talked with England by telephone on a weekly
basis until February 2007 when she met him at the Smokey Hill restaurant in Jemison,
Alabama; that thereafter she met with England about every other week at different locations;
and that just she and England attended these meetings until April 26, 2007.

Meeks testified that in November 2006 Kline asked for time off under KMA's bereavement plan because her niece had been tragically killed and she wanted to go to funeral; that she told Kline that KMA would not pay for the time off under its bereavement plan because
 5 KMA determined that the niece was a step niece²; that Kline took one day off to go to the funeral; and that KMA did not pay Kline for the day because while a niece is considered a covered relative or immediate family, a step niece under the policy is not. Meeks testified that Kline ceased speaking to her after this.

10 Meeks testified that in early 2007 she heard rumors of union activity at CRH, which is an automotive parts manufacturing facility located next door to KMA; that she heard a rumor that there might be some union activity going on between associates at CRH and KMA; that UAW came to KMA's attention when she had a conversation with Judy Banson who is the Human Resource manager at CRH; that she frequently talks with Benson because CRH and KMA swap
 15 employees; that Banson told her that she had heard rumors that there was some union activity between KMA and CRH employees; that this conversation occurred sometime in February 2007; and that she told management at KMA about the rumors.

20 Shawn Dale Coleman, who was an assistant quality manager at Respondent's facility, testified that on February 20, 2007 he attended a meeting in Respondent's conference room 2, which is Respondent's largest conference room; that he was notified of the meeting by email from Human Resources manager Debbie Meeks who indicated that all supervisors and managers needed to attend³; and that an attorney was present at this meeting.

25 On cross-examination Meeks testified that her indication in General Counsel's Exhibit 2, which is dated February 19, 2007, (a) on page one that "There have been reported recent meetings with some CRH Associates in which some KMA Associates were present, and (b) on page 2 that "these activities were just brought to light this morning," refer to her conversation

30 ² Respondent's Exhibit 16 is the obituary Meeks' assistant retrieved from the internet and the document Kline turned in which refers to the funeral service.

³ As here pertinent, the February 19, 2007 email, General Counsel Exhibit 2, reads as follows:

35 There is reason to believe that there may be some union organizing efforts underway at CRH as well as KMA from the UAW (United Auto Workers). You may be aware that the UAW has committed enormous amounts of funds to organizing activities across the U.S. and have been very active with Mercedes and its suppliers as well as Hyundai suppliers. There have been reported recent meetings with some CRH Associates in which some KMA Associates were present. Who and how many is undetermined at this time.

40 In an effort to be proactive at KMA, we will have **MANDATORY REQUIRED** meetings with **ALL SALARIED STAFF** beginning tomorrow morning and continuing until we can get everyone through the training. This is critical training and is **NOT** optional. In this meeting you will learn about the UAW, their targets, what to look for at KMA, the legal things you can say and do with Associates and Union Organizing. Marcel Debruge, Attorney at Law with Burr & Forman will be presenting the training. The following are the
 45 meeting times and the time you must be present:

....

50 **I apologize for the short notice on this, but these activities were just brought to light this morning and we must act quickly to ensure a union-free workplace at KMA. Please be supportive of the company's efforts and arrive on time for these meetings. Please come prepared to take notes.** [Emphasis in original]

with Benson.

5 Coleman testified that on February 22, 2007 he attended a meeting in the medium-sized conference room at Respondent's facility; that he learned about this meeting by an email⁴; and that Micah McDonald and Barbara Ray attended this meeting.⁵

10 Coleman testified that one or two days after the February 22, 2007 meeting he attended a third meeting in the medium-sized conference room behind the office of the president with McDonald, Ray, Coltrain, Keefer, who is quality coordinator for document control, and Meeks; that attorney Debruge was not at this meeting; and that

15 A. This meeting was about what the meeting from the two previous meetings where we met with Debbie Meeks and the substance of the meeting was whether or not the people in our department, meaning our associates, were union, nonunion or would listen to the union. That was the questions we asked at this meeting. That was the contents.

....

20 A. Debbie Meeks went through a list of the employees in our department, in the quality department. Debbie Meeks asked every supervisor in that meeting what were our feelings for each hourly employee in that department. She would state a name for [an employee] that you supervised and did you feel that they support the union or [were] against the union or whether they would listen to what the union had to say.

25 Q. Did you see whether Ms. Meeks had anything in her hands during this meeting?

30 A. Ms. Meeks made notations of every time someone spoke.

35 Q. About how long did this meeting last?

A. Probably less than an hour.

40 Q. Did -- was there any discussion about an employee named Janet Lanier?

A. Yes.

40 ⁴ The email, General Counsel's Exhibit3, reads as follows: "Attached is today's schedule for meeting with union attorney Marcel Debruge. Please make sure you are prepared and on time. Thanks for your cooperation."

⁵ The following appears on General Counsel's Exhibit 3:
Schedule with Marcel Debruge for February 22, 2007

45
1:00 pm
 Shawn Coleman
 Micah McDonald
 Barbara Ray [Emphasis in original]

50 Also, it is noted that the names of neither Jack Coltrain nor Deborah Keefer are on this list. Their names do, however, appear on the list of those who were expected to attend the first meeting on February 20, 2007. See General Counsel's Exhibit 2.

Q. Tell us the substance of the discussion during that meeting about an employee named Janet Lanier?

5 A. Ms. Meeks called Janet Lanier's name. She asked every supervisor, manager, how we felt about Janet's position on the union. We gave our position and she made notations.

10 Q. Do you recall what the -- what statements the supervisors made about Ms. Lanier?

A. Every supervising manager in the room said Janet would be a union supporter. [Transcript pages 20 - 22]

15 On cross-examination Coleman testified that he believed that one of the reasons that the third meeting was held was because Coltrain and Keefer were not present at the second meeting with the attorney on February 22, 2007 because they were away from the plant "in training or FEMA training at Honda" (transcript page 41); and that he gave his opinion to Meeks regarding whether an employee supported the union "based on our direction to find out what
20 was going on on the floor" (transcript page 43).

Barbara Ray, who was a supervisor in the quality department until she was terminated by KMA in June 2007, testified that she attended a management meeting in late February 2007 other than the ones covered by General Counsel's Exhibits 2 and 3; that the third meeting
25 occurred no more than two weeks after the February 22, 2007 meeting; that an attorney was not present at this third meeting; that she, Coltrain, Coleman, McDonald, and Meeks attended this third meeting; that the meeting was held in "the little room behind the main office ... near the president's office" (transcript page 98); that during this meeting Meeks called out employees' names and wanted to know if the supervisors present thought they were for or against the
30 Union; that Meeks had a list of quality employees and she went down the list, asking each one of the supervisors present if they thought the employee was for or against the Union, and Meeks told the supervisors who she thought was for the union, namely Janet Lanier and Candice McGalliand, and who she thought was against the Union, namely Mark, who was one of Ray's inspectors; and that Meeks said that they were supposed to watch Lanier and McGalliand and
35 make sure that they did not talk on the floor with each other.

On cross-examination Ray testified that at the third meeting Meeks said that she believed that Lanier and McGalliand were union supporters; that Meeks said that they were for
40 the Union and they were going to lunch together and having meetings; that she was asked to keep an eye on Lanier to see whether she talked to McGalliand; that "[n]o one was supposed to talk union in the plant" (transcript page 113); that when employees were out of their area talking to other employees, they would be broken up; that Work Rule No. 22 indicates that an employee shall not interfere with the work of other employees; that she did not see the Union pass out handbills at KMA; and that she did not see any kind of union activity going on at KMA.
45

Meeks testified that there was "absolutely not" (transcript page 460) a meeting at KMA where there was not a lawyer present where she sat down with Ray, Coleman or anybody else to question them about the pro-union or anti-union sentiments of KMA associates; that "[n]o" she does not have "some king of a list ... [she was] going through making notes on whether
50 supervisors viewed employees as pro-union, not union or unknown." (Id.)

On cross-examination Meeks testified that Coltrain and McDonald still work for KMA;

that Suzuki and Hester still work for KMA; that Coltrain's duties require him to be away from KMA's facility from time to time; and that she did not recall whether Coltrain was away from KMA's facility on February 22, 2007.

5 Meeks testified that KMA distributed some memoranda to its employees, General Counsel's Exhibits 9, 10, and 11; that there are no other communications that KMA made to its associates about the subject matter of unions in 2007; and that General Counsel's Exhibit 9 was distributed to employees on March 1, 2007. As here pertinent, General Counsel's Exhibit 9 reads as follows:

10 It has recently come to our attention that KMA faces a serious situation. The United Auto Workers union is now in a card signing drive as part of an effort to organize KMA.

....

15 KMA values its relationship with you and we believe that bringing in a union would be very harmful to all of us.

....

20 Of course, it is your decision whether to sign a union card, but we want you to know what you are signing.

25 You must realize that by signing this dangerous card you are signing away your rights.

....

Harry Suzuki, Executive Vice President

30 On cross-examination Kline testified that she received a written warning on March 2, 2007, Respondent's Exhibit 4. The "Nature of the Incident" specified on the warning is "Causing Hostile Environment," and the "Details of the Incident" are as follows: "Showing racism toward associates by racial slurs, attitude and unfriendly remarks and gestures." The "Corrective Action" section of the document reads as follows: "... This is a final warning. Any other racial slurs, attitude will not be tolerated and you will be dismissed from employment from KMA." The document indicates that Kline refused to sign it. It is signed by Lee Hester and Andy Slater. Kline testified that she was told about this written warning but she never did see a copy of it; that the contents of the document were discussed with her at a meeting on March 2, 2007; that she was told that she was mistreating black people at work; that Meeks brought up the fact that she, Kline, refused a Christmas present from one of the floaters, who was an African American, and she told Meeks that she refused it because it was not given in the manner of the season; that the floater involved was never really nice to her and she did not believe that the gift was given in the right way; that she did not tell the floater that she did not "accept gifts from you people, or the likes of you people" (transcript page 204); that she did tell Dorothy Anderson, who is African American, that she, Kline, was raised to be "prejudiced against colored people" (Id.) but she had changed; that that she told Anderson "my dad, back in the '60s, '50s, there was a lot of racial raising but you change" (transcript page 205); that she has not made any black, racist remarks; that she did not recall management asking her to sign anything at this meeting; that after this meeting management did do a plant-wide survey; that it is indicated in the employee handbook that if the Company believed an employee made racial slurs or otherwise racially harassed a coworker, that person could be fired for it; and that she did not make a racial slur. Counsel for

General Counsel pointed out that the March 2, 2007 discipline is outside the Section 10(b) limitation period.

5 On redirect Kline testified that in December 2005 Dorothy Anderson brought a Christmas gift over to the table she, Kline, was working on and left it there; that she gave the present back to Anderson; that she first heard in March 2007 from a supervisor that her conduct in December 2005 might be a problem; that the gift was in a little bag; that this was the first and last time Anderson gave her a gift; that other employees had not given her a Christmas gift; and that since she did not look in the bag she did not know what it was.

10 Meeks testified that she was approached by Tammy Talley Robinson, who is the first shift team leader for the production area; that Robinson told her that she was tired of the way Kline talked to her, talks down to the black people, and says derogatory things to them; that Robinson is black; that she conducted an investigation, talking to various associates on the floor
15 of all races and the consensus was that Kline was making racial statements to African Americans like "this is the way I was raised" and "I don't accept gifts from your kind of people"; that on March 2, 2007 an Associate Written Warning Report, Respondent's Exhibit 4 - which is described above, was issued to Kline; that racial harassment or racial discrimination is found in the employee handbook, General Counsel's Exhibit 4; that while it is a matter of discretion
20 depending on the severity, KMA's normal action would have been to terminate Kline for racial harassment; that she, Hester and Salter met with Kline about this discipline; that the contents of the report were read to Kline by Hester who let Kline see the report; that Kline said "[w]ho? Me? I am the most nonracial person you will ever want to meet" (transcript page 392); that she did not believe Kline because "[s]he didn't seem sincere" (Id.); that she had five complaints and then that was just African American employees; that this warning was step one in KMA's
25 progressive discipline policy; that under KMA's progressive discipline policy there are four steps, namely a verbal warning, a written warning, suspension, and termination; that this violation of company policy was severe enough to go beyond just a verbal warning so Kline was given a written warning, but it was the first time that Kline had been in any kind of issue with KMA's
30 company policy; that Kline asked if she was going to get a copy of the written warning and she told Kline that it was a company document and Kline would not get a copy; that Kline then said that she did not sign anything that she did not get a copy of; that while there is a place on the form for the employee to write remarks, Kline did not write any; that Kline was given the opportunity to write on the form; that at this time she was not aware of any union activity of
35 Kline; and that Kline did not raise the issue of a union or assert that she believed that the union had anything to do with the company's decision to issue this discipline.

40 On cross-examination Meeks testified that with respect to Kline refusing a Christmas gift, two individuals complained, namely Dorothy Anderson and Gloria Williams; that Anderson complained that Kline refused a gift at Christmas 2005 and Williams complained that Kline refused a gift at Christmas 2006; that she spoke with eight people during this investigation before she spoke with Kline; and that the following then occurred:

45 Q And on this occasion, you followed the same procedure [as was later followed with Kline as described below] where you wrote out a discipline and the opportunity for the employee to respond was after they had been issued the discipline?

A No sir. That was not the case in this one.

50 Q Well what happened?

A We conducted the investigation and concluded based on the evidence from the

people complaining and the other people who were not in the complaint, if they could validate any of their statements and we concluded that Ms. Kline had, in fact, made some racial comments and racial slurs.

5 Q And my question is, you drew that conclusion before you talked to Ms. Kline?

A Correct.

10 Q And so in that instance - - in that investigation, you didn't ask for her input at all, is that it?

A Correct. [Transcript pages 484 and 485]

15 It is noted that the employee handbook, General Counsel's Exhibit 4, contains the following on page 29: "[a]ll violations remain on the Associate's record for one year from the date of the imposition for purposes of determining the next step of disciplinary action to be taken for subsequent violations."

20 Ray testified that a couple of weeks after the third management meeting she attended about the union, Meeks came up to her on the floor in the quality area and told her that Lanier and McGalliand were talking and she was supposed to watch them and see that this did not happen. Further, Ray testified that she told Pam Merchants, who is team leader in her department, to help her watch Lanier, who is an inspector auditor, and make sure Lanier stayed in her department and she did not go over into McGalliand's department, which was shipping; and that Lanier had to audit parts sometimes in shipping. Also, Ray testified that on one 25 occasion Meeks made her write up Lanier for coming back from lunch 3 or 4 minutes late; and that there were no other occasions when Meeks told her that she had been watching the break and lunch practices of any employee other than Lanier.

30 Meeks testified that there were complaints, including from Ray, that Lanier and Candice "were holed up between the containers out in ... the plant, out where the warehouse part is" (transcript page 457); that McGalliand works in an office off the warehouse and her job function was not out in the plant; that Ray was told to watch the both of them because they were interfering with the work of each other and they were not doing what they were supposed to be 35 doing; that "unions" (transcript page 458) had nothing to do with her discussing with Ray that she needed to watch or keep an eye on Lanier and McGalliand; that Ray was not correct in testifying that she was directed to watch Lanier and McGalliand for talking about "unions" (Id.); and that she never told Ray to do anything to make sure people did not talk about "unions" (Id.) at work.

40 On cross-examination Ray testified that she complained to Meeks about Lanier on certain occasions; that she probably complained about Lanier being late for lunch; that she never complained to Meeks about McGalliand; that she did not recall talking to Meeks about an issue regarding Lanier and McGalliand clocking each other out; and that Meeks was watching 45 the clock and saw how many minutes Lanier was late, it was not just but a few, and she, Ray, was not going to write Lanier up for just a few minutes.

On redirect Ray testified that she thought that she spoke to Meeks about Lanier coming back late from her lunch break on the same day that Lanier was written up.

50 Meeks testified that General Counsel's Exhibit 10 was distributed to KMA employees about March 19, 2007. As here pertinent, it reads as follows;

5 In the past few days we have received reports that UAW organizers may be making telephone calls to KMA employees to seek support for the UAW's organizing drive. It is also likely that the UAW organizers may already have started visiting KMA employees at their homes to seek and get union cards signed.

....

10 If you have any questions about this matter please feel free to talk with your supervisor or any other member of management.

Akira Nagura, President

Harry Suzuki, Executive VP

15 According to the testimony of Meeks, General Counsel's Exhibit 11 was distributed to KMA employees in late March 2007. As here pertinent, it reads as follows:

20 We are writing to update you in recent union organizing activity in our community, as well as alert you to a couple of very disturbing situations involving the UAW at other Alabama automotive supplier facilities.

25 In Harry's last memo you were alerted that the UAW is trying to organize KMA. The UAW organizers are in the Clanton area and they are reportedly approaching people in the street to solicit support.

30 Union cards are dangerous legal documents. Simply by signing one of these cards you take the risk that the UAW could try to come into KMA without you even getting your right to cast a secret ballot vote. This is exactly what UAW organizer Ricky England is doing right now at Ai3, another automotive supplier in Vance, Alabama.

....

Akira Nagua, President

Harry Suzuki, Executive VP

35 In March 2007, according to the testimony of Ray, she had a telephone conversation with Coltrain from her home and she told Coltrain that she thought Coleman was for the Union, she was upset because Coleman was management, and Coltrain told her to be patient that he would take care of that in time. Ray could not remember who called whom.

40 On cross-examination Ray testified that she believed that Coleman was for the Union because "[j]ust I guess his attitude. He was - - he was trying to steer the people in the right way, as he would put it, do what is good for the people, he said." (transcript page 117)

45 On April 26, 2007 according to the testimony of Kline, for the first time she brought someone else with her when she met with England.

50 On cross-examination Kline testified that beginning on April 26, 2007 other named KMA employees started attending the union meetings and, to her knowledge, at the time of the trial herein those named employees had not been terminated by KMA.

Klein testified that she has had conversations with Andre Lee from time to time; that on

two occasion she had a conversation with Lee about the Union; that on the first occasion she was working at her machine (She believed that she was on the 385 but she was not sure.) and Lee, who raised the topic, was doing a mold change and complaining to her about Ryan Ivey not helping him do the job they were supposed to do; that she told Lee that they needed to get
 5 some representation in here to avoid all of this; that the first time she talked to Lee about representation he had come up to her; that this exchange lasted a minute or two; that the second and later occasion was in August 2007 (covered below); and that all of her other conversations with Lee were just about work.

10 On cross-examination Kline testified that the operator is supposed to move out of the way of the overhead crane because accidents do happen and if the setup technician is distracted, if he drops a mold - which are moved between machines with an overhead crane, it could seriously harm someone.

15 Lee testified that as a set up tech each day he performs 8 to 10 mold and 10 to 15 color changes and makes sure that they are done in a timely manner; that he relieves employees and makes sure that the machines keep running; that his daily schedule dictates the times the mold and color changes should be performed; that if he is not at the machine when it is time to
 20 change the mold or the color, the machine operator will call him, he checks to see how many parts are needed before he can stop the machine, and then he stops the machine and makes the mold or color change; that he uses the overhead crane to change out the molds; that Respondent's Exhibits 8, 9, and 10 are pictures of the molds with eye hooks protruding from the top which molds weigh from 1,500 pounds on up; that to change out a mold he would (a) make
 25 sure the area that he would be working in is free of any other employee, (b) bring the overhead crane directly over the mold, (c) hook up the crane to the mold, (d) lift the old (The one that has been used up to that point in time.) mold out of the machine and place it on the production floor near the machine from which it was removed, and (e) hook up the overhead crane to the new
 30 mold, lift it off the production floor, and put it in the machine; that the higher he has to take the mold to get it over the machine before lowering it into the machine, the further the employees would have to be away from the machine; that the farthest is 10 feet away from the machine; that the old material has to be removed from the machine during a mold or color change; that a specified material, M90, has to be purged into a bucket of water or formaldehyde will be released into the air, which causes physical problems; that there have been occasions when
 35 KMA has had to evacuate the plant because formaldehyde has gotten into the air; that he cannot have anyone else around when he is purging M90; that in April 2007 he was interrupted by Kline while he was performing a mold change; that he had been called to machine 385-2 for a mold change; that he was standing up on machine 385-2 hooking up the crane to take the mold out and he noticed that Kline was saying something to him so he stepped down off the machine to see what she was saying⁶; that Kline was working on machine 275-3 that day, which
 40 machine is on the opposite side of the 385 machine from the side that he was standing on; that an operator is not assigned to the 385-2 machine and he did not know why Kline would say that she was assigned to the 385-2 machine⁷; that when Kline approached him on April 7, 2007 she

45 ⁶ Respondent's Exhibit 12 is a photograph showing Lee standing on Machine 385-2 as he would when he was hooking up the crane to the mold. The hook of the crane is not present in this photograph.

50 ⁷ As noted below regarding the August 16, 2007 incident, Lee gave Respondent a statement, Respondent's Exhibit 13, indicating that he was working on machine 385-2 and Kline was working on machine 385-1. Were there two 385 machines at the time? It is noted that the layout of the plant introduced by KMA, Respondent's Exhibit 5, shows one 385-2 machine and it does not show an operator on either side of the machine. So, on the one hand, Kline testified

Continued

5 talked to him for about 5 minutes; that he stopped his job and stepped down while she was talking to him; that Kline was not supposed to be in that area while he was performing his job; that actually he had hooked the crane up to the mold before he stepped down; that Kline told him that he was doing too much work, he was doing more work than his job required for him to do, he was doing other people's job and not saying anything about it, he needed to speak out and let everyone know that he was doing more than what his job requires him to do, and she could help him with the situation if he wanted her to; that he had not complained to Kline about Ivey, who was his supervisor; that at that point he would have stepped down from the machine whether Kline was there or not so that he would be able to operate the crane to lift the mold while he was standing on the production floor⁸; that where Kline was standing on the production floor she was too close to the mold; that he did not initiate the conversation with Kline; that Kline was not on break; that after she spoke to him she went back to her machine; that the 275-3 she was running that day operates continuously and it has a cycle time of 25 to 40 seconds depending on what part is being run; that no other employee, other than his supervisor, ever came to talk to him when he was performing a mold change; that he told Ivey about the incident because of the safety hazard and because he tries to do the mold change in a timely manner; that he tries to do the mold changes in 10 to 15 minutes and he told Ivey that Kline distracted him from his work so the he could not perform his job in a timely manner; that he could have been written up if he had been seen talking to someone while performing a mold change; that he never made a report like that to Ivey before; that Kline bringing up the union did not have anything to do with him reporting the incident to Ivey; that the first time he did not tell Ivey that she talked about the Union to him; and that before this Kline brought up the Union to him during breaks and he did not report her on those occasions.

25 On cross-examination Lee testified that he had finished the mold change and he was on the production floor when he told Ivey; that he told Ivey that Kline walked up to him when he was doing a mold change; that Ivey asked him if it was a work-related issue and he told Ivey it was not; that this was the first time that Kline had interrupted him while he was doing a mold change; that Kline had never talked to him during working time before this; that, with respect to a statement of Meeks (marked for identification as General Counsel's Exhibit 14), namely, "[o]n about May 24, 2007, Ryan Ivey told me that Andre Lee had come to him and told him that Annie Kline kept coming to him and trying to talk with him about something he did not want to talk about," that this referred in part to the times Kline spoke about the union to him while they were on break; and that the time he told her that he was not interested was when she interrupted his work the second time, which was in August 2007 (treated below).

40 Kline testified that on one day in May or June 2007 she was working on the small machines, she was caught up with her work, and she was on her way to tell floater Gloria Williams that she was going to take a break; that while someone working on the small machines could not go on lunch break without relief, they could take a 10 minute break without being concerned about the work piling up; that at about 9:15 a.m. she was on her way to tell Williams that she was to take a break when she saw Geneva Wilkins, who just came back from back surgery, tugging some big, heavy cartons; that she helped Wilkins pull the cartons into the line and push them down the line; that this took about 4 to 5 minutes; that she then walked over and told Williams that she was taking a break; that she took her break; that later that day Karen

that she was not sure about being on a 385 machine and, on the other hand, Lee drafted a statement that at one time he was working on machine 385-2 and Kline was working on machine 385-1.

50 ⁸ Obviously to be standing on (and hanging onto) the machine while the mold was being lifted out of the machine would not be a safe procedure.

Sparks told her that she, Sparks, was going to give her a warning for talking; that while she has conversed with co-worker Mandy Hall about such things as work, kids, her new husband, and being pregnant, she did not recall having a conversation with Hall on the day she helped Wilkins; that she has never made conversation with Hall about the Union; that after Sparks told her that she was going to get a warning for talking, she was shown a write up in Meeks's office with Sparks and Meeks present; that Meeks said that she, Kline, was interfering with other unspecified employees' work; that she explained that she was helping Wilkins and then went over and told Williams that she was taking a break; and that General Counsel's Exhibit 5 is a written warning she received on May 24, 2007.⁹

On cross-examination Kline testified that while she needed a floater for her lunch break on the small machine she was working on the day she helped Wilkins, she did not need a floater to take her 10-minute break because the parts could pile up and she could catch up when she returned from her 10-minute break.

Sparks, who is a production coordinator and admitted supervisor at KMA, testified that KMA has an assembly line; that KMA supplies its product directly to Honda, which uses the parts in its assembly line; that there is not a lot of inventory; that if KMA causes the shutdown of the Honda line, KMA would be liable to Honda for somewhere in the vicinity of \$100,000 for every minute the line is down; that she was also assembly coordinator; that she enforces the policies in the employee handbook, General Counsel's Exhibit 4; that work rule number 22 in the employee handbook refers to interference with the work of others; that interference with the work of others could result in a stoppage of the assembly line; that she was the coordinator over Kline during the period pertinent herein in 2007; that General Counsel's Exhibit 5 is a counseling report she issued to Kline on May 24, 2007 for disrupting the work of others; that Respondent's Exhibit 5 is a layout of the production floor at the KMA Clanton plant; that on May 24, 2007 she came out of the production office and she was walking down the center of the aisle of the production floor; that she saw Kline standing at the 720 machine in between the two operators, and the B side operator was attempting to push her containers down and "she flagged at me and kind of gestured that Annie [Kline] was in her way" (transcript page 274); that she asked Kline what she was doing in that area in that Kline was assigned to be working on the 200s on the opposite side of the production aisle; that Kline told her that she was telling her floater "that she had come to or went to break or came back from break" (transcript page 275); that Williams was attempting to push the containers toward the production aisle and Kline was in the way; that Kline was not helping Williams push the containers but rather Kline was standing in the way; that Wilkins was not pushing containers at the time but rather she was standing at her

⁹ The "ASSOCIATE COUNSELING REPORT", dated May 24, 2007 indicates that the written warning was given to Kline for "Disrupting Work of Other Associates." The specified details of the incident are as follows:

We have received several complaints today that Annie [Klein] is stopping Associates while they are supposed to be working to talk with them. It doesn't mater what you are talking about and what you do on your own time or your designated break times, but disrupting other Associates while you or the other Associate is supposed to be working violates our Work Rules (#22), 'Interfering with the work of others'.

....

Effective immediately, Annie must stop disrupting the workflow of other Associates. Any additional occurrences will result in more serious discipline.

Work rule 22 appears in the employee handbook, General Counsel's Exhibit 4. The document indicates "Associate Refused to Sign unless provided a copy." The counseling report is signed by Meeks and Sparks and it indicates that the last offense was "3/22/07."

station; that Williams waved at me, Sparks, and pointed at Kline standing in her way; that there was no work related reason for Kline to be at the 720-2 machine; that it was not necessary for Kline to get a floater to take a break because the machine she was working on runs parts that require no assembly; that at this time she did not know that Kline supported the Union; that
 5 Kline was given a written warning because that was the level she was at at the time since Kline received a warning on March 2, 2007; that she has never seen anyone else at KMA interfering with the work of others in a similar manner; that on one other occasion she disciplined an employee, Crystal Booker, who left her work station and kept going to another work area; that Booker was terminated with this discipline since she was at the level calling for termination; and
 10 that she has never approached employees on the work floor to talk about non-work related issues.

On cross-examination Sparks testified that there is a warehouse and Respondent does try to maintain a 2-day inventory of parts; that sometimes KMA manufactures parts which are
 15 placed directly on the truck to be delivered to Honda; that to go from the machine she was working on on May 24, 2007 to the break area (either inside or outside), Kline had to go past (within a few feet of) the 720-2 machine; that she walked the production floor up and down 20 times each shift; that she has seen other supervisors out walking the production floor during the first shift; that there is always at least one supervisor walking the production floor; that Kline was
 20 just standing there in between two operators, standing at the conveyor belt, "[s]he actually was just standing there. She wasn't doing anything to my knowledge" (transcript page 302); that when she asked Kline what she was doing Kline told her "that she was telling a floater that she returned from break, or something to that effect, and I asked her to return to her machine" (transcript page 303); that she knew on May 24, 2007 that Williams was the floater; that while
 25 Kline told her that she was over there to talk to her floater, Williams, about break, Sparks concluded that Kline had no reason to be over there and so she "didn't buy it" (Id.); that she believed that Kline was in the way; that there was no reason for Kline to be there in that "why would you need to tell your floater you are returning from break and you haven't been to break" (transcript page 304); that she thought that Kline was just talking or in the way; that she really did not care what Kline was talking about, Kline was in the way; that she did not ask Williams if
 30 she had a conversation with Kline; that she decided that Kline's representation that she had there to talk to Williams was untrue without even checking with Williams because Kline should not have been there; that the gesture that Williams made to her was one of "flustration" (transcript page 305); that Kline was clearly disrupting their flow process and potentially causing
 35 a quality issue; and that sometimes production on the machines does not go exactly as it should.

On redirect Sparks testified that she saw Williams trying to perform work; that Kline was preventing Williams from performing work; and that Kline did not have any reason to go to
 40 Williams' work station and prevent her from performing work.

With respect to General Counsel's Exhibit 5, which is the counseling report Kline received on May 24, 2007, Meeks testified as follows:

45 Q BY MR. DEBRUGE: Did you have the opportunity to hear Andre Lee's testimony today?

A Yes, sir.

50 Q Did you hear his testimony relating to the incident referenced in General Counsel's Exhibit 5?

A Yes, sir.

Q The testimony you - - was the testimony you heard from Mr. Lee consistent with your recollection of events?

5

A Yes, it was.

Meeks further testified that Sparks had observed Kline disrupting the work flow of an associate; that she had received two complaints from Associates, Hall and she could not remember the name of the other employee; that General Counsel's Exhibit 5 is not just because of the Lee work obstruction; that she typed General Counsel's Exhibit 5; that Hall had never complained about another employee disrupting her work; that at the meeting regarding this discipline, Kline did not say anything in response to the accusations; that during the meeting on May 24, 2007 Kline did not say that she was helping a lady, who had come back from surgery, move boxes; that Kline did not write in the Associate Remarks section of the disciplinary form; and that as of May 24, 2007 she was not personally aware of Kline engaging in any union organizing activity of any sort.

On cross-examination Meeks testified that Kline's discipline was based on several complaints; that Hall came directly to her and complained that Kline was interfering with her ability to do her job, Kline was interrupting her ability to perform her job, and she did not want to hear it; that Hall did not say what she did not want to hear and she did not ask Hall; that she did not know if Hall came into her office on work time or during break time on May 24, 2007; that the May 24, 2007 discipline to Kline was issued on the afternoon of May 24, 2007; that she did not remember whether Hall was on her break or she had gotten permission and coverage so she could come to Meeks' office; that Hall said that she was at her work station when Kline interfered with her work operation; that that day Ivey told her that Kline had talked to Lee, Hall complained about Kline talking to her, and later Sparks reported the incident involving Williams and Kline; that she did not recall which complaint occurred first; that she did not bother to ask Hall what Kline had supposedly done but rather Hall said Kline interfered with my work and she, Meeks, took that at face value; that Kline was not asked her side of the story before the discipline was drafted; that Kline was given the opportunity to tell or write her side of the story in the meeting which was held after the discipline was drafted; and that 50 percent of the time in disciplinary actions the accused employee is not given the opportunity to tell their side of the story before the discipline is drafted.

Meeks testified that KMA is a just-in-time inventory company, if somebody interferes with the work of another employee, then the whole assembly flow process gets slowed down at some junction and KMA could short ship Honda which could result in the shut down of a line which could have a domino effect; that there are quality considerations for KMA with respect to the importance of work rule 22 in that if an employee is not paying attention and lets blemished or warped parts get by, this would be taken into consideration by Honda and this could affect where Honda gets its parts; that, as here pertinent, KMA's discipline procedure includes counseling reports which have four steps, namely a verbal, a written, a suspension, and a termination; and that the steps of the progressive discipline can be bypassed if the offense is severe.

Coleman testified that it was a usual occurrence for employees to participate in personal conversations at work from time to time; that the employees would discuss sports; and that based on his experience as a manager who reviewed situations, conducted investigations and issued disciplinary actions, he did not have any recollection of any occasion where discipline issued to someone for discussing personal matters such as football.

On cross-examination Coleman testified that he was terminated by KMA; that as quality assistant manager part of his job was to walk up and down the floor and make quality decisions; that he was not involved in disciplining production employees; that if it was not a quality
 5 employee, he would not have been involved in the discipline; that he never supervised Kline, she never worked in his department, and he did not have any personal knowledge of any of the disciplines issued to her; that Respondent has an employee handbook; that it is against Company policy to interfere with the work of others; that he was told when he was terminated by
 10 KMA that it was because of absenteeism and disloyalty¹⁰; that he was not aware of any KMA employee who ever got to a level 4 discipline and was not terminated; and that while he was at KMA as assistant manager he never saw anybody out front hand billing the plant, he never saw anyone wearing union stickers, and he never saw anything going on that looked like union organizing on the floor.

15 Meeks testified that Coleman was terminated by KMA for attendance, Coleman assumed that because salaried people have 10 sick days per year they are supposed to use them when in fact KMA discourages salaried people from using their sick leave, and Coleman made a proposal which, among other things, involved him being promoted into his boss' job.

20 Cathy Garrett, who was a machine operator with the Respondent until she was terminated on April 18, testified that during production she had conversations with other employees about football, movies, personal matters, and current events; that she had a conversations with her coordinator Karen Sparks in the vicinity of the machine she, Garrett, was
 25 working on; that the conversations with Sparks occurred when she, Garrett was having trouble with a part and Sparks would ask her how she was doing; that during one conversation Sparks asked her if she had "heard any more about the union" (transcript page 88); that between January and March 2007 she received printed information about the Union from the Company; and that during a preshift meeting Sparks told her and other employees that "if someone approached them and asked them to sign something, don't" (transcript page 89).

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¹⁰ Respondent's Exhibit 1 is a copy of a two-page email Coleman sent to members of the management of KMA, including its President after he was terminated by KMA on May 9, 2007. In it Coleman indicated that (1) if KMA did not rehire him, the Union would succeed in organizing
 35 KMA, and (2) he was going to sue KMA on grounds of racial discrimination, different treatment and retaliation. Respondent's Exhibit 2 is a Charge of Discrimination Coleman filed against KMA with EEOC which is dated August 7, 2007 and which was still pending at the time of the trial herein. Coleman testified that before he was terminated he wrote a memorandum to KMA suggesting a restructuring of the quality department, including promoting him to the position
 40 then held by his boss, the quality manager. In Respondent's Exhibit 3, which - according to the testimony of Coleman - was sent a couple of months before he was terminated, Coleman, as here pertinent, indicates

45 [t]here is an open manager's position in production that Jack [Coltrain] has filled before.... Production is the larger department and has struggled and needs more guidance than quality does. We know that KMA is planning a restructuring of the plant that will reduce our manpower and save the company money. I think we have to do the same with management. I propose that you move Jack to production manager and promote me to quality manager. An assistant quality manager will not be needed to manage our current staff and neither of the coordinators is ready for the position at this
 50 time anyway. [T]his town is not big enough for the both of us. If something does not change, I'm afraid my time is short.

On cross-examination Garrett testified that she filed an unfair labor practice against KMA which she later withdrew; that the Company prohibits employees from leaving their work station and interfering with the work of others on the job; and that this was not something that she did while she was employed at KMA.

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Ray testified that conversations about personal matters occurred at work during the time that she was employed with KMA as an associate and as a supervisor; that people talked all the time, they would talk about football games, going gambling, they talked all the time; that if an employee stayed talking to another employee at a machine that was not their work station, she, as a supervisor, would say something to the employee who was not at their work station; that an employee should not be at someone else's machine for more than 5 minutes; and that while she was a supervisor she spoke to an employee just a couple of times for being at someone else's machine for more than 5 minutes.

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Ray testified on cross-examination that a couple of weeks before she was terminated by KMA in June 2007, Kline did tell her that she was for the union; that she did not say anything about this information; that Kline had not done anything to hold herself out as a union supporter before she told Ray that she, Klein, was for the union; that when KMA let her go she was told that her people did not respect her and that was the only reason given to her by KMA for her termination; that Coltrain told her that he came up with a game plan to enhance the quality department and he gave it to her, giving her 30 days to "improvise it" (transcript page 128); that Meeks told her that she would help her with the game plan; that she came up with a game plan and took it to Meeks; that Meeks said Ray's plan would not work and Meeks helped her with another one; and that she brought the plan that Meeks helped her with to Coltrain and "[h]e said this wasn't what he wanted, this wasn't the game plan he wanted and didn't have no [sic] reason but to terminate me" (transcript pages 128 and 129).

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Meeks testified that Ray was fired for job performance in that Ray could not execute any work direction for her people, she could not come up with a game plan for improvements within her department, and her department had gotten unhappy with her leadership; that Ray was given the opportunity to come up with a game plan of how she could improve in the areas where management thought her weaknesses were; that Coltrain was very specific; that Ray failed to come through; that Ray seemed like a nice enough person but she seemed confused about a lot of things; that Coltrain gave Ray written instructions on what to do in the game plan she was to work up; that "she [Ray] just failed to meet every one of the written criteria for it" (transcript page 460); that when she was terminated Ray got very emotional, she was very angry with Coltrain and basically blamed it all on Coltrain.

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Meeks testified that Respondent's Exhibit 17 is a quality counseling report given to Kline on June 19, 2007; that Kline was given the report because she received more product labels than she requested, she did not report this fact, she did not check the labels as required, and Kline used the wrong label on one of the parts; that the mistake was caught before the part left KMA; that because Kline had quality issues in the past she was issued a counseling report; that during the meeting on this counseling report Kline admitted that she had made a mistake; that Kline did not mention anything about unions in this meeting; that the subject of unions did not come up at all in this meeting; that Kline asked for a copy of the discipline and when she was refused a copy she did not sign the report; that quality and delivery accountability are separate from other corrective actions; and that this was marked level 1 for a quality issue.

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Kline testified that General Counsel's Exhibit 6 is a counseling report she received on

July 16, 2007¹¹; that on July 16, 2007 she was running the 201 machine which required the operator to have a floater relieve them when they went on break; that the machine was "down" at 9 a.m. and she told Ivey, who said that it would be down for a while, that she was going to take her 10-minute break; that at the 7:30 a.m. pre-shift meeting on July 16, 2007 Sparks assigned her to work on machine 201 and on another small machine also when she had time to help it catch it up; that as she left to take her break she walked over to the other machine, noticed that it was behind, stayed there and caught it up, and then went to the outside smoking area for her break; that after her break she went back to machine 201 and saw Ivey starting it back up; that she first saw General Counsel's Exhibit 6 in Meeks's office after 2 p.m. that day; that she, Meeks, Ivey (she believed), Lee Hester and Andy Salter were there; that Meeks told her that she took too long for her break and then Meeks told her that she had 3 days off without pay; that she did not recall anyone asking her what she had done or where she had gone; and that when she left the 201 machine to go on break Ivey was working on it.

On redirect Kline testified that during the meeting she had with representatives of management (Meeks, Salter, Ivey, and possibly Sparks) on July 16, 2007 she told them that she was running machine 201, it was down, she went to take her break, she went by the other machine she was assigned to work on that day, caught it up and went on to break.

Sparks testified that she sat in on Klein's July 16, 2007 counseling report meeting; that Ivey was responsible for the paperwork, presented it to Kline, and "she didn't say anything pretty much" (transcript page 287); that Kline did not give any explanation as to why she returned to work late; that she could not recall ever writing up an employee for overstaying break; and that she did not know that Kline supported the Union at the time she was written up for overstaying her break.

On cross-examination Sparks testified that during the meeting when Kline was suspended Kline she did not recall Kline specifically saying that she had not been on break too long; that she did not recall giving a statement during the investigation of this matter; that she did recall meeting with Counsel for General Counsel and giving him an affidavit, General Counsel's Exhibit 12; and that in her affidavit, which was given several months before she testified herein, she indicated that Kline specifically said during the meeting when she was

¹¹ The counseling report, which is dated July 16, 2007 indicates that Kline was suspended for "Overstaying morning break." The details of the incident reads as follows;

Annie is working on the 200-3 today, and the machine had metal in the tip and Ryan Ivey had to pull nozzle tip and maintenance had to adjust the heater band. Annie stated that she was going to break, which was at 9:00 a.m. according to clock on the press and when Ryan came up front at 9:15 a.m., Annie was still at break. Ryan witnessed Annie going back out on the floor at 9:18 a.m. which resulted in Annie taking 18 minutes in total for a 10 minute break.

....

Effective immediately, Annie will be sent home for the balance of the day today, as well as Tuesday and Wednesday to reflect upon her employment with KMA. Since March 2007, Annie has violated 2 company policies resulting in Written Warnings (Creating a hostile work environment and Disrupting the Workflow of Others) and received a Verbal Warning for Quality Delivery issues. Annie needs to be prepared to discuss with Management upon her return to work on Thursday morning (July 19, 2007) her future employment with KMA.

The report is signed by Ivey. The document indicates that "associate refused to sign because we don't provide copies."

suspended that she had not been on break too long.

5 Meeks testified, with respect to General Counsel's Exhibit 6, that Ivey came to her office and told her that Kline had overstayed her break; that Ivey said the nozzle tip on the machine Kline was operating had metal in it and he had to shut the machine down and call maintenance to adjust the heater bands; that Kline told him at 9 a.m. that she was going on break; that Ivey was speaking to her at 9:15 a.m., saying that Kline was still not back from break when Kline walked by Meeks' door coming back from break; that if one person overstays his or her break it throws off the rotation of floaters who relieve employees and everyone else going to break would be shorted or even lose their break; that when she, along with Ivey, Sparks, and Salter, met with Kline and issued the July 16, 2007 counseling report Kline did not say anything about being late coming back from break because she was held up working another machine on her way out; that Kline did not write anything in the Associate Remarks section of the counseling report; that as of July 16, 2007, to her knowledge, Kline had not done anything to engage in union organizing activity at KMA; that the only thing that Kline said during this meeting was that she was not late, and she might have been 1 or 2 minutes late but not 8 minutes late; that she told Kline that she was suspended for 3 days, the remainder of July 16 would be counted as the first day, and when Kline returned to work she was to meet with her in Human Resources at 7:30 a.m.; that this was the third level of KMA's progressive discipline which automatically results in suspension; and that the next level is termination.

25 Kline testified that when she came back from suspension on July 19, 2007 she clocked in when she arrived at KMA as she always did; that she started getting paid at 7:30 a.m.; that on July 19, 2007 she arrived at KMA at 7 a.m. and went in to see Meeks since Meeks told her when she suspended her that she should come to see her before she went to work; that Meeks told her that she would not see her until 7:30 a.m.; that she went to the outside smoking area to wait; that about 7:15 a.m. she saw Sparks and she told Sparks "I knew that rumors were going around that I was a union supporter and ... I was telling her now that I was a union supporter" (transcript page 178); that Virginia Garrick stood up and said "I'm a union supporter also" (Id.); that Sparks said that this is not the time nor the place to discuss this and Sparks left the area; and that when she went back to Meeks' office she, Kline, was asked to sign a final warning agreement, General Counsel's Exhibit 7.¹²

35 On cross-examination Kline testified that she did not go up to Sparks to let her know that she, Kline, was a union supporter because England had counseled her to do that; that, yes, as indicated in the affidavit she gave to the Board, England did counsel her to do that; that up to that point in time she had tried to keep the fact that she was a union supporter a secret from the Company; that she did not wear union insignia or tell anyone in management that she was a union supporter; that she did not stand out in front of the plant with any union organizer; that she met with England at various locations away from the plant so that she would not be seen; and that she never told KMA management about her union background at her prior job.

45 Sparks testified that on the day Kline returned from her suspension Kline told her, while she was in the smoking area having morning coffee, that she, Kline, was a union supporter; that another employee sitting with Kline, Virginia Garrett, said "I am, too, I just wanted you to know that" (transcript page 288); and that she did not ask either one of them if they were a union supporter.

50 ¹² It is noted on the agreement that Kline "Refused to sign without receiving a copy." Meeks, Ivey and Salter, who is the Production Manager, signed the agreement.

On cross-examination Sparks testified that there is just one smoking area and it is outside the plant.

5 Meeks testified that on July 19, 2007 she presented to Kline a final warning agreement, General Counsel's Exhibit 7, that she had prepared for her to sign; that she read the document to Kline; that Kline refused to sign it; that prior to July 19, 2007 she had never presented an employee who had gotten to a level 3 with a final warning agreement; that she did it with Kline because she wanted to make sure that Kline understood how serious the situation had become; that during this meeting Kline did not say anything about unions and she did not say or do
10 anything to hold herself out as a union supporter; that after Kline left her office, Sparks came to her office and told her that Kline said to Sparks, in the smoke area outside, before the start of the shift that morning, that she, Kline, was a union supporter; that Garrett then told Sparks that she, Garrett, was a union supporter also; that this was the first time that she had any actual confirmation or any information given to her that, in fact, Kline was a union supporter; and that
15 up until that time Kline had not done anything to hold herself out as a person trying to organize KMA or supporting the UAW at KMA.

On August 16, 2007 Kline spoke with Lee. Kline testified that she was on one of the small machines and she told Lee that they were having a meeting at her house if he wanted to
20 come; and that Lee might have been doing a color change.

On cross-examination Kline testified that she has discussed parts with Lee, who "yes" is "black" (transcript page 213); that Lee is a co-worker and not a friend; that she does not hang out with him outside of work; that Lee is a setup technical, which is a skilled position; that she
25 has personal experience with a delay in purging our formaldehyde from the machines in that they had to evacuate KMA's building two or three times because of it; that she was aware that it is important that the setup technician gets his job done and not delay when it is time to change out these machines; that from a safety standpoint it is her understanding that when a setup technician is changing out a machine the operator is supposed to move out of the way but the
30 machines are never shut down and the parts keep coming; that when the molds are changed the machines need to be purged in a timely manner or, on certain materials, there is the possibility of the formation of formaldehyde; that the first time she went up to Lee he did not tell her to leave him alone; that Lee did not go to the union meeting; that she asked Lee to come to a union meeting one time; that the one time occurred in August 2007; that Lee did not tell her to
35 leave him alone; that they were both on the clock during this conversation; and that at the time Lee was doing either a color or a mold change.

Lee testified that a couple of months after the first incident, Kline spoke to him again when he was performing a mold change; that this time the mold change involved M90 so he had
40 to get the material out of the hopper before he removed the mold; that he was purging the machine when Kline walked up and started talking to him; that Kline was violating policy when she approached him while he was purging M90; that he was not able to continue purging the M90 while Kline was talking to him; that Kline talked about 5 minutes, repeating what she had told him earlier, inviting him to a union meeting, and giving him directions; that he told Kline that
45 he had no interest in it, he wanted no part of it; that Kline was working on a machine that was next to the 385-2 that day; that she was working on the side of that machine that was away from the 385-2 machine; that Kline had no work related reason for approaching him that day; that he was not able to continue performing his work while Kline was speaking to him; that he did not call her over to talk to her; that he did not initiate the conversation in any way; that after Kline left
50 he continued performing the mold change; that he told Ivey about the incident; that he asked

Ivey to do something about it since this was the second time it happened; that about 30 minutes later Ivey asked him to write a statement about what had happened¹³; that he reported the incident to Ivey because there had already been an incident with the M90 and some employees got sick and some employees had to go to the emergency room, and he did not want to be the cause of another such incident; and that he has never had another employee approach him when he is purging M90.

On cross-examination Lee testified that Kline started to give him directions to the place where the union meeting was going to be held; that he did not recall telling Ivey that the union meeting was at Kline's house; that once or twice Kline spoke to him about the union while they were in the break area but he did not respond; that he does not put up caution signs to let employees know the he is purging M90; that he speaks with employees in the vicinity of the machine in that once the operator calls him for a mold or color change he has to speak to the operator to find out how many more parts they need, and this is the only time; that otherwise he does not have conversations with employees at machines; that he did not tell Ivey or anyone that the union meeting that Kline invited him to was at her house; that he told Kline that he did not know about the union and he was satisfied with what he was doing; that Kline told him to think about it and get back to her later that day; that he did not tell Ivey that Kline said that Ivey was getting away with Lee doing his work; and that Ivey did not ask him how long the conversation had taken.

Meeks testified that she never saw any obvious and open union organizing activity going on at KMA in 2006 or 2007; that other than Lee indicating that Kline asked him to go to a union meeting, nothing specific had come up from the floor about union activity; that by August 2007 whatever was going on in the Spring was over; that on August 16, 2007 Ivey and Hester came to her office and told her that Lee complained again about being interrupted by Kline, she was stopping him from doing his work, it was a distraction and he wanted it to stop; that Ivey and Hester said that they actually walked up on Kline and Lee talking; that she told them that this would result in Kline's termination because she would be at level 4; that it did not matter that about 1 month before Kline told Sparks that she, Kline, was a union supporter; that Kline was brought to Human Resources; that she met with Kline, with Salter, and Hester present; that Hester and Salter read the Associate Counseling Report to Kline; that she explained to Kline what her benefits would end; that the report was placed in front of Kline to read; that Kline did not make any comment and she did not write in the Associate Remarks portion of the report; and that Kline refused to sign the report; that unions were not discussed during this meeting and the union did not play any part in the termination.

General Counsel's Exhibit 13 is an email from Ivey to Meeks and Salter dated August 17, 2007. It reads as follows:

I asked dre [Andre Lee] what was all said at the 385-2 today and he stated that [A]nnie asked dre if he would like to come to the meeting tonight. Dre said what meeting? Annie stated the union meeting im [sic] having at my house tonight. Dre said that he did not want to have any part of the union. She said that if you change your mind come back to my press and I will give you direction[s] to my house. This was hindering him from doing his job. Dre stated in the past this has been an issue. He stated all of this conversation

¹³ Respondent's Exhibit 13. It reads as follows: "Annie Kline interrupted my work yesterday, while I was doing a change on the 385-2, and she was on the 385-1. Her reason was not a work situation, but was something that I have no interest in and something that I had shared with her I have no interest in."

started before the press was purged of the m90 material. This is a repeat issue with her confronting dre with non-work related issue. This is hindering dre from doing his job.

On cross-examination Meeks testified that Ivey was a supervisor at the time.

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Sparks testified that she had no involvement in Kline's August 18, 2007 counseling report. On cross-examination Sparks testified that "[n]o," just asking a simple question even if it was not work related, that in and of itself would not constitute interference (transcript page 309); that "[n]o," asking somebody if they are going to go to a football game in and of itself does not constitute interference with work; that "[n]o," inviting somebody to go to a union meeting does not constitute interference with work; and that she has asked employees how they are doing, especially if they did not look like they were feeling well or they were not performing well.

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On redirect Sparks testified that it does not matter what the content of the conversation is if it is interfering with the work of others; that if an employee leaves his work station and approaches another employee who is working and distracts that employee to talk about Alabama football, that is a violation of the interference with work policy; that if two employees are working side-by-side and they are discussing Alabama football that is not a violation of the interference of work policy; and that if a machine is not operating well, it is not permissible for an employee to leave their work station and go distract others from doing their work.

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According to her testimony, on August 18, 2007 Kline met with Meeks in her office. Kline testified that Lee Hester, Salter and Edna from human resources were also present; that she was shown an associate counseling report which indicated that she was terminated¹⁴; that Hester brought her to Meeks' office; that Meeks told her that KMA was terminating her for talking, she asked Meeks if she was the only one talking in the plant, and Meeks said that was irrelevant; and that Meeks told her that her insurance would be good until September¹, and she wanted her employee badge; and that she gave Meeks the badge and then she was escorted to the front door by Hester.

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On cross-examination Kline testified that she did not read the document which she refused to sign; that this counseling report was placed on the table in front of her; that she did not recall if she had a chance to read it at the time; that she refused to sign her above-described counseling reports because the Company would not give her a copy¹⁵ and she disagreed with the reports; that she did not write anything on the reports to show that she disagreed; that she was not given the opportunity to write anything on the report except her name; and that she did

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¹⁴ General Counsel's Exhibit 8. The nature of the incident given is "Interfering with the work of others - Work Rule #22." The "Details of Incident" reads as follows:

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Complaints have been received again that Annie was interfering with the work of others with non-work related matters. Annie had been previously warned on May 24, 2007 for the exact same issue. Additionally, Annie was suspended on July 16 for another violation of company policy, and upon her return on July 19, 2007 she was told in a Final Warning Agreement that she had to commit to conducting herself by the Company policies contained in the Associate Handbook.

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¹⁵ Meeks sponsored Respondent's Exhibit 15, which is a coaching report dated "9/30/04." The subject of the coaching report is Kline. Meeks testified that the report was issued because of quality issues; and that Kline would not have been given this coaching report. Kline signed the report on the line designated "Associate's Signature." Meeks testified that Sparks wrote what appears in the portion of the report designated "Associate's Comments During Coaching"; and that the employee can fill in this section or have the supervisor fill it in for them.

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not see the section of the report where she could have written something.¹⁶

5 Kline testified that she had conversations with Sparks from time to time during work or break time; that during work time she discussed with Sparks her kids, her husband, her house, her pool, and lawnmowers since her husband has a shop and repairs lawnmowers; that she once told Salter that she liked the Dale Jarrett hat he was wearing; and that when Ray's daughter was having heart problems she talked to her about that.

10 Ray testified that sometime after she was terminated by KMA, Kline telephoned her and told her that she had heard what happened to Ray and she, Kline, was sorry for what happened; and that Klein told her that the UAW was paying her health insurance. Subsequently Ray testified that Kline made this statement after she was terminated.

15 On cross-examination Kline testified that the UAW began paying her COBRA healthcare insurance from KMA, which is \$313.14 a month, on September 1, 2007; that UAW has been paying, up to the present, for her healthcare insurance because she asked them to when she was terminated; that the payments are a loan from the UAW, with the understanding (memorialized in a written agreement) that whether she is reinstated by KMA, she has to pay UAW back; that she asked UAW to pay the insurance on August 25 or 26, 2007; that she also
20 drew \$200 a week until she started to receive her unemployment which is another loan agreement she has with UAW; that she has already paid back to the UAW the \$200 a week draw that she received for 6 weeks; that she has no definite date for how long UAW will continue to loan her the money to pay her Cobra premiums; and that her state issued automobile license plate reads "AK UAW"; that she does not recall if she obtained the license
25 plate before or after she was terminated by KMA or if she ever drove her car to work with that license plate on it before she was terminated by KMA; that she has never been a paid organizer for any union; and that before KMA she had not been involved in trying to organize any company.

30 Meeks testified that when she came to work at KMA in July 2004 the old solicitation distribution policy in the employee handbook, General Counsel's Exhibit 4, as set forth above, was in effect. As here pertinent, it reads as follows: "all solicitation must have the approval of Human Resources." Meeks testified that this was the version of KMA's solicitation and
35 distribution policy which was in effect while Kline worked at KMA; that that policy is no longer in effect in that by notice dated "2/29/2008," Respondent's Exhibit 14, KMA advised employees that there was a new policy regarding solicitation and distribution of materials. The new policy does not include "all solicitation must have the approval of Human Resources." Meeks testified that the new policy was posted on February 29, 2008 and then KMA attached it to all paychecks distributed on March 6, 2008; that, notwithstanding that the old policy was not written to limit the
40 pre-approval to just bulletin boards, her interpretation of the old rule was that the only thing that required the approval of Human Resources was anything that was posted on the Company bulletin board, and that was to prevent anybody from putting anything that would be offensive in the work place; that while the old policy was in effect she never required employees to get advance approval to verbally solicit at work; that she never applied the old policy to require pre-
45 approval in any respect other than posting on the bulletin board; that she never disciplined anyone for a violation of the solicitation and distribution policy; and that she never used the policy to in any way limit any employee's activity other than bulletin board posting.

50 ¹⁶ There is a section of the report which is designated "Associate Remarks:" and which contains three blank lines.

On cross-examination Meeks testified that before February 29, 2008 she never gave employees anything in writing notifying them that KMA's pre-approval requirement for solicitation only applied if they were going to use the bulletin board; and that in the past during orientation new employees were told that if they were going to put anything on the bulletin board, the policy in the handbook was "just saying" (transcript page 490) that they had to have Human Resources sign off on it.

On redirect Meeks testified that the only thing anyone has ever come to her about was putting something on the bulletin board or could they sell Girl Scout cookies or if they could sell Avon or Tupperware.

Meeks sponsored Respondent's Exhibit 18, which is composed of eight documents referring to the discipline of five different KMA employees (One employee received three disciplines and two of the documents refer to the same incident.) for, as here pertinent, interfering with the work of others or disrupting the workflow of others. The disciplines collectively date from January 2, 2002 to September 4, 2007.

Meeks also sponsored Respondent's Exhibit 19, which is composed of nine documents referring to the discipline of nine different KMA employees collectively for, as here pertinent, coming back from lunch 3 minutes late, leaving assigned work area, leaving work station without authorization, leaving work area without first notifying supervisor and leaving early for/or overstaying breaks or lunch, coming back from lunch 6 minutes late, taking unauthorized breaks, leaving floor without notifying supervisor and taking an additional unauthorized break, and coming back about 10 minutes late (two of the employees) from lunch break. The disciplines collectively date from January 2, 2007 to February 22, 2008. Meeks testified that the union did not play any part in the Company's decision to issue discipline to any of these employees or, to her knowledge, the employees covered in Respondent's Exhibit 18.

Analysis

I do not find Meeks to be a credible witness.

Ray testified that in March 2007 she told Coltrain that she thought that Coleman was for the Union, she was upset because Coleman was management, and Coltrain told her that he would take care of it in time. Coltrain did not testify at the trial herein so Ray's testimony is not refuted. Ray's testimony is credited. As Coltrain promised, Coleman was taken care of in time. But with that telephone call Ray sealed her fate. Respondent did not want someone around who knew the real reason Coleman was terminated and who could not be trusted to be silent about what happened. Ray was then set up and Meeks played a major role in the setup. Meeks testified about why Ray was terminated. But Meeks did not specifically deny Ray's testimony that she, Meeks, told Ray that Coltrain would not approve the game plan that Ray worked up, and she, Meeks, "helped" Ray with another game plan. Meeks testified that Coltrain gave Ray written instructions on what to do in the game plan she was to work up; and that "she [Ray] just failed to meet every one of the written criteria for it." (transcript page 460) It was Meeks' game plan written for Ray that "just failed to meet every one of the written criteria for it." (transcript page 460) Of course Meeks did not testify at the trial herein that she told Coltrain that she had helped Ray with the game plan. Coltrain already knew.

Meeks lied under oath about the third meeting with Coleman and Ray which was also attended by Coltrain, McDonald, and Keefer. Coleman explained why he believed it was necessary to have a third meeting, namely that Coltrain and Keefer were unable to attend the second meeting because they were away from the plant "in training or FEMA training at Honda."

(transcript page 41) Again Coltrain was not called as a witness in this proceeding. Neither was there any attempt by Respondent to introduce any records to show the whereabouts of Coltrain and Keefer on February 22, 2007, the day Coleman testified that they were out of the plant. Respondent had its attorney(s) present at the first two meetings so witnesses were not
 5 questioned about what was said at those meetings. There was no attorney present at the third meeting. The communication was strictly among management and supervisors and it did not specifically refer to legal advice previously given by Respondent's attorney(s). Two witnesses, Coleman and Ray, testified that the third meeting occurred. Both Coleman and Ray were
 10 supervisors at KMA before they were terminated. KMA called only Meeks. On brief, Counsel for General Counsel contends that Respondent's failure to call Quality Manager Coltrain and Quality Coordinator McDonald warrants an adverse inference. In the circumstances of this case such an adverse inference is warranted. When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be
 15 drawn regarding any factual questions on which the witness is likely to have knowledge. It may be inferred that the witness, if called, would have testified adversely to the party on that issue. While an adverse inference is unwarranted when both parties could have confidence in an available witness' objectivity, it is warranted where the missing witnesses are officials of the Respondent. *International Automated Machines*, 285 NLRB 1122 (1987).¹⁷ The testimony of Coleman and Ray about this third meeting is credited.

20 As set forth in *Fluor Daniel, Inc.*, 304 NLRB 970, at 970 (1991),

In *Wright Line*, 251 NLRB 1083 (1980) enfd. 662 F.2d 899 (1st Cir. 1981) cert. denied 455 U.S. 989 (1982),⁴ the Board set forth its causation test for cases alleging
 25 violations of the Act turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once accomplished, the burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. It is also well settled, however, that when a
 30 respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal.⁵ The motive may be inferred from the total circumstances proved. Under certain circumstances the Board will infer animus in the absence of direct evidence.⁶ The finding may be inferred from the record as a whole.⁷

35 ⁴ Approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

⁵ *Shattuck Denn Mining Corp. v. NLRB*, 362 F. 2d 466, 470 (9th Cir. 1966).

⁶ *Association Hospital Del Maestro*, 291 NLRB 198, 204 (1988); *White-Evans Service Co.*, 285 NLRB 81, 82 (1987).

40 ⁷ *ACTIV Industries*, 277 NLRB 356, 374 (1985); *Heath International*, 196 NLRB 318, 319 (1972).

In order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, General
 45 Counsel must establish union activity, employer knowledge, animus and adverse action taken against those involved or suspected of involvement which has the effect of encouraging or discouraging union activity. Inferences of animus and discriminatory motivation may be

¹⁷ It is noted that Counsel for General Counsel requests an adverse inference regarding the
 50 fact that Respondent did not call Hester to testify about what was said at the discharge meeting with Kline. The alleged disputed point is not determinative. The request has no merit and it is hereby denied.

warranted under all the circumstances of a case, even without direct evidence. Evidence of false reasons given in defense may support such inferences.

5 Here, when Kline was terminated KMA knew that she had engaged in union activity. Indeed, a month earlier Kline declared to Sparks that she, Kline, was a union supporter. But
10 Counsel for General Counsel has not shown that before Kline's declaration to Sparks on July 19, 2007 Respondent was placed on notice that Kline supported the Union. Common sense would seemingly dictate that when Lee and Hall complained about Kline interfering with their
15 work on or about May 24, 2007 Respondent would have been placed on notice regarding what Kline was talking about with Lee and Hall. But Lee's testimony that he did not tell Ivey, regarding the first incident, what Kline was talking to him about is not refuted. And Hall was not called as a witness so the assertion that Hall did not tell Respondent what Kline was talking to her about is not refuted. Add to this the fact that Kline admits that before her July 19, 2007 declaration to Sparks, she did not openly display her support for the Union while she was at KMA's facility.
20 Indeed, Kline admitted that up to that point in time she had tried to keep the fact that she was a union supporter a secret from the Company. Counsel for General Counsel has not demonstrated that before July 19, 2007 the Respondent knew of Kline's union activity. Additionally, Respondent had a business justification for the May 24, 2007 discipline in that Lee and Hall complained that Kline interfered with their work. Even if the Sparks' assertion about
25 Kline on May 24, 2007 is suspect, Kline should not have even been in the area with Lee when he was engaged in a mold change. Lee's testimony that he could have been written up if he had been seen talking with someone during a mold change is not refuted. It follows that the person who was talking with Lee during the mold change should be written up. Respondent also had a business justification for the July 16, 2007 Kline discipline. While it is clear that Kline protested this discipline arguing at the counseling meeting that she had not been on break too long, I do not believe that Kline said at this meeting that she went by the other machine she was assigned to work on that day, caught it up and then went on break. Without that information, Respondent knew only when Kline told Ivey she was leaving to go on break and when she returned from
30 break. If Kline strongly believed that she was being wronged, one must wonder why she would not have taken the opportunity accorded her by the Respondent to put it in writing by filling out the Associate Remarks portion of the counseling report. General Counsel has not shown disparate treatment since Kline was not the only employee disciplined for returning minutes late from break. In my opinion, it has not been demonstrated regarding the May 24 or the July 16, 2007 disciplines that they violated the Act as alleged.

35 With respect to the August 17, 2007 discharge, General Counsel has shown a declaration of union support by Kline to Sparks, employer knowledge, animus and adverse action taken against Kline. Respondent's union animus is demonstrated by the questioning of
40 employee Garrett about whether Garrett heard any more about the union - which conduct was not denied by Sparks,¹⁸ by the subject matter of the third management meeting which only Meeks denied happened, and by the discharge of supervisor Coleman after Ray complained to Coltrain that she thought Coleman was for the Union. But has the Respondent shown that it had a business justification to terminate Kline? Has Respondent shown that it would have
45 terminated Kline even if she had not engaged in union activity? In my opinion, it has. Kline was one step away from termination. This was made more than clear to her with the final warning which she would not sign on July 17, 2007. Kline admits that she has personal experience with a delay in purging formaldehyde from the machines in that they had to evacuate KMA's building two or three times because of it; that she was aware that it is important that the setup technician gets his job done and not delay when it is time to change out these machines; that from a safety
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¹⁸ It is not necessary that this conduct be alleged as a separate violation.

standpoint it is her understanding that when a setup technician is changing out a machine the operator is supposed to move out of the way (Since machine 385-2 does not have an operator, it was not a question of Kline moving out of the way but rather it was a situation where she left her work station at another machine and walked into an area where she was not supposed to be.); that when the molds are changed the machines need to be purged in a timely manner or, on certain materials, there is the possibility of the formation of formaldehyde; that they were both on the clock during this conversation; and that at the time Lee was doing either a color or a mold change. It would not matter what Kline was talking to Lee about. Lee was engaged in an activity which, if because he was distracted and made a mistake, could adversely physically affect the employees in the plant. Common sense would dictate that Kline not leave her work station, enter Lee's work area, and approach him while he was changing out a machine so that she could engage him in a conversation about any topic, unless it involved exigent circumstances. Respondent did not violate the Act in discharging Kline.

With respect to Respondent's old solicitation rule which reads in part "all solicitation must have the approval of Human Resources," Counsel for General Counsel, on brief, contends that almost identical language was found to violate the Act in *Addtranz, ABB Daimler-Benz*, 331 NLRB 291, 293 (2000); that the finding of a violation of the Act "does not depend on the respondent's motive or the success or failure of the coercion, but depends instead on whether the respondent engaged in conduct that may reasonably tend to interfere with the free exercise of rights under the Act," *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999); that the Respondent's new February 29, 2008 policy did not cure its unlawful maintenance of the facially invalid rule throughout the 10(b) period up and until just a few weeks before the opening of the trial herein; that to cure earlier unlawful conduct, an employer's repudiation must be timely, unambiguous, specific in nature to the coercive conduct and free from other proscribed illegal conduct, *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978); that the Respondent's rescission of the facially invalid policy, several years after its promulgation, and 11.5 months after the commencement of the violation, 5.5 months after the charge was filed, and 4 weeks after the issuance of the complaint was not "timely"; and that since Respondent did not successfully accomplish a repudiation, a violation should be found and a Board remedy imposed. For the reasons given by Counsel for General Counsel, I believe that Respondent did violate the Act as alleged regarding its old solicitation policy.

Conclusions of Law

By maintaining a work rule in its employee handbook that indicates, as here pertinent, that "all solicitations must have the approval of Human Resources", Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Remedy

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.

Continued

ORDER

5 The Respondent, Kumi Manufacturing of Alabama, LLC, its officers, agents, successors,
and assigns, shall

1. Cease and desist from

10 (a) Maintaining a work rule in its employee handbook that indicates, as here pertinent,
that "all solicitations must have the approval of Human Resources."

(b) 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.

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

(a) Amend the employee handbook by rescinding the unlawful rule requiring that all
solicitations must have the approval of Human Resources.

20 (b) Within 14 days after service by the Region, post at its facility in Clanton, Alabama,
copies of the attached notice marked "Appendix."²⁰ Copies of the notice, on forms provided by
the Regional Director for Region 10, after being signed by the Respondent's authorized
representative, shall be posted by the Respondent and maintained for 60 consecutive days in
conspicuous places including all places where notices to employees are customarily posted.
25 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
30 March 12, 2007.

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

35 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges
violations of the Act not specifically found.

Dated, Washington, D.C., July 1, 2008.

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John H. West
Administrative Law Judge

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102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed
waived for all purposes.

50 ²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in
the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted
Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the
National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

5

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15

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

20

WE WILL NOT maintain a solicitation and distribution rule which interferes with union activities by requiring prior approval by Human Resources.

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.

25

WE WILL amend our employee handbook by rescinding our unlawfully overly broad rule regarding solicitation and distribution.

30

Dated _____ By _____
Kumi Manufacturing of Alabama, LLC
(Representative) (Title)

35

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

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233 Peachtree Street NE, Harris Tower, Suite 1000
Atlanta, Georgia 30303-1531
Hours: 8 a.m. to 4:30 p.m.
404-331-2896.

45

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 404-331-2877.

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