

**Children's Center for Behavioral Development and  
Children's Center Federation of Teachers, Local  
4485, IFT/AFT AFL-CIO. Cases 14-CA-27617  
and 14-CA-27785**

May 15, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS  
LIEBMAN AND SCHAUMBER

On June 28, 2004, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs. The Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions<sup>1</sup> and briefs and has decided to affirm the judge's rulings, findings, and conclusions, as modified below, and to adopt the recommended Order as modified and set forth in full below.<sup>2</sup>

1. The judge found that the Respondent violated Section 8(a)(1) of the Act by issuing a memorandum to its employees that assertedly would reasonably tend to chill their exercise of Section 7 rights. We disagree. On October 23, 2003, the Respondent issued the following memorandum to its employees:<sup>3</sup>

<sup>1</sup> No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(5) of the Act by refusing to provide relevant information to the Union. Additionally, no exceptions were filed to the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(1) of the Act by telling employees that it was eliminating the hours for persons who performed family therapy work because of the Union, by maintaining a discriminatory policy prohibiting employees from talking about the Union during working time while allowing them to talk about other nonwork related matters during working time, and by telling employees that they would not get a wage increase because of the employees' union activities.

<sup>2</sup> The General Counsel has excepted to the judge's failure to include in the recommended Order a requirement that the Respondent restore the family therapy hours that it eliminated in violation of Sec. 8(a)(1), (3), and (5) of the Act, as well as the hours, pay, and corresponding benefits of other employees that were eliminated in violation of Sec. 8(a)(1) and (5) of the Act. Although we reverse the judge's finding that the Respondent violated Sec. 8(a)(3) when it eliminated family therapy hours for the reasons given below, we otherwise find merit to the General Counsel's exceptions and will modify the Order and notice to conform to the language set forth in the modified Order. The Respondent argues that the additional remedies sought by the General Counsel should be denied because they would impose an undue and unjust burden on the Respondent. The record is undeveloped on this point. The Respondent is free to raise this remedial issue and to introduce supporting evidence at the compliance stage of this proceeding. *Lear Siegler, Inc.*, 295 NLRB 857 (1989).

<sup>3</sup> All dates are in 2003, unless otherwise noted.

I am sure that you know that Children's Center for Behavioral Development is suffering from severe financial hardship. What many of you may not know is that, I believe that for months now, the Union has been doing everything in its power to harm Children's Center for Behavioral Development. The Union has interfered with our relationship with the United Way, which affected our funding. Now the Union is trying to arbitrate grievances on behalf of Eileen Redeker, which has caused the Children's Center for Behavioral Development to incur costs and legal fees, which it cannot afford. In addition, the Union is now claiming that it has a contract with CCBD, even though the Union rejected the Center's last offer earlier this year and the parties have not been back to the negotiating table since.

I wanted to make all of you aware of these issues and ask that you not permit Union issues to distract us from our mission. It is only by working together that we can move forward and succeed in these difficult times.

The judge found that the Respondent did not merely express its opinion in the memo, but rather denigrated the Union in the eyes of the employees it represented. As such, the judge found that the Respondent interfered with the employees' free exercise of their Section 7 rights and violated Section 8(a)(1) of the Act. For the following reasons, we find that the memo is a lawful expression of the Respondent's opinion about the Union and does not violate the Act.

Section 8(c) of the Act "implements the First Amendment" such that "an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). It gives employers the right to express their opinions about union matters, provided such expressions do not contain any "threat of reprisal or force or promise of benefit." Section 8(c); *Progressive Electric*, 344 NLRB 426, 427 (2005); see also *United Technologies Corp.*, 274 NLRB 1069, 1074 (1985), *enfd. sub nom NLRB v. Pratt & Whitney*, 789 F.2d 129 (2d Cir. 1986) (finding employer's communications "criticizing the Union's demands and tactics" was protected by Sec. 8(c) because "employees ought to be fully informed as to all issues relevant to collective-bargaining negotiations and the parties' positions as to those issues"). Thus, an employer may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees. See *Poly-America, Inc.*, 328 NLRB 667, 669 (1999), *affd. in part and revd. in part* 260 F.3d 465 (5th Cir. 2001) (rely-

ing on proposition that “[i]t is well settled that Section 8(c) . . . gives employers the right to express their views about unionization or a particular union as long as those communications do not threaten reprisals or promise benefits[.]” the Board finds that employer did not violate Section 8(a)(1) through its agent’s statements to employees that the Union was no good, that it had threatened to burn the plant, and that it would charge up to \$300 in weekly or monthly fees); see also *Trailmobile Trailer, LLC*, 343 NLRB 95, 95 (2004) (finding that “flip and intemperate” remarks intended to make fun of some union representatives did not violate the Act). . . . “Argumentation of this type is left routinely to the good sense of employees.” *Optica Lee Borinquen, Inc.*, 307 NLRB 705, 708–709 (1992), *enfd. mem.* 991 F.2d 786 (1st Cir. 1993). Although the Board has found that extreme denigration may rise to the level of interference with Section 7 rights, such cases are clearly distinguishable. See, e.g., *Sheraton Hotel Waterbury*, 312 NLRB 304 fn. 3 (1993), *enfd. in relevant part* 31 F.3d 79 (2d Cir. 1994) (employer violated Section 8(a)(1) by accusing the union of abusing employees at home, and in response hiring police to patrol its parking lot, thus implying to employees that their safety in the workplace was at issue, while at the same time comparing the union to a totalitarian regime that uses abuse and intimidation to quell dissent).

In this case, the Respondent’s memo conveys nothing more than the Respondent’s negative opinion of the Union’s actions. The first paragraph of the memo states the Respondent’s opinion that the Union was attempting to harm the Respondent. The memo then cites specific examples of the Union’s conduct that supported the Respondent’s opinion: (1) the Union’s lobbying of United Way to get involved in the parties’ ongoing collective bargaining; (2) the arbitration of grievances that result in legal fees for the Respondent; and (3) the Union’s position that the parties had a collective-bargaining agreement. The second paragraph is a mere continuation of the Respondent’s expressed opinion. It restates the Respondent’s desire to continue its mission despite its disagreement with the Union over the issues stated above. The memo says that the Respondent wishes to make employees “aware of these issues.”

Furthermore, the judge’s finding, that the memo interfered with the Union’s right to elevate grievances to arbitration and unfairly blamed the Union for the status of the parties’ contract negotiations, is belied by a plain reading of the memo. The memo conveys the Respondent’s unhappiness that the Union’s use of arbitration has caused the Respondent to incur certain costs. As such, it amounts to nothing more than the lawful expression of fact, i.e., arbitration *does* cost money. Finally, the memo

does not blame the Union for the status of the negotiations, as the judge contends. It simply states the Respondent’s disagreement with the Union’s position that the parties have a contract. Although the Respondent’s position has now been rejected, there is nothing unlawful in stating a legal position, even if it is later rejected.

As noted above, denigration of the Union is insufficient to support a finding that the Respondent has violated the Act unless it is such as to “threaten reprisals or promise benefits.” *Poly-America, Inc.*, *supra*, 328 NLRB at 669. All that the General Counsel has proven here is that the Respondent expressed an unfavorable opinion about the Union, its positions, and its actions. In sum, the memo “did not suggest that the employees’ union activity was futile, did not reasonably convey any explicit or implicit threats, and did not constitute harassment that would reasonably tend to interfere with employees’ Section 7 rights.” *Trailmobile Trailer, LLC*, *supra* at 95 (footnote omitted).<sup>4</sup> As such, the memo is protected by Section 8(c).

A plain reading of the memo also requires the rejection of the dissent’s contention that the memo warned employees that unless they refrained from supporting the Union, their jobs would be jeopardized. As explained above, the memo identifies two union activities which have affected the Respondent financially and for which the Respondent expended funds which it says it cannot afford. The memo also states the Respondent’s disagreement with the Union as to whether the parties have a contract. It then concludes by asking employees not to be “distracted” in performing their jobs and to keep “working together.” Making such a request is a far cry from warning employees that their support for the Union may jeopardize their continued employment. There simply is no basis to infer a threat of adverse consequences from the expression of hope that employees continue to work together. In sum, the expression of lawful opinion, combined with a simple request that employees not be distracted and keep working together, does not amount to an unlawful threat.

We also find without merit the dissent’s argument that the Respondent’s violations of Section 8(a)(5) created a “strong antiunion atmosphere” in which the memo would be perceived as a threat. In general, we are reluctant to convert otherwise lawful statements into unlawful threats simply because of the existence of other violations. Concededly, there are cases, such as *Ryder Transportation Services*, 341 NLRB 761 (2004), and *Webco Indus-*

<sup>4</sup> The dissent contends that *Trailmobile* is inapposite because it did not concern a directive to cease supporting the Union. We disagree. As stated above, there is no such directive in the Respondent’s memo, just as there was none in *Trailmobile*.

*tries. v. NLRB*, 217 F.3d 1306, 1316 (10th Cir. 2000), enfg. *Webco Industries*, 327 NLRB 172 (1998), cited by the dissent, where ambiguous comments may be perceived as threats because of a pervasively coercive atmosphere. But *Ryder* and *Webco* are readily distinguishable from the present case.

In *Ryder*, the “strong antiunion atmosphere” was created by threats of loss of jobs and benefits, discharges, suspensions, creating the impression of surveillance, and solicitation of grievances with implied promise of redress. Within this context of a “strong antiunion atmosphere,” the Board found unlawful the respondent’s request that employees report to management employees who, in advocating the union, “harrass[ed]” other employees. *Id.* at 761.

In *Webco Industries*, *supra*, the Board adopted the judge’s findings that the respondent violated Section 8(a)(1) by issuing written warnings to two employees and suspending two employees for engaging in union solicitation. The record in *Webco* established that in cases of nonunion solicitation, the respondent simply asked employees who violated the no-solicitation rule to cease doing so, and that no formal action or discipline was involved. Finding that “[o]nly the union solicitation was punished without warning and with serious discipline,” the judge further found that the respondent disciplined the four employees at issue “to make examples of the soliciting employees to chill support for the Union[.]” *Id.* at 186 (footnote omitted).

It was within the context of these 8(a)(1) violations that the Board found that Dana Weber, respondent’s president, unlawfully disparaged the union when she told employees that the union was responsible for the respondent’s (unlawful) discipline of the four employees. In finding this violation, the Board held that “[a]lthough an employer is generally free to make critical comments about a union that is seeking to organize its employees, it violates Section 8(a)(1) of the Act when it takes *adverse action* against employees and falsely blames its action on the union.” *Id.* at 173 (emphasis added). It reasoned that the respondent was “suggest[ing] to employees that seeking union representation results in damage to their terms and conditions of employment.” *Id.* The dissent notes that the circuit court, in enforcing the Board’s order, found *Weber*’s statements unlawful given the “particularly threatening context” in which they were made, i.e., the unlawful discipline issued to the four employees. *Webco Industries v. NLRB*, 217 F.3d at 1316.

In the present case, by contrast, Respondent’s several violations of Section 8(a)(5) of the Act hardly demonstrate the kind of pervasive atmosphere of hostility to employees’ union activity that was found in *Ryder* and

*Webco*, *supra*. It cannot be said that the Respondent issued its October 23 memo to employees in a “particularly threatening context” or, indeed, in an atmosphere that was pervasively coercive.<sup>5</sup> Accordingly, we find that the Respondent did not violate Section 8(a)(1) of the Act by issuing its October 23 memo to employees and we shall dismiss that part of the complaint.

2. The judge also found that the Respondent violated Section 8(a)(1) of the Act by maintaining an overbroad no-solicitation policy. For the following reasons, we disagree with the judge and dismiss that allegation.

The Respondent’s no-solicitation policy reads in relevant part:

Staff should not be permitted to solicit, obtain, accept or retain services, merchandise, commodities, etc. for personal gain/profit during working hours. This conduct is prohibited in all buildings and on surrounding grounds.

Citing *Lafayette Park Hotel*, 326 NLRB 824 (1998), enfd. mem. 203 F.3d 52 (D.C. Cir. 1999), the judge found that the policy violated Section 8(a)(1) because it would reasonably tend to chill employees’ exercise of their Section 7 rights. Because the rule applies to all staff, makes no distinction for regular duty hours or break time, and applies to all of the Respondent’s property, the judge found it overbroad. Unstated, but implicit in the judge’s finding, is that the policy applies to protected activity. We disagree.

We find that employees would not reasonably believe that the policy applied to protected concerted activity, and thus the policy does not violate the Act. By its own terms, the language in the policy is not directed at protected concerted activity. The policy states that employees are not permitted to “solicit, obtain, accept, or retain services, merchandise, commodities, etc. for personal gain/profit.” Thus, the policy expressly targets personal commercial business, rather than concerted protected activity, and accordingly would not reasonably tend to chill the exercise of employees’ Section 7 rights. Cf. *Wilshire at Lakewood*, 343 NLRB 141 fn. 2 (2004) (finding lawful rule prohibiting “rumors and gossip” with a “malicious intent”). We therefore dismiss that portion of the complaint.

<sup>5</sup> In *Webco*, the court explained that while it continued “to grapple with distinguishing between an employer’s unprotected threats versus protected predictions[.]” it recognized that “words of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1) of the Act. *Sears, Roebuck & Co.*, 305 NLRB 193, 193 (1991).” *Webco Industries v. NLRB*, 217 F.3d at 1316. Thus, the *Webco* decision cited by our dissenting colleague actually supports our finding that this part of the complaint should be dismissed.

3. The judge found that, in addition to violating Section 8(a)(5), the Respondent violated Section 8(a)(3) of the Act by eliminating the hours for family therapy services performed by an employee in retaliation for the Union's protected activity. Although we agree, for the reasons stated by the judge, that the Respondent's unilateral elimination of family therapy violated Section 8(a)(5), for the following reasons we disagree that the Respondent's actions violated Section 8(a)(3) of the Act.

The relevant facts are not in dispute. In June, the parties were still negotiating a successor to the collective-bargaining agreement that had expired December 31, 2002. Their bargaining relationship, by that point, had become acrimonious. The main source of contention was the issue of dues checkoff, which the Respondent sought to eliminate in the new agreement. On June 12, then-Union President Eileen Redeker sent a memo to employees accusing the Respondent of bargaining in bad faith and of trying to break the Union; she also informed employees that her own grievance was in arbitration. On June 19, the executive director of the Respondent, Carolyn Birth, responded by circulating a memo to employees accusing Redeker of only being interested in getting the employees to pay for her arbitration.

The parties' contention over the dues-checkoff issue also implicated the Respondent's relationship with the United Way. The United Way provided funding for the Respondent's family therapy services, which were performed by employee Sharon Orr outside her normal hours. Throughout 2003, the United Way attempted to get the Respondent to comply with certain United Way requirements for funding. Specifically, the United Way required the Respondent to have more United Way members on its board of directors and to provide them appropriate training. As of July 1, Birth was attempting to remedy these deficiencies.

At the end of June, the Union tried to gain some bargaining leverage with the Respondent by seeking support for its position from the United Way. The Union called Bill Thurston, a union official on the United Way board of directors, and informed him that the Respondent was seeking to eliminate dues checkoff. Thurston, in turn, contacted other officials with United Way, including Craig Biehle. Biehle contacted Birth on June 30, and asked if the Respondent was eliminating dues checkoff. Biehle provided Birth a copy of the Union's communication to United Way. Birth told Biehle that the Respondent was continuing to deduct dues and had no plans to change.

In early August, the Union informed Biehle that the Respondent's latest bargaining position included the elimination of dues checkoff. Biehle called Birth again,

at which time Birth told him that his inquiries were "inappropriate and unprofessional," and that he was interfering with the Respondent's relationship with the Union. On August 26, the Respondent sent a letter to United Way terminating their relationship. The Respondent admits that it terminated its relationship, at least in part, due to Biehle's inquiries regarding collective bargaining and dues checkoff. On August 29, the Respondent eliminated family therapy hours.

The judge found that the Respondent violated Section 8(a)(3) of the Act by eliminating the employees' hours performed for family therapy in retaliation for the Union's protected activity. The judge first found that the General Counsel sustained his initial burden under *Wright Line*<sup>6</sup> by showing that the Union's protected activity was a motivating factor in the Respondent's decision to eliminate the employees' hours. The judge relied on the inquiries made by the United Way concerning dues checkoff, Birth's knowledge that the Union had initiated the inquiries, Birth's annoyance with the Union's actions, and the fact that the Respondent's board took into consideration these calls when deciding whether to end its association with United Way. The judge also stated that Birth had been unhappy about the June 12 Redeker memo. The judge then found that the Respondent would not have eliminated the family therapy hours in the absence of the Union's communications with the United Way.

Contrary to the judge, we find that the Respondent eliminated family therapy hours not in response to union activity, but because it had lawfully terminated its relationship with the sole source of funding for that therapy, the United Way. Thus, the Respondent did not violate Section 8(a)(3) of the Act and we dismiss that part of the complaint.

It is clear from the record that United Way's actions in inserting itself into the collective-bargaining process spurred the Respondent to act. Birth was displeased by United Way's attempt to inject itself into the Respondent's negotiations with the Union. There is no evidence that her displeasure was with the employees. Rather, as the judge found, Birth had become "fairly stiff" with Biehle as a result of his telephone calls, and Birth made it clear that "the United Way should not be interfering." Significantly, it was United Way's repeated inquiries on the dues-checkoff issue, not any Union or employee activity, that was the subject of Birth's report to the Respondent's board.

<sup>6</sup> 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393 (1983).

Clearly, the record shows that the Respondent acted in response to United Way's actions, which were not protected by the Act. Contrary to the judge's finding, Birth's irritation with the telephone calls from Biehle, and the fact that the Respondent's board gave consideration to Birth's irritation with these calls, does not demonstrate antiunion animus. Rather, it demonstrates displeasure with the conduct of a third party whose actions are not protected by the Act. As such, they do not support the General Counsel's case in chief.

Concededly, Birth knew that the Union had contacted United Way and, in a memo 2 months earlier, Birth expressed displeasure with the Union. However, it is simply too great a leap to infer from these facts that the decision to terminate the United Way relationship was motivated by anything other than the Respondent's displeasure with United Way's attempt to insert itself into negotiations between the Respondent and the Union.

The dissent contends that because the United Way intervened at the invitation of the Union, the actions of the United Way cannot be separated from the actions of the employees; therefore when the Respondent acted against the United Way it was really retaliating against the employees' protected activity. The dissent thus seeks, in effect, to cloak United Way with the protection of the Act. We disagree.

In our view, the evidence clearly shows that the Respondent severed its ties to United Way because of its pique at United Way's attempted intrusion into the Respondent-Union bargaining process. While United Way's intervention may have been sought by the employees, it was United Way itself that intruded into the bargaining process, and Respondent's pique was directed at United Way's actions in so doing. In these circumstances, the manner in which United Way got involved is irrelevant.

The actions of the United Way, a third party, and not a representative of employees, are not covered by the Act. We are unwilling to go beyond the plain language of the Act to find otherwise. The Respondent was therefore free to respond to the United Way's interference by severing its relationship with United Way.

The cases cited by the dissent are clearly distinguishable in that they involved employers who retaliated against employees for having sought third party intervention.<sup>7</sup> The employers in those cases did not act against the third party. Thus, contrary to our dissenting colleague's assertions, these cases only underscore the fact

that the Act's protections simply do not extend to the conduct of a third party when it intervenes in a dispute between an employer and its employees.

The dissent also argues that the October 23 memo, which stated that the Union had interfered with the Respondent's relationship with the United Way, shows that the Respondent severed its ties to the United Way in retaliation against the employees. We disagree. Certainly, the United Way's involvement was in response to the Union's urging. However, just as clearly, the Respondent ended its relationship with the United Way in response to the United Way's actions. As noted above, the Respondent acted only after it decided that Biehle's phone calls had become burdensome, not when it learned that the employees had contacted the United Way. Further, Birth's report to the Respondent's board expressed displeasure with the United Way's actions, not with the Union's actions in contacting the United Way.

The Respondent's memo to employees, coming 2 months after the Respondent ceased doing business with the United Way, must be viewed against the contemporaneous evidence at the time that the Respondent made its decision. That evidence points solely to the Respondent's displeasure with the United Way's acts of interference. As explained above, that interference is not protected by the Act. Accordingly, and contrary to the judge, we find that the General Counsel has failed to prove by a preponderance of the evidence that the Respondent's elimination of the family therapy hours was motivated, even in part, by its animus towards protected union activity, and we shall dismiss that part of the complaint.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Children's Center for Behavioral Development, Centreville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as the exclusive collective-bargaining representative of the employees.

(b) Refusing to execute and adhere to the terms of an agreed upon collective-bargaining agreement including the payment of longevity wage increases.

(c) Unilaterally and without providing notice to or bargaining with the Union, reducing employees' hours of work, pay and other benefits and eliminating the hours of employees who perform family therapy work.

<sup>7</sup> See, e.g., *Richboro Community Mental Health Council, Inc.*, 242 NLRB 1267, 1268 (1979) (denying promotion to employee who sent letter of complaint to third party funding source); *Emarco, Inc.*, 284 NLRB 832, 833 (1987) (denying reinstatement to employees who criticized employer to third party).

(d) Bypassing the Union and dealing directly with employees by negotiating a reduction in their hours, pay, and other benefits.

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

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

(a) Restore the hours of employees whose family therapy hours were eliminated, and restore the hours, pay, and other benefits of employees that the Respondent unlawfully reduced.

(b) Execute and adhere to the terms of the agreed upon collective-bargaining agreement, including the payment of longevity wage increases retroactive to January 1, 2003.

(c) Make whole any employees, with interest, for any loss of earnings and other benefits suffered as a result of the Respondent's elimination of the hours of employees who perform family therapy services, the unilateral reduction of employees' hours of work, pay, and other benefits, and for the failure to execute and adhere to the terms of the agreed upon collective-bargaining agreement, in the manner set forth in *Ogle Protection Services*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Provide the Union with the information it requested on November 19 and December 4, 2003.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Centreville, Illinois copies of the attached Notice marked "Appendix."<sup>8</sup> Copies of the Notice, on forms provided by the Regional Director for Region 14, 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. Reasonable steps shall be taken by the

<sup>8</sup> 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."

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 August 29, 2003.

(g) 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.

MEMBER LIEBMAN, dissenting in part.

After its employees successfully sought the help of the United Way in contract negotiations, the Respondent ended its relationship with the charity—concededly because of the charity's intervention in bargaining—and then eliminated the family therapy work for which United Way had been the sole source of funding. Some weeks later, the Respondent sent employees a memo, blaming the Union for its financial hardship and warning employees not to let union issues distract them. Contrary to the majority, which reverses the judge's findings, both measures violated the Act.<sup>1</sup> The elimination of family-therapy-services hours was an obvious reprisal for approaching the United Way—as the memo, which unlawfully threatened employees for supporting the Union, made clear.

#### I. THE 8(A)(1) THREAT

The judge found that the Respondent violated Section 8(a)(1) by issuing a memo on October 23, 2003,<sup>2</sup> that interfered with the Union's relationship with the employees by denigrating the Union in the eyes of the employees. I agree with the judge's conclusion that the Respondent's memo was unlawful, based on my view that the memo constituted a threat of adverse action if the employees maintained their support for the Union.

The Respondent's memo, quoted in full by the majority, informs the employees that the Respondent is "suffering from severe financial hardship," that union activities are to blame for this situation, and that the employees' continued support of these activities will put their jobs at risk. The memo specifically places the blame for the Respondent's "severe financial hardship" on three union activities: (1) the Union's effort to enlist the help of one of its financial supporters (the United Way) in negotiating a collective-bargaining agreement with the Respondent; (2) the Union's arbitration of a grievance on

<sup>1</sup> I agree with the majority opinion in all other respects.

<sup>2</sup> All dates hereafter are in 2003.

behalf of employee Eileen Redeker, which allegedly caused the Respondent to incur unaffordable costs and legal fees; and (3) the Union's insistence that it had reached a contract with the Respondent (as we find it did). The memo then warns the employees that unless they "do not permit Union issues to distract" them from the Respondent's mission, the Respondent will not succeed in overcoming its financial difficulties. Thus, the Respondent clearly implied that unless the employees refrained from supporting the Union, the Respondent's resulting financial difficulties would jeopardize the employees' job security.

The statements in the memo must also be viewed against the background of other unfair labor practices committed by the Respondent. Thus, as the majority agrees, during this time the Respondent unlawfully refused to execute and adhere to the terms of an agreed upon collective-bargaining agreement, failed to pay the employees longevity wage increases, unilaterally reduced the employees' hours of work, pay, and other benefits, and bypassed the Union and dealt directly with employees by negotiating a reduction in the employees' hours, pay, and other benefits. The memo's implicit threat against engaging in union support is reinforced by these unfair labor practices, which send the clear message that the Respondent will ignore the Union and act unilaterally to reduce the employees' wages and other benefits whenever it wishes to address financial difficulties.<sup>3</sup>

The majority finds that the memo is protected under Section 8(c), but Section 8(c) protects employer speech that is free from threats of reprisal or promises of benefit. When the entire text of the memo is considered, along with the strong antiunion atmosphere in which it was delivered, it is clear that the Respondent's message did more than express an opinion. Rather, the Respondent effectively warned the employees to cease supporting the Union's actions or risk jeopardizing their job security.<sup>4</sup>

Accordingly, I would find that the Respondent's October 23 memo violated Section 8(a)(1) of the Act.

<sup>3</sup> See *Ryder Transportation Services*, 341 NLRB 761 (2004) (employer's directives may take on a different meaning when issued in a "strong antiunion atmosphere" created by the employer). See also *Webco Industries v. NLRB*, 217 F.3d 1306, 1316 (10th Cir. 2000) (affirming Board's finding that employer threats were not protected, due in part to "particularly threatening context").

<sup>4</sup> For these reasons this case is clearly distinguishable from those relied on by the majority. In *Trailmobile Trailer, LLC*, 343 NLRB 95 (2004), the Board found that "flip and intemperate" remarks intended to make fun of some union representatives did not violate the Act. That case did not involve an employer directive to cease supporting the union upon risk of job loss, as we have here. Nor was such an unlawful directive present in *Optica Lee Borinquen, Inc.*, 307 NLRB 705, 708-709 (1992), *enfd. mem.* 991 F.2d 786 (1st Cir. 1993).

## II. THE 8(A)(3) ELIMINATION OF FAMILY THERAPY SERVICE HOURS

I agree with the judge, that by eliminating family-therapy hours, the Respondent unlawfully punished the employees for seeking the United Way's assistance in collective-bargaining negotiations.

The relevant facts are not in dispute. During negotiations, the main source of contention between the Respondent and the Union was whether the parties' contract would contain a dues-checkoff provision. When the Respondent refused to agree to a dues-checkoff provision, the Union sought the help of the United Way, which provided all funding for the Respondent's family therapy services. (Understandably it was in the Respondent's best interest to maintain a good relationship with the United Way.)

Based on the Union's request, United Way official Craig Biehle contacted Respondent's executive director, Carolyn Birth, and asked whether the Respondent was eliminating dues checkoff from its collective-bargaining agreement with the Union. Birth falsely told Biehle that the Respondent had no plans to eliminate that provision from the contract. After later being informed by the Union that the Respondent's bargaining position did indeed propose eliminating dues checkoff, Biehle again called Birth and asked whether the Respondent intended to eliminate dues checkoff. Birth advised Biehle that his inquiry was inappropriate and unprofessional and that he was interfering with the Respondent's relationship with the Union.

There is no evidence that Biehle or any other representative of the United Way made any further inquiries about this matter. Nonetheless, the Respondent terminated its relationship with the United Way, and eliminated all employee work hours covering family therapy services. The Respondent admits that it terminated its relationship with the United Way due at least in part to the United Way's inquiries about collective-bargaining negotiations and dues checkoff.

In analyzing a charge of antiunion discrimination under Section 8(a)(3), the Board employs the analytical framework established in *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 889 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel must prove, by a preponderance of the evidence, that the employee's protected conduct was a motivating factor in the employer's adverse action. The General Counsel makes that showing by establishing that: (1) the employee engaged in protected activity; (2) the employer knew of that activity; and (3) the employer demonstrated animus toward that activity. If the General Counsel makes such a showing, the burden shifts to the

employer “to demonstrate that that same action would have taken place even in the absence of the protected conduct.” *Webasto Sunroofs*, 342 NLRB 1222, 1224–1225 (2004). Applying this analysis here demonstrates that the Respondent violated the Act by terminating its relationship with the United Way and eliminating its employees’ work hours for family therapy services.

There is no dispute that the Respondent was aware that the Union had requested the United Way to inquire about whether the Respondent intended to terminate the dues-checkoff provision. Such efforts to enlist the support of third parties concerning a labor dispute between the employees and their employer are protected activity.<sup>5</sup> The Respondent’s numerous unfair labor practices demonstrate that the Respondent harbored antiunion animus. Finally, the Respondent has conceded that it terminated its relationship with the United Way at least in part because the United Way contacted it about the parties’ labor negotiations. Because United Way did not act on its own initiative, its action is inseparable from the employees’ request for help. Thus, the Respondent cannot show it would have terminated its relationship with the United Way and its employees’ family therapy hours even in the absence of protected activity.

The majority asserts that the Respondent acted not in retaliation against employees, but simply in response to the United Way’s meddling, which was not protected by the Act. My colleagues thus attempt to divorce the employees’ approach to the United Way from the United Way’s intervention. In the majority’s view, the Respondent’s termination of its relationship with the United Way had nothing to do with the employees’ request that the United Way contact the Respondent concerning labor negotiations. But, of course, it had everything to do with it.

The only apparent business reason for the Respondent to terminate its free funding from the United Way was to retaliate against its employees for bringing in unwanted negotiation pressure from an outsider. Importantly, the Respondent itself made it clear that it did not view the United Way’s inquiries separate from the employees’ action of requesting that the United Way make the inquiries. In its October 23 memo to the employees the Respondent specifically blamed the Union for the loss of the United Way funding. Placing the blame on the Union in this manner served no purpose other than making sure that employees got the message that they were being punished.

<sup>5</sup> See, e.g., *Richboro Community Mental Health Council, Inc.*, 242 NLRB 1267, 1268 (1979) (finding protected employee’s letter writing to third party funding source); see also *Emarco, Inc.*, 284 NLRB 832, 833 (1987) (finding protected employee criticisms of employer made to third party).

## APPENDIX

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

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

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide the Children’s Center Federation of Teachers, Local 4485 (the Union) with requested information relevant to the Union’s performance of its collective-bargaining duties as your exclusive collective-bargaining representative.

WE WILL NOT refuse to execute and adhere to the terms of an agreed upon collective-bargaining agreement including the payment of longevity wage increases.

WE WILL NOT unilaterally and without providing notice to or bargaining with the Union, reduce employees’ hours of work, pay, and other benefits and eliminate the hours of employees who perform family therapy work.

WE WILL NOT bypass the Union and deal directly with you by negotiating a reduction in your hours, pay, and other benefits.

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

WE WILL restore the hours of employees whose family therapy hours were eliminated, and restore the hours, pay, and other benefits of employees that we unlawfully reduced.

WE WILL execute and adhere to the terms of the agreed upon collective-bargaining agreement, including the payment of longevity wage increases retroactive to January 1, 2003.

WE WILL make employees whole for any loss of earnings and other benefits as the result of our elimination of hours for those persons performing family therapy work, the unilateral reduction in hours of work, pay, and other benefits, and our failure to execute the agreed upon collective-bargaining agreement.

WE WILL provide the Union with the information it requested on November 19 and December 4, 2003.

## CHILDREN'S CENTER FOR BEHAVIORAL DEVELOPMENT

*Christal J. Key, Esq.*, for the General Counsel.  
*Andrew J. Martone, Esq.* and *Michelle M. Gaffney, Esq.*, of St. Louis, Missouri, for the Respondent-Employer.  
*Chris Kolker, Esq.*, of Belleville, Illinois, for the Charging Party.

## DECISION

## STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on April 19 through 21, 2004, in St. Louis, Missouri, pursuant to a consolidated complaint and notice of hearing in the subject cases (the complaint) issued on April 2, 2004, by the Regional Director for Region 14 of the National Labor Relations Board (the Board). The underlying charges were filed on various dates in 2003<sup>1</sup> and 2004 by Children's Center Federation of Teachers, Local 4485, IFT/AFT, AFL-CIO (the Charging Party or the Union) alleging that Children's Center for Behavioral Development (the Respondent, Center, or Employer) has engaged in certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

## Issues

The complaint alleges that Respondent engaged in a number of independent violations of Section 8(a)(1) of the Act including informing employees that it was eliminating the hours for persons who performed family therapy work, maintaining a discriminatory policy of prohibiting employees from talking about the Union during working time, issuing a memorandum that interfered with employees rights to engage in union activities, the enforcement of an overly broad solicitation rule in its personnel handbook and informing employees that they would not get a raise because of the employees' union activities. Additionally, the complaint alleges that the Respondent eliminated the hours for employees performing family therapy work in violation of Section 8(a)(1) and (3) of the Act. Lastly, the complaint alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by reaching complete agreement on terms and conditions of employment but refusing to execute a written collective-bargaining agreement, refusing to provide requested information necessary and relevant to the Union's performance of its duties, unilaterally eliminating the pay, scheduled hours and other benefits of employees and bypassing the Union and dealing directly with employees by negotiating a reduction in their hours and pay.

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

## FINDINGS OF FACT

## I. JURISDICTION

The Respondent is a corporation engaged in the business of educating behaviorally disturbed children and adolescents at its

facility in Centreville, Illinois, where in conducting its business operations it derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of Illinois. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

*A. Background*

The Respondent is a not-for-profit center for emotionally disturbed/behavior disordered children and adolescents ages 5–21. It focuses on three primary components, a day treatment program, a residential facility, and an outpatient program. The day treatment program provides services to students who are socially and/or emotionally disturbed, learning disabled or mildly retarded. The residential program provides education and treatment to juvenile sex offenders while the outpatient program provides assistance to victims and perpetrators of sexual offenses.

Since about October 7, 1986, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent contract having expired by its terms on December 31, 2002 (GC Exh. 2).

The Center is primarily funded by grants from the State of Illinois, its various departments including the Department of Corrections and the Department of Children and Family Services, and the Illinois State Board of Education. In December 2002, the Center projected an 18-percent loss in government funding for 2003 and a yearend deficit of \$284,688. This information was shared with the Union who had requested it in anticipation of entering into collective-bargaining negotiations for a successor collective-bargaining agreement.

Negotiations for such an agreement commenced on December 12, 2002. In part, the Center proposed that the dues-check-off provisions of the agreement be deleted in its entirety.

For a number of years the Center has been an affiliate member of the United Way of Greater St. Louis. United Way funds support the comprehensive family life education program, which serves children and families in the school-based program. In 2002, the Center received \$86,058 in order to support the family therapy program and any overtime or comptime related to providing services to children or their families that is nonreimbursable from the state of Illinois.

By letter dated December 26, 2002, the United Way made a number of comments and recommendations for the Center's continued membership in 2003. The United Way panel noted that the Center had not achieved a board of director membership of 12 individuals that at a minimum was required for United Way membership standards. In large part due to this deficiency, the panel recommended that the Center's membership status be changed for the next 3 years and conditioned affiliated membership on meeting various criteria including training sessions for board members and the development and utilization of an effective committee structure. A detailed

<sup>1</sup> All dates are in 2003, unless otherwise indicated.

agenda was set forth that required the Center to meet strict guidelines during calendar year 2003 in order to continue its membership in the United Way and be eligible for funding to support the family therapy program (GC Exh. 5). By letter dated February 18, the United Way reaffirmed the above-agenda requirements (GC Exh. 6). On March 18, United Way Community Investment Associate Craig Biehle spoke to the executive director of the Center and explained that the panel would no longer tolerate hearing the Center's excuse that there are no board members available in Illinois. Biehle apprised the executive director that the Center had missed the February 28 deadline of submitting a timeline of scheduled training sessions and by June 30, the panel expects the Center to submit documentation that three or more training sessions have taken place, the content of those sessions and an attendance listing for each session (GC Exh. 39). By letter dated April 17, the United Way informed the Center that they would receive \$85,757 in 2003 to support salary expenses of the family life education program (GC Exhs. 7(a) and (b)).

Collective-bargaining discussions continued between the parties during the spring and summer of 2003. Since the Center was unwilling to change its proposal to delete the dues-checkoff provision from the parties' agreement, the Union contacted Bill Thurston, the president of the SW Illinois Central Labor Council who also serves on the board of the United Way. Thurston, on June 28, made an inquiry to the labor liaison contact at the United Way concerning the status of negotiations at the Center and specifically his concern about the possible deletion of the dues-checkoff provision in the Center's collective-bargaining agreement. Based on this inquiry, Biehle contacted the executive director on June 30, and again in early August 2003. The executive director informed Biehle that the Center was still allowing for a payroll dues-checkoff provision and had no plans to change it (R. Exh. 19). By letter dated August 5, from the Union to Thurston, it was pointed out that the Center had not changed their position on deleting the dues-checkoff provision from the 2003 collective-bargaining agreement (R. Exh. 16).

By letter dated August 26, the Center informed the United Way that the board of directors decided to terminate their membership effective immediately (GC Exh. 10). By letter dated September 5, the United Way acknowledged the board of director's wishes to terminate its membership and confirmed that effective immediately all United Way funding would cease (GC Exh. 11).

At all material times, Marietta Miller served as the union field services director and chief negotiator, Eileen Redeker held the position of acting union president, and Atefe Aghahosseini served as treasurer. For the Respondent, Carolyn Birth holds the position of executive director and Kenneth Carroll served as labor-relations consultant and chief negotiator.

#### *B. The 8(a)(1) Allegations*

##### 1. The elimination of hours

The General Counsel alleges in paragraph 5(a) of the complaint that about August 25, Birth, at an employee meeting, told employees that it was eliminating the hours for persons who performed family therapy work because of the Union.

Birth testified that she called a meeting of all employees on August 25, to welcome the staff back from summer vacation and to apprise the employees of the status of funding for the Center in the upcoming fiscal year.

Birth informed the employees that the Union had sent correspondence to the United Way that might have interfered with funding decisions and after a complete review of the family therapy program the board of directors had decided to terminate its relationship with the United Way. As a result, the United Way decided to terminate funding for the family therapy program at the Center.

Employee Sharon Orr testified that she attended the staff meeting and heard Birth state that the United Way funding for the family therapy program was no longer going to be available because of union interference. Orr's affidavit given to the Board on March 5, 2004, addresses Birth's statement much differently. She states, that "Birth told us that the United Way would no longer be providing the Center funding because the Union had interfered in their relationship." Birth said that because the United Way funding had been cut, the Center was going to have to eliminate the family therapy program and the positions associated with it.

Employee Mollie Stanley testified that Birth stated at the August 25 meeting that the family therapy program would be cut, and that the Union had sent a letter to the United Way that she believed had caused interference with the financial relationship with the United Way.

Based on the forgoing recitation, and even relying on the witnesses' proffered by the General Counsel, it has not been established that Birth informed employees at the August 25, staff meeting that the Center was eliminating the hours of persons performing family therapy work because of the Union. Accordingly, I recommend that paragraph 5(a) of the complaint be dismissed.

##### 2. The discriminatory policy

The General Counsel alleges in paragraph 5(b) of the complaint that since about August 25, Respondent has maintained a discriminatory policy prohibiting employees from talking about the Union during working time while allowing them to talk about other nonwork-related matters during working time.

Birth testified that no such policy has been maintained and no employee has been warned or disciplined for talking about the Union during working time. Birth concedes that a practice has been in effect at the Center that union business/activities may only be conducted before or after working hours or during the lunch period. She also notes, that article IX, section 8 of the parties' 2001-2002 collective-bargaining agreement provides that the Union shall be allowed to conduct meetings at the Center between the hours of 8 a.m and 4 p.m. with the approval of the executive director.

Orr testified that during a January 13, 2004 mandatory staff meeting an employee named Justina asked Birth, "Who are the Union members and how many are there." Birth referred Justina's question to Union Representative Aghahosseini who was in attendance at the meeting. Aghahosseini told Justina to see her after hours because we were not allowed to talk about

union business during regular work hours. Birth said, "That is right."

In her affidavit, Orr stated that she recalled Birth talking about the Employer's policy in the staff meeting, and said that employees are not allowed to talk about the Union during the workday except during lunch. Birth was talking about the Union and she kept referring questions to Aghahosseini. Birth told employees that they could not talk about the Union except before and after work and at lunch.

Stanley testified that when employees asked questions during the January 13, 2004 staff meeting, Birth referred them to Aghahosseini who told the employees she could only talk to them after hours or during lunch. Birth said, "You are right."

Aghahosseini testified that no one in management at the Center ever told her she could not talk about the Union with employees during work time.

Based on the forgoing testimony of Birth and several employees, I find that a policy existed at the Center for union business/activities to be conducted before or after hours or during the lunch period. Indeed, it is apparent to me that the Union acquiesced in this policy and over time it ripened into an established practice.<sup>2</sup> However, primarily relying on the testimony of Birth and Union Representative Aghahosseini, I find that no discriminatory policy existed at the Center that prohibited employees from talking about the Union during working time while allowing them to talk about other nonwork-related matters. Orr's testimony was inconsistent with her affidavit in certain key areas and conflicted with that of Aghahosseini. I believe that both Orr and Stanley confused the established union business policy with their belief that employees were not permitted to talk about the Union during working time.

For all of the above reasons, I find that the General Counsel has not established that the Respondent maintained a discriminatory policy and recommend that paragraph 5(b) of the complaint be dismissed.

### 3. The October 23 memorandum to employees

The General Counsel alleges in paragraph 5(c) of the complaint that about October 23, Respondent in a memorandum to all employees, interfered with employees' rights to engage in union activities by informing employees that the Union's processing of grievances, filing of unfair labor practice charges, and solicitation of support for a contract was jeopardizing the future of Respondent's business.

The October 23 memorandum stated, "I am sure that you know that Children's Center For Behavioral Development is suffering from severe financial hardship. What many of you may not know is that, I believe that for months now the Union has been doing everything in its power to harm Children's Center For Behavioral Development. The Union has interfered with our relationship with the United Way, which affected our funding. Now the Union is trying to arbitrate grievances on behalf of Eileen Redeker, which has caused the Children's Center For Behavioral Development to incur costs and legal

<sup>2</sup> By memorandum dated November 19, 2002, Birth apprised Acting Union President Redeker that the Union was conducting business and activities during normal work hours in direct violation of an agreement between the parties (GC Exh. 22).

fees, which it cannot afford. In addition, the Union is now claiming that it has a contract with CCBD, even though the Union rejected the Center's last offer earlier this year and the parties have not been back to the negotiating table since. I wanted to make all of you aware of these issues and ask that you not permit union issues to distract us from our mission. It is only by working together that we can move forward and succeed in these difficult times."

The Respondent argues that the October 23 memorandum is not violative of the Act as it is protected by Section 8(c) of the Act.<sup>3</sup>

The Board has held that an employer is free to express and disseminate its views or opinions, as long as such expressions contain no threat of reprisal or promise of benefit. I find, however, that in the particular circumstances of this case the Respondent engaged in conduct that, it may reasonably be said, tends to interfere with the free exercise of employees rights under the Act. *American Freightways Co.*, 124 NLRB 146, 147 (1959).

It is well settled that the filing of grievances and the Union's position in contract negotiations are internal union affairs upon which an employer is not free to intrude. Viewed in light of those principles, the Respondent's memorandum unduly interferes with the right of the Union to elevate grievances to arbitration and blames the Union for articulating its position as to the status of the parties' contract negotiations. Moreover, the memorandum attempts to blame the Union for the Center's financial hardship and with harming the mission of the Respondent.

Under these circumstances, I find that the Respondent went beyond merely providing information to its employees or expressing an opinion, but rather denigrated the Union in the eyes of Respondent's employees. By these actions, the Respondent unlawfully interfered in the relationship between the employees and their representative in violation of Section 8(a)(1) of the Act.

### 4. The overly broad work rule

The General Counsel alleges in paragraph 5(d) of the complaint that the Respondent has maintained an overly broad work rule in its personnel handbook.

The Board's standard for analyzing workplace rules like these is set out in *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999), as follows:

In determining whether the mere maintenance of rules such as those at issue here violates Section 8(a)(1), the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent *evidence* of enforcement.

The rule provides:

<sup>3</sup> Sec. 8(c) states: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of the Act, if such expression contains no threat or reprisal or force or promise of benefit."

The intent of this policy is to openly communicate the Center's standards of conduct regarding solicitation.

Staff should not be permitted to solicit, obtain, accept or retain services, merchandise, commodities, etc. for personal gain/profit during working hours. This conduct is prohibited in all buildings and on surrounding grounds.

Violation of this policy may result in immediate disciplinary action, up to and including termination of employment.

The Respondent argues that the Union agreed to the above policy when it negotiated the language during discussions that took place on December 12, 1995 (R. Exh. 25, item 34).

Contrary to the Respondent's argument, the Board has held in the case of *Lafayette Park Hotel*, that some Section 7 activity can be contravened in rules promulgated by an employer. In this regard, the rule in the subject case is not limited to outside contractors or visitors to the Center but specifically applies to incumbent staff and prohibits them from soliciting in all buildings and on surrounding grounds. It makes no allowances for whether an employee is on or off duty, or whether an employee is on break, or engaged in solicitation before or after regular duty hours and does not exclude from its coverage the cafeteria or parking areas. The mere existence of an overly broad rule tends to restrain and interfere with employees' rights under the Act even if the rule is not enforced.

Accordingly, I find that the Respondent's maintenance of this rule in its personnel handbook is a violation of Section 8(a)(1) of the Act.

#### 5. The withholding of a wage increase

The General Counsel alleges in paragraph 5(e) of the complaint that about January 13, 2004, Birth told employees that they would not get a raise because of the employees' union activities.

Union Representative Aghahosseini attended the January 13, 2004, meeting. She testified that Birth apprised the employees that it could not afford to give them a wage increase in 2004, primarily because excessive legal costs exceeded the budget including two cases that the Union was involved in. Aghahosseini stated, however, that Birth did not attribute the failure to give the wage increase to the Union.

Orr testified that Birth had crunched the numbers in order to give employees a wage increase in 2004 but because legal costs were exceptionally high no raise could be given. According to Orr, Birth also told the employees that part of the high legal costs included grievances filed by the Union and their request for names, addresses, and telephone numbers of the Center, staff that she considered confidential. Orr's affidavit, however, given a little over 45 days before her testimony did not mention legal fees or specific cases filed by the Union.

Stanley testified that Birth informed the employees at the meeting about the Center's troubled financial status and the inability to give employees a 3-percent wage increase due to legal costs of approximately \$40,000. Birth also told the employees that the Union had filed charges about employee's duty hours being reduced and had also requested the employees

names, addresses and telephone numbers that she considered confidential.

Birth testified that she opened the staff meeting by informing employees of good news in that their health insurance costs would not be increased for 2004. She then apprised the employees that they would not be receiving a wage increase in 2004 due in part to unexpected excessive legal costs and other financial hardships including a reduction in fund raising, the closing of a wing of the facility that caused a reduction in revenues and increased costs associated with supplies and the purchase of new computers. Birth also told the employees that part of the increased legal costs was attributed to union grievances, unfair labor practice charges and requests for information that had been filed with the Center.

Based on the above recitation, and particularly noting the admission of Union Representative Aghahosseini that Birth did not attribute the failure to give a wage increase to the Union, I find that the General Counsel has not sustained its burden of proof. Indeed, it is apparent to me that Birth, when informing employees at the staff meeting that no wage increase would be given in 2004, discussed a number of reasons for this decision. In this regard, the mention of union grievances and charges was just one reason among others that contributed to excessive legal and other costs that precluded giving a wage increase to employees in 2004.

Accordingly, I recommend that paragraph 5(e) of the complaint be dismissed.

#### C. The 8(a)(1) and (3) Allegations

The General Counsel alleges in paragraph 6 of the complaint that about August 29, Respondent eliminated the hours for employees performing family therapy services because its employees formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

In *Wright Line*, 251 NLRB 1083 (1980), enf'd., 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) 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 decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1993). In *Manno Electric*, 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

The Respondent argues that the management-rights clause of the parties' 2002 contract gives them the right to eliminate the family therapy program. In this regard, the Center opines that

since they have the inherent right to establish hours of work, the management-rights clause gives them the unfettered right to change or eliminate employee's hours of work including those employees who are performing family therapy services. Thus, the Respondent opines that the elimination of the hours for employees performing family therapy services was based on provisions in the parties' collective-bargaining agreement and was in no way related to the employees' union activities.

Birth acknowledges that the family therapy program has been in effect at the Center for approximately 8 years. Previously, a full-time employee was assigned those responsibilities as much of the duties required meeting with students and families after regular work hours. Since the Center was unsuccessful in hiring another therapist to perform these duties upon the departure of the full-time employee, it was decided that two therapists presently on the staff would be permitted to work outside their normal duty hours to perform the responsibilities of the position. In January 2002, Orr added the duties of the family therapy position and worked outside her regularly scheduled hours to perform the work. The United Way provided the funding for this position. Orr continued to perform the family therapy duties throughout 2002 and was joined in this endeavor when employee and fellow therapist Eileen Redeker<sup>4</sup> was assigned the same duties in the spring of 2002. While Redeker ceased performing the duties at the end of 2002, Orr continued to perform the work during 2003 up until the Center terminated its relationship with the United Way and eliminated her hours in August 2003.

Birth testified that she received a number of letters from the United Way in 2002 and 2003 that informed the Center that unless certain membership requirements were satisfied, the loss of their membership and funding was in jeopardy (GC Exh. 5, 6, 7, and 8). She further acknowledged that during the summer of 2003, Biehle inquired about the status of the Union at the Center and specifically asked about the dues-checkoff provision in the parties' negotiations. Biehle apprised Birth that he was privy to a facsimile transmission that made an inquiry about these issues and the United Way was checking with her so as to be able to respond to the inquiry. At Birth's request, the document was provided to her. Birth informed Biehle that it was inappropriate and unprofessional for him to contact the Center about its relationship with the Union. Further, Birth suggested to Biehle that he needed to discontinue these communications and inquiries about the Union, as there was nothing in the existing agreement between the Center and the United Way that required information of this nature to be shared. According to Biehle, Birth became "fairly stiff" during their July and August 2003 telephone conversations and made it very clear that the United Way should not be interfering in the relationship between the Center and its Union.

Birth conceded that the board of directors independently made the decision to terminate their business relationship with the United Way, in part, because of the inquiries that Biehle had made concerning the status of negotiations and in particular the issue of dues checkoff. It is noted that although Birth apprised

<sup>4</sup> Redeker served as acting union president from April 2001 to September 2003.

Biehle that the Center was continuing to adhere to the dues-checkoff provisions of the contract during negotiations, no mention was made of the Center's ongoing contract proposal to eliminate the dues-checkoff provision from the parties' successor collective-bargaining agreement. By letter dated August 26, the president of the Center's board of director's notified the United Way that the Board had voted to terminate its membership with the United Way effective immediately (GC Exh. 10).<sup>5</sup>

For the following reasons, I find that the General Counsel has made a strong showing that the Respondent was motivated by protected concerted activity or antiunion considerations in eliminating the hours for persons performing family therapy work.

First, I note the telephone conversations that Birth had with Biehle wherein she became irritated with inquiries the United Way was making concerning ongoing collective-bargaining negotiations at the Center and in particular the status of the dues-checkoff provision in the successor collective-bargaining agreement. Second, as admitted by Birth, the board of directors in making their decision to eliminate the hours for persons performing family therapy work, took into consideration the telephone inquiries made by the United Way about union negotiations and the dues-checkoff provision. Third, Birth was aware prior to the Center's decision to terminate its relationship with the United Way, that the Union had initiated an inquiry with the United Way, both orally and in writing, regarding the Center's contract proposal to eliminate the dues-checkoff provision (R. Exhs. 16 and 19). Fourth, Birth obtained a copy of a June 12, memorandum to union members that was critical of the Center's position to delete the dues-checkoff provision from the collective-bargaining agreement (R. Exh. 10). By memorandum dated June 19, while normally not commenting on union affairs, Birth replied to the Union's memorandum noting that it contained both false information and unfair attacks on the Center and its volunteer board of directors (R. Exh. 9).

The Respondent asserts that the management-rights clause privileged its decision to eliminate the hours for persons who performed family therapy work. Likewise, the Center argues that because they had not met membership requirements imposed by the United Way it was in their best interests to proceed in another direction and that was one of the reasons it decided to terminate its relationship with the United Way. Birth further testified that the family therapy program was difficult to monitor, she had received complaints from parents about the program including negative comments about Redeker's job performance, and these were also factors that the Board considered when reaching their decision to terminate the United Way relationship. I reject these reasons as pretextual and an afterthought to buttress its reasons for terminating its business relationship with the United Way and thereafter eliminating the hours for persons performing family therapy work. In this regard, Birth admitted that Redeker did no family therapy counseling during the entire year of 2003, there-

<sup>5</sup> The letter stated in pertinent part: We agree with and appreciate the recommendations made by the panel pertaining to the Board. However, we feel that we as a Board would be of more service to the agency if we established internal priorities and timelines for completion of the recommendations.

fore any complaints about her performance would have arisen in 2002. Thus, as it concerned Redeker, the issues impacting her performance were to remote in time to the Board's decision to eliminate the United Way funding in late August 2003. Likewise, the complaints by parents about the program occurred in 2002, a period of time removed from the August 2003 decision of the board of directors to terminate the family therapy program.

Rather, I find that the Union's correspondence in June 2003 to all employees about the status of ongoing negotiations and the repeated telephone inquiries undertaken by Biehle during the summer of 2003 on behalf of the United Way about ongoing union activities at the Center, were the real reasons that the board of directors relied upon in deciding to terminate its relationship with the United Way. With respect to Respondent's assertion that the program was difficult to monitor, I note during the litigation that it expressed no problems with the program for the preceding 8 years of its existence.

Therefore, I conclude that the same action in eliminating the hours for those persons performing family therapy work would not have taken place but for the Union's inquiries into the status of negotiations and in particular the Center's proposed elimination of the dues-checkoff provision in the successor collective-bargaining agreement. I also note that the family therapy services program was completely funded by the United Way and therefore, did not negatively impact the Center's finite financial situation.

Accordingly, I find that the Respondent violated Section 8(a)(1) and (3) of the Act when it eliminated the hours for employees performing family therapy services as alleged by the General Counsel in paragraph 6 of the complaint.

#### *D. The 8(a)(1) and (5) Violations*

##### 1. Did the parties reach a collective-bargaining agreement

###### *a. The facts*

The General Counsel alleges in paragraph 8 of the complaint that about September 16, the Union and Respondent reached complete agreement on terms and conditions of employment. Thereafter, the Union requested that Respondent execute a written contract containing the agreement reached by the parties but the Respondent declined to do so. Since about September 18, in failing to adhere to the agreement, the Respondent has refused to grant employees retroactive longevity wage increases.

By memorandum dated October 31, 2002, the Union notified the Respondent of its intention to negotiate a successor collective-bargaining agreement (GC Exh. 23).

By letter dated November 19, 2002, Carroll acknowledged the Union's request to negotiate a new agreement, apprised them that he represented the Center and requested that the Union contact him to schedule a date for a meeting (GC Exh. 24).

The parties met on December 12, 2002, for their first face-to-face negotiation meeting. Miller, Redeker, and Aghahosseini represented the Union while Carroll served as the chief and only negotiator for Respondent. Carroll presented the Union with the Center's bargaining proposals that in pertinent part proposed the elimination of the dues-checkoff provision and no wage increase for calendar year 2003 due to the troubled finan-

cial condition of the Respondent as explained by Carroll during the meeting (GC Exh. 27). The Union gave their proposals to the Respondent and also requested that the dues that were being checked off be sent to a post office box.

By letter dated December 18, 2002, the Respondent set out the final and best offer of the board of directors to complete the negotiation process (GC Exh. 29(a)). Attached to this letter was a copy of the Respondent's proposals that had been given to the Union at their initial meeting on December 12, 2002. The Respondent rejected a number of the proposals that the Union had previously submitted but agreed to the union proposal for a 1-year agreement effective from January 1 to December 31. The Respondent still maintained its position that the dues-checkoff provision in any successor agreement should be eliminated in its entirety.

By letter dated March 20, the Union informed Carroll that it was willing to enter into a new collective-bargaining agreement with certain enumerated changes but it still insisted on a dues-checkoff provision as a condition of final agreement (GC Exh. 30).

By letter dated March 31, Carroll responded to the Union's March 20 letter. In pertinent part, Carroll indicated agreement on a number of union proposals including Holidays, movement on the pay scale based on years of service, computation of overtime and a 1-year agreement effective January 1. The Center, however, did not agree to the Union's request to continue dues checkoff and stood firmly on its proposal to eliminate in its entirety the dues-checkoff provision (GC Exh. 31).

The parties next met for their second face-to-face negotiation session with a Federal mediator on May 6. The same individuals that attended the prior meeting represented their respective constituencies. Carroll testified that he informed the Federal mediator that the Center would not sign a new agreement that contained a dues-checkoff provision but acknowledged that the parties had agreed upon all other outstanding matters for a new collective-bargaining agreement.

By letter dated September 16, the Union revised their position and agreed to accept the Center's final agreement as outlined in their March 31 letter. Thus, the Union was willing to execute a collective-bargaining agreement that did not contain a dues-checkoff provision (GC Exh. 32(a) and (b)).

By letter dated September 18, Carroll informed the Union that the March 31 offer is no longer on the table due in part to the Center's worsened financial position. Therefore, the Center will not enter into a collective-bargaining agreement as proposed by the Union but will continue negotiations if the Union is interested in doing so (GC Exh. 33).

By letter dated September 29, the Union informed Carroll that it could find no evidence of the Center's offer ever being rescinded or any information that puts a time limit or expiration date on their offer (GC Exh. 34).

###### *b. Discussion*

The Center argues that they did not execute a written collective-bargaining agreement because the Union conditioned their offer of acceptance on retroactivity of the agreement to January 1, and due to the Center's troublesome financial condition that worsened during the course of negotiations.

I reject these arguments for the following reasons. First, Carroll's March 31 letter to the Union states that the Center would agree to a 1-year agreement effective January 1. He confirmed this position when he informed the Federal mediator on May 6, that all provisions for a new collective-bargaining agreement were agreed upon with the exception of a dues-checkoff provision. Second, the Respondent never informed the Union of a suspense date for the March 31 contract offer to be rescinded. Likewise, the Center never orally or in writing informed the Union that the March 31 contract offer was withdrawn or would only be open for a set period of time. *The West Co.*, 333 NLRB 1314 (2001). Third, at the outset of negotiations Carroll informed the Union that the Center's financial predicament was precarious and it was anticipated that it would run a deficit of \$284,688. In August 2003, after the auditors completed their review of the 2003 fiscal year report (fiscal year ended June 30, 2003), it was determined that the Center lost \$214,623 (R. Exh. 22). Thus, contrary to the predictions in December 2002, the actual loss was not as severe as initially projected. Therefore, to reject the previously agreed-upon collective-bargaining agreement in September 2003, based on the Center's worsening financial condition that actually improved during the course of negotiations, does not withstand scrutiny. Indeed, Carroll never mentioned the Center's troublesome financial condition after the initial face-to-face meeting as an impediment to reaching a collective-bargaining agreement. Thus, the Respondent is estopped from making such an after the fact argument as a defense to rejecting the agreement. Likewise, contrary to its argument in brief, the Respondent has failed to establish an economic exigency justifying its refusal to execute the agreement.

Finally, I find that the passage of time between the offer and acceptance was not a circumstance that would have led both parties to reasonably believe that the Respondent had withdrawn its offer. See *Worrell Newspapers*, 232 NLRB 402, 406-407 (1977) (6 months between offer and acceptance; *Teamsters Local 688 v. NLRB*, 756 F.2d 659, 662 (8th Cir. 1985) (offer viable where time period between offer and acceptance was "five or more months" and no negotiations or communications occurred during that period).

For all of the above reasons, I find that an agreement in principal was reached when the Union accepted the Center's March 31 contract proposal on September 16. Therefore, it was incumbent on the Respondent to execute a written agreement incorporating the terms and conditions of employment agreed to by the parties. Since the Respondent did not execute the agreement reached with the Union, it must make employees whole and grant them retroactive longevity wage increases. *Torrington-Extend-A-Care Employees Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994) (refusal to sign a written memorandum of the agreement is a per se refusal to bargain).

Under these circumstances, I find that the Respondent violated Section 8(a)(1) and (5) of the Act as alleged by the General Counsel in paragraph 8 of the complaint.

## 2. The refusal to provide information

### a. The facts

By letter dated November 19, in preparation for collective-bargaining negotiations, the Union requested that the Respondent provide the following information.

1. The names, home addresses, and home telephone numbers of all Center employees in the bargaining unit.
2. The names, job titles and work schedules/hours of Center employees in the bargaining unit.

Since the Union did not receive a response from the Center, it faxed a second request for the same information on December 4.

By letter dated December 9, the Respondent replied to the Union's request for information. It provided certain information but only included information for those employees with last names beginning with the letters A through L, and did not provide any information for those employees in the bargaining unit whose last names started with the letter M and subsequent letters of the alphabet. Moreover, the Respondent omitted the telephone numbers and addresses of the bargaining unit employees indicating that the employees requested the Center to do this and also informed the Union that the information was not being provided due to confidentiality concerns and that the Union already possessed the information.

### b. Discussion

The obligation under Section 8(a)(1) and (5) of the Act on the part of an employer to supply the statutory bargaining agent with relevant and necessary information for contract negotiations is well and long established. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). The Board has previously directed an employer to furnish the union with the names and home addresses of employees in the bargaining unit. *Magma Cooper Co.*, 208 NLRB 329 (1974). Indeed, the Board has also found requests for this same information to be presumptively relevant. *Superior Protection, Inc.*, 341 NLRB 267, 269 (2004).

Although the Respondent argues that when the Union received the information on December 9, it should have notified it that the information for bargaining unit employees whose last names began with the letter M and thereafter was not provided, I am of the opinion that this burden should fall on the Respondent. Thus, it is incumbent upon an employer to verify that it has fully complied with a request for information submitted by the exclusive representative of its employees. Likewise, contrary to the Center's argument that bargaining unit employees requested them to withhold such information, Birth testified that only 4 or 5 of 51 bargaining unit employees ever requested that their home addresses and telephone numbers be kept confidential.

In regard to the Respondent's confidentiality defense, the Respondent never informed the Union in advance about such concerns nor did it come forward with some offer to accommodate both its concerns and the Union's legitimate need for the information. Here, the Respondent made no offer to release the information conditionally or by placing any restrictions on the

use of the information. *Pennsylvania Power*, 301 NLRB 1104 (1991).

For all of the above reasons, since the Respondent did not provide presumptively relevant information to the Union and made no effort to bargain to accommodate the Union's interest in seeking relevant information, it violated Section 8(a)(1) and (5) of the Act.

Therefore, I conclude that the General Counsel sustained the allegations alleged in paragraph 9 of the complaint.

### 3. The unilateral change in conditions of employment

#### *a. The facts*

By memorandum dated August 20, Birth announced an agencywide meeting would be held on August 25 in the day treatment program gymnasium. Birth reviewed the Center's troubled financial situation explaining to the employees that funds were cut from a number of sources and projected increases in the residential population did not occur. Birth announced that certain family therapy and other services were going to have to be suspended as of August 29, as United Way funds were in question and probably would cease. Effective August 29, the Center eliminated the hours of persons who were performing family therapy services. Birth admitted that although Redeker attended the August 25 meeting, the Union was not notified in advance that the hours of persons who were performing these services would be cut nor did the Center engage in negotiations over the elimination of these hours.

Before the August 25 meeting took place, Birth had discussed the Center's financial status with their chief accountant, James Schmersahl, who was completing the audit work for the fiscal year that ended June 30. Schmersahl discerned that the Center had incurred a loss of \$214,623 during the prior fiscal year and advised Birth that cuts must be made to reduce expenses. Since the highest expenses at the Center were incurred by personnel costs, it was decided that this was the area that had to be cut. Schmersahl advised that approximately a 5-percent cut in expenses had to be undertaken. He also concurred in the Center's decision to terminate its relationship with the United Way as the costs associated with the family therapy program absorbed the majority of the funding.

On October 27, the board of directors met to discuss the recommendation of its accountants to reduce expenses by cutting employee hours and other benefits. The Board agreed that this was a prudent approach to solving their financial crisis. Accordingly, Birth determined that individual meetings with employees were necessary to independently explain the rationale of the board of directors concerning this difficult decision.

On October 29, Birth met with the custodian and cooks in her office and explained the financial crisis of the Center. She discussed the State of Illinois budget constraints, proposed cuts in funding from the Governor's office and additional social service cuts in funding. Due to these cuts, she apprised the employees that in order to reduce personnel expenses, their hours of work would have to be reduced effective November 9 (GC Exhs. 13 and 14(a)). Birth admitted that the Union was not notified in advance of this meeting or any other meeting of employees in which the reduction of hours and benefits were

discussed nor were they given an opportunity to negotiate on behalf of these employees.

On October 30, Birth held another meeting with additional employees and addressed the same subjects as discussed above. Additionally, Birth apprised these employees that this action was being taken to avoid layoffs and that certain paperwork would be prepared to effectuate the change in their reduction of work hours.

On November 18, Birth met with the program aides and addressed the same subjects as discussed above. Birth informed these employees that their hours of work and other benefits would be reduced effective December 1 (GC Exh. 14(b)).

On various dates in November 2003, Birth met individually or in a group with a number of employees and witnessed their signatures on a "Salary Action Authorization Form" that officially documented the rate of pay before and after the reduction in their hours of work (GC Exh. 15(a) through (l)). For those employees who did not sign in her presence, Birth instructed them to proceed to the office and sign the forms. It is noted that two employees did not sign the forms but their hours of work were nevertheless reduced. Birth admitted that the Union was not notified in advance of these meetings nor before the forms were signed by the employees. Therefore, no negotiations with the Union occurred regarding the reductions in employees work hours.

#### *b. Discussion*

The General Counsel alleges in paragraph 10 of the complaint that Respondent unilaterally eliminated the pay and hours of the family therapists and unilaterally decreased the sick leave, personal days and vacation days of custodians, cooks and program aides without notice to or negotiations with the Union.<sup>6</sup>

The Respondent defends its actions in reducing the hours of work, pay, and other benefits of employees based on the fact that these matters are covered under its May 2002 policy manual that was negotiated with the Union (R. Exh. 7). Thus, the Center argues that the reduction-in-force provisions govern the reduction in hours and since the Union previously negotiated this provision, it has waived its right to negotiate.<sup>7</sup>

I reject this argument for a number of reasons. First, the furlough of an employee contemplates either the temporary or permanent removal from the Center's employment rolls. No further salary, vacation, sick, or personal leave benefits accrue to an employee who is furloughed. The facts in the subject case do not establish that employees were furloughed. Indeed, Birth admitted that those employees who incurred a reduction in

<sup>6</sup> On the first day of the hearing, the General Counsel amended the complaint to exclude paras. 10(b) and (d) involving the VOCED coordinator, clinic records employee and secretaries

<sup>7</sup> The reduction-in-force provision states: "The Board of Directors, based on the recommendation of the Executive Director, will issue the furlough notice to the determined employee. This notice will state that due to the drop in our average daily enrollment, the employee will need to be furloughed. However, if within year, our census increases back to our average daily projection, the employee will be called to return to work in order of seniority. Recommendation of the employee to be furloughed will be based upon the needs of the Center and administrative recommendation."

hours, pay, and other benefits were not removed from the Center's employment rolls, are still gainfully employed, and no paperwork was prepared showing that these employees were placed in a furlough status.

Second, the Board has held the obligation to refrain from unilaterally changing terms and conditions of employment continues after contract expiration and until good-faith bargaining results in an impasse. *Paperworkers v. NLRB*, 981 F.2d 861 (6th Cir. 1992). Both Carroll and Birth admitted that the terms and conditions of the 2002 collective-bargaining agreement remained in full force and effect during bargaining for a successor agreement. Indeed, there is no dispute that any bargaining took place prior to the Respondent's unilateral reduction of its employees' hours of work, pay, and other benefits.

Third, reference to article III of the 2002 collective-bargaining agreement (GC Exh. 2—Management Rights) establishes that “[t]he parties agree that the Board may amend the Policies and Procedures Manual at anytime during the course of this Agreement, but must negotiate with the Union on any changes that pertain to wages, hours, and terms and conditions of employment.” Contained in this manual are references to “Hours of Work” and “Vacation, Sick and Personal Leave Benefits” (R. Exh. 5, pp. 6, 11, 12, and 16). Thus, I find that the Center pursuant to its collective-bargaining agreement had an obligation to negotiate with the Union prior to its unilateral action of reducing the hours of work, pay, and other benefits of its employees.

Based on the forgoing, I find that the Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally reduced the hours of work, pay, and other benefits of its employees without notice or bargaining with the Union. Therefore, the allegations set forth in paragraphs 10(a), (c), and (e) of the complaint are sustained.

#### 4. The bypass of the Union

The General Counsel alleges in paragraph 11 of the complaint that on various occasions between November 7 and 18, Respondent, by Birth, at its facility bypassed the Union and dealt directly with its employees by negotiating a reduction in their hours and pay.

Based on the above discussion and particularly noting that Birth met independently with a number of bargaining unit employees, without notice to or negotiations with the Union, when she apprised them of a reduction in their hours, pay, and other benefits and subsequently was present when a number of these employees signed the “Salary Action Authorization Form,” I find that the Respondent dealt directly with its employees in violation of Section 8(a)(1) and (5) of the Act. Therefore, the allegations in paragraph 11 of the complaint are sustained. See *John Geer Chevrolet Co.*, 262 NLRB 256, 264–265 (1982) (direct dealing found where employer faced with financial problems had employees sign a form approving a unilateral reduction in hours).

#### CONCLUSIONS OF LAW

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

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

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by distributing a memorandum to employees that interfered with their rights to engage in union activities and by maintaining an overly broad solicitation rule in its personnel handbook.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by eliminating the hours for employees performing family therapy services.

5. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to execute a contract after agreeing on terms and conditions of employment, by refusing to grant employees retroactive longevity wage increases, by refusing to furnish the Union with necessary and relevant information, by unilaterally eliminating the hours, pay, and other benefits of its employees and by bypassing the Union when it dealt directly with its employees in negotiating a reduction in their hours, pay, and other benefits.

6. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) of the Act when it told employees that it was eliminating the hours of persons who performed family therapy work because of the Union, by maintaining a discriminatory policy prohibiting employees from talking about the Union during working time and by informing employees that they would not get a raise because of their union activities.

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

#### REMEDY

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

Since the Respondent refused to bargain with the Union and failed to execute a written collective-bargaining agreement that provided for employees retroactive longevity wage increases and unilaterally eliminated the hours, pay, and other benefits of bargaining unit employees, I shall order it to cease and desist from engaging in such conduct, to bargain on request with the Union about these matters, and to execute the parties' 2003 collective-bargaining agreement. I shall further order the Respondent to make whole any employee for any loss of earnings and other benefits suffered as a result of the elimination of their hours for persons who performed family therapy work, the reduction in their working hours, pay, and other benefits and not receiving their duly owed retroactive longevity wage increases. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]