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

TCB SYSTEMS, INC.

and Case 12–CA–25299

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ, successor to SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 11

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for the General Counsel.
Donald T. Ryce, Esq., for the Respondent.
Katchen Locke, Esq., for the Charging Party.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Miami, Florida, on August 3, 4, 5, and 6, 2009, pursuant to complaint issued on April 30, 2009, and amended on June 3, 2009.[1] The complaint alleges that the Respondent is a successor employer, that the Respondent threatened not to hire employees because of their union activity in violation of Section 8(a)(1) of the National Labor Relations Act, refused to hire six applicants because of their union activity in violation of Section 8(a)(1) and (3) of the Act, and failed and refused to recognize and bargain with the Union in violation of Section 8(a)(1) and (5). The Respondent's answer denies any violation of the Act. I find that the failure of the Respondent to recognize and bargain with the Union violated the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[2]

Findings of Fact

I. Jurisdiction

The Respondent, TCB Systems, Inc., TCB, provides building cleaning and maintenance services to various customers in and around Miami, Florida. TCB annually purchases and receives goods, materials, and services valued in excess of $50,000 directly from points located outside the State of Florida. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] All dates are in 2007 unless otherwise indicated. The charge was filed on February 22 and was amended on March 5, June 14, and August 28, 2008.
[2] Pursuant to my order at the hearing, the parties have tendered Joint Exhibit 6 as a post hearing exhibit, and General Counsel has tendered Exhibit 62(a). They are hereby received.

The Respondent admits, and I find and conclude, that Service Employees International Union, SEIU, Local 32BJ, successor to SEIU Local 11, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

This case involves issues arising from union organizational activity among janitorial employees who perform cleaning services at Nova Southeastern University, Nova, the main campus of which is located in Fort Lauderdale-Davie, Florida. Prior to February 19, the janitorial employees were employed by UNICCO Service Company, UNICCO. UNICCO had additional contracts with other employers, including the University of Miami.

In 2005, Service Employees International Union, Local 11, began organizational activity among janitorial employees at the University of Miami and, in November 2005, organizational activity began at Nova. The organizational activities included meetings, rallies, demonstrations, and, at Nova, in March and April 2006, two short strikes that lasted one or two days each. The Union filed unfair labor practice charges against UNICCO. On September 25, 2006, UNICCO and the Union agreed to submit the Union's claim of majority status at Nova to the American Arbitration Association. The Union and UNICCO agreed to two separate units, a unit of maintenance technicians and a janitorial unit. The issues herein relate only to the janitorial unit.

In support of its claim of majority status, the Union submitted multiple authorization petitions, some of which were signed by only one or two employees, most of which were signed by from three to seven employees, and a few of which were signed by from eight to twelve employees. There were two versions of the petition, one in English with a Spanish translation and one in Haitian Creole. On October 4, 2006, a representative of the American Arbitration Association certified that the Union had presented valid petitions which reflected that at least sixty percent (60%) plus one of the employees in the janitorial unit had authorized the Union to represent them. Consistent with the agreement of the parties, UNICCO recognized the Union as the exclusive collective bargaining representative of the employees in the following unit:

> All janitors, utility cleaners, custodians, lead cleaners, groundskeepers, utility workers, lead groundskeepers, and drivers/chauffeurs; excluding supervisors and clerical personnel.

Representatives of the Union and UNICCO entered into negotiations for a collective-bargaining agreement. At those negotiations, an employee committee composed of Amparo Correa, Rose Marie Fleuranvil, Steve McGonigal, and Wanda Rodriquez was present. Prior to the parties reaching any agreement, Nova terminated its contract with UNICCO.

Shortly after the Union obtained recognition, it learned that Nova was seeking a different contractor to provide cleaning services and that TCB was one of the potential bidders. On November 28, 2006, Local 11 President Rob Schuler wrote Robert Orue, Owner and President of TCB, advising that the employees were represented by Local 11, the predecessor of Local 32BJ, and stating that the Union was making application for employment with TCB on behalf of the employees named on an attached typed list. He received no reply to that communication.

President Schuler thereafter made several unsuccessful attempts to contact Orue by telephone. He ultimately succeeded in speaking with the District Manager of TCB, Eduardo

Maestri, and expressed the Union's desire that, if TCB obtained the contract, the represented employees be hired. Maestri stated that it was "common for them to keep everybody when they took over an account, that he didn't think that was going to be a big problem," but that the client might want to weed out "a couple of bad apples." Nova awarded the contract for work formerly performed by UNICCO to TCB in early February. Schuler again called Maestri, and he agreed to meet with Schuler. Maestri did not recall speaking with Schuler until after TCB obtained the contract, and testified that President Orue requested that he meet with Schuler. The foregoing conflict in testimony is immaterial.

On February 7, District Manager Maestri and Local 11 President Schuler, accompanied by a director of the International Union, Secky Fascione, met at a local coffee shop. Schuler recalls that Maestri repeated what he had told him over the telephone two months earlier, that TCB kept the workers "whenever they take an account over," but might weed out "a couple of people at the insistence of the client." Fascione recalled that Maestri stated that "generally we keep the staff," and referred to a recent contract that TCB had obtained at a local airport. Maestri explained that TCB was going to subcontract the work at some of the buildings on the Nova campus and was going to conduct a job fair on February 10 at which all current employees would be permitted to file applications.

Maestri denied making any comment relating to hiring. He did not deny mentioning TCB's assumption of a contract at an airport. I credit Schuler and Fascione, but note that there is no evidence that Maestri was involved in hiring or staffing decisions. Insofar as TCB would be subcontracting some of the work formerly performed by UNICCO, his statement regarding "generally" keeping the staff would apply only to TCB.

On February 7, following that meeting, Schuler wrote Maestri, attaching petitions that had been signed by the current UNICCO employees which stated their desire to continue working at Nova. The letter states that the Union was making an unconditional offer of employment on their behalf. The letter acknowledges that the employees would need to submit applications at the Saturday, February 10, job fair.

Victor Sierra, Vice President of Operations for TCB, was in charge of the job fair. Consistent with the decision of TCB to subcontract the janitorial work at certain buildings, representatives of those firms were present at the job fair. All current employees of UNICCO who worked at Nova were given an opportunity to apply with TCB or the subcontractors at the job fair which was held at an empty retail facility on the campus. Applicants were admitted in groups of 10 and referred to the appropriate potential employer, depending upon the location at which they were currently working. Representatives of TCB conducted a brief interview with those who were applying with TCB, confirming their current job assignment and shift. Each of the alleged discriminatees submitted an application, one of whom, Fritz Hector, applied with TCB although the janitorial work in the building in which he had worked had been subcontracted by TCB to Planned Building Services. President Schuler received reports that some employees were informed of wage rates and given the impression that they had been hired whereas others were told that they would be called. The record does not establish that the different protocol related to whether the applicant was dealing with TCB or one of the subcontractors. Local 11 Organizing Director Eric Brakken recalled that he and International Director Fascione spoke briefly with District Manager Maestri at the job fair and that he stated that "we're going to hire everyone. That's what we always do." Maestri denied that conversation. Whether he made the statement is immaterial. Insofar as the work at several buildings and groundskeeping were being subcontracted, TCB was not hiring for the subcontracted work. The reports received by President Schuler contradicted any assurance that TCB was hiring everyone.

TCB and its subcontractors were to take over the cleaning work on Monday, February 19. Applicants had been told at the job fair that they would be called to report if they were hired. On February 16, Sierra provided Montoya with "from 80 to 90" applications of former UNICCO employees and requested that he call them, asking them to report to work on February 19.

TCB and its subcontractors initially had a total employee complement of 277. Of those 277 employees, 131 were employed by the subcontractors and 146 were employed by TCB. The typed list of UNICCO employees attached to President Schuler's letter of November 28, 2006, contains 296 names, thus there was a reduction in the total employee complement of 19, assuming that the UNICCO employment complement remained the same. The record does not establish whether the employee complements at the buildings for which TCB subcontracted the janitorial work were reduced, thus the exact reduction in the employee complements at each building is not established. Over 100 of the former UNICCO employees were not hired.

Notwithstanding the reduction in the total employee complement and failure of TCB and its subcontractors to hire over 100 of the former UNICCO employees, the parties stipulated that TCB hired former UNICCO employees as a majority of its employee complement, employees represented by the Union. Insofar as the TCB employee complement was 146, TCB hired 76 or more former UNICCO employees, which is consistent with the testimony of Montoya that Sierra had him call "from 80 to 90" former UNICCO employees. On February 21, Union President Schuler wrote TCB President Orue asserting the Union's majority status, stating that TCB was a successor, and requesting recognition and bargaining. He received no reply.

On March 5, Schuler wrote Orue attaching a list of 120 UNICCO employees who had not been hired by either TCB or one of its subcontractors and requesting that they be hired. The charge herein alleges that 108 employees were not hired. The foregoing discrepancy is immaterial. Schuler's letter notes that Maestri told him that the applications of employees who were not hired would be forwarded to the subcontractors, and he requested that he be advised of any additional steps that needed to be taken. Schuler received no reply to that letter.

TCB subcontracted the groundskeeping work, thus the complaint alleges that the appropriate unit is:

> All full-time and regular part-time cleaning, janitorial, custodial and housekeeping employees employed by Respondent who are assigned to perform work at Nova Southeastern University campuses in Miami-Dade County and Broward County, Florida.

On September 26, 2008, Local 32BJ became the successor to Local 11. The Respondent's answer admits the successorship, thus there is no issue regarding the identity of the Union, which is now SEIU Local 32BJ.

B. Preliminary Observations

TCB hired virtually all of the UNICCO supervisors. The complaint contains four Section 8(a)(1) allegations, all of which are attributed to former UNICCO supervisors who were hired by TCB. There are no Section 8(a)(1) allegations attributed to any supervisor or manager of TCB who had been historically employed by TCB prior to its obtaining the Nova contract. The initial hiring decisions of TCB were made by Vice President of Operations Sierra prior to February 17, which was before TCB hired any former UNICCO supervisors.

The complaint alleges that TCB, having hired a majority of the former UNICCO employees, was obligated to recognize and bargain with the Union.

Notwithstanding the hiring of a majority of the former UNICCO employees by TCB, the complaint alleges that TCB discriminated against six employees by failing to hire them. The General Counsel and Charging Party argue that the six were among the most vocal and active supporters of the Union. Much of the record herein relates to the union activities of the six alleged discriminatees when employed by UNICCO. Testimony and photographs establish their presence at various rallies and vigils at which they were observed by supervisors of UNICCO. As the Respondent correctly points out, however, these events were attended by numerous other employees, including employees who were hired. Newspaper articles in both English and Spanish that reported upon the campaign contain photographs and the names of various alleged discriminatees as well as employees who were hired. There is no probative evidence that any supervisor or manager of TCB who had been employed by TCB prior to its obtaining the Nova contract was aware of the level of involvement of the alleged discriminatees in those union activities. The Union, in its communications with TCB, the earliest of which was on November 28, 2006, did not single out any specific supporters of the Union.

The charge herein, filed on February 22 and thereafter amended, was filed against TCB, the subcontractors, and Nova. It alleges an unlawful failure to hire 108 employees formerly employed by UNICCO. The initial charge identified 14 of those employees by name, some of whom worked in buildings in which TCB subcontracted the work. The complaint, which issued on April 30, 2009, names six alleged discriminatees, one of whom, Fritz Hector, is still employed by UNICCO. He applied for a job with TCB although the work at the building to which he had been assigned was subcontracted. The number of employees named in the charge increased to 16 when the names of Rosario Lopez and Frantz Merisier were added in the most recent amendment to the charge which was filed on August 29, 2008. That amended charge is filed only against TCB. Although the charge alleges that the failure to hire was at the direction of Nova, the compliant makes no such allegation, and Nova is not a party to this proceeding.

C. Facts

In early February, Vice President of Operations Sierra learned that TCB had been awarded the Nova contract. He obtained permission to walk through the buildings that TCB would be cleaning. He recalls that he did so on more than one occasion. He did not recall that the Custodial Manager for UNICCO, Efrain Montoya, accompanied him on one of the occasions that he walked through the buildings. Montoya recalled that he did accompany Sierra on one occasion, but they did not engage in conversation. Sierra was taking notes as he walked through the various buildings, including the Health Professions Division, referred to as HPD, a complex consisting of seven buildings that are interconnected and a parking garage.

Montoya was hired by TCB as its Custodial Manager at Nova. He continued to be employed by UNICCO during its final week as the janitorial contractor at Nova. Melissa Tanon was Assistant Manager for UNICCO and was responsible for the second shift, the night shift. TCB hired her in that same position. Shortly after the February 10 job fair, Sierra met with Montoya after work because he was still a UNICCO employee. Using Montoya's current assignment list, Sierra confirmed the information that the employees had provided at the job fair regarding their job assignments, thereby establishing which employees were working in the various buildings that TCB was going to begin cleaning on February 19. Montoya denied having any conversation relating to the Union with anyone from TCB, stating that his priority was the work and that he was just trying to keep his job.

Vice President of Operations Sierra testified that he made his hiring decisions based upon his inspection of the locations and where the UNICCO employees had worked

relative to those locations as confirmed by Montoya. He denied that he "tried to find out which employees were strong Union supporters" or even asking "about Union support." He had taken notes when he walked through the buildings and noticed specific "areas that needed improvement." He explained that "[i]t wasn't that all the buildings were totally filthy," but that there were problem areas "that needed improvement." Sierra decided which employees to hire "based on these people's location where they worked, their job performance. … [I]f I thought that an area was not up to par, was neglected, that's why I decided not to hire them."

On February 16, Sierra provided Montoya with "from 80 to 90" applications, and Montoya called those employees over the weekend of February 17 and 18, requesting them to report to work and began working for TCB. Employees who were not called, including the six alleged discriminatees, also reported to the campus on February 19, and they were informed that they had not been hired.

The record establishes the union activity of the alleged discriminatees, much of which occurred in 2006 in the course of the organizational campaign, a campaign that resulted in the predecessor, UNICCO, recognizing the Union. Although each of the alleged discriminatees engaged in significant union activity, their level of involvement differed. Alleged discriminatees Eximene Jules, Fritz Hector, and Frantz Merisier did not work at Nova until September 2006, thus they did not participate in the two short strikes in the spring of 2006, strikes in which Amparo Correa, Armando Pons, and Rosario Lopez, as well as over 60 other UNICCO employees did participate. The Union did not separately name alleged discriminatees Rosario Lopez and Frantz Merisier in the initial charge that identified 14 employees by name. Their names were added over a year later in the most recent amendment to the charge which was filed on August 29, 2008. Alleged discriminatee Amparo Correa, when asked to identify the most outspoken union advocates working at the HPD complex, identified herself, Pons and Lopez, not Jules or Merisier.

Of the six named discriminatees, four worked on the second or night shift in the HPD complex, one worked on the day shift in that complex, and one, Fritz Hector, worked at the Sport Center, one of the buildings at which the work was subcontracted. None of the alleged discriminatees are native speakers of English, and all except Fritz Hector testified through an interpreter in their native language, either Spanish or Haitian Creole.

Fritz Hector's native language is Haitian Creole. Although an interpreter was present, he testified in English. Hector began working for UNICCO as a cleaner at the Miami Country Day School in or before the year 2000. UNICCO lost the contract at Miami Country Day School, and he was transferred to the Nova campus in September 2006, where he worked in the Sport Center. TCB subcontracted the work at the Sport Center to Planned Building Services. Planned Building Services was represented at the job fair on February 10; however, Hector, applied only with TCB. Hector did not testify regarding how it happened that he failed to apply with Planned Building Services. He was not called to report to work on February 19. He went to the Sport Center and explained that he had been working there for five months. He heard that TCB was assigning employees from the Physical Plant Building, he went there and located Efrain Montoya, who as Custodial Manager for UNICCO had overseen all of the buildings. He asked him about his job, stating that he had applied "with TCB" but had not heard from them. Montoya replied that he could "go outside and talk to the Union to give you a job." The record does not reflect whether he did so. Hector is still employed by UNICCO at a different location.

Marie Hector, Fritz Hector's wife, is not alleged as a discriminatee. Her native language is Haitian Creole, and she testified through an interpreter. Like her husband Fritz, Marie Hector

was transferred to the Nova campus in September 2006. She worked in the Family Center, one of the buildings at which the cleaning work was subcontracted to Planned Building Services. It appears that she did apply for work with that company insofar a Planned Building Services supervisor she identified as Carlos called her to come to work but then called again stating that he had made a mistake, that she was not to come to work. Hector went to the campus because she wanted to see Carlos "face-to-face." She confronted him regarding the two telephone calls. Carlos responded that he had told her not to come in. Marie Hector located Montoya, who she referred to as Mr. Efrain, and explained the two calls from Carlos. She reported that Carlos told her that he did not have to tell her anything, and requested, "Mr. Efrain [Montoya], you have to tell me something." Montoya answered, "[O]kay, I don't have a job for you. That's what I say." Marie Hector testified that she persisted, saying, "[O]kay, you don't have a job for me for why, because I'm a union member?" She claimed that Montoya answered, "[Y]es, go to them, ask the Union to give you a job." Marie Hector mentioned nothing about her husband Fritz Hector or Eximene Jules being present.

Eximene Jules' native language is Haitian Creole, and she testified through an interpreter. Jules began work for UNICCO at Miami Country Day School in 1998. She was transferred to the Nova campus in September 2006 when UNICCO lost that contract. She was assigned to work at the HPD complex. She filled out an application at the job fair and recalls being asked about her position. She responded that she worked at the HPD Building. The individual with whom she spoke took her application and said that he would call her back. Jules was not called, but she went to the Nova campus on February 19. She presented her identification card which a representative of TCB compared to a list. She was informed that her name was not on the list. Jules recalled that both Custodial Manager Efrain Montoya and second shift supervisor at the HPD complex, Jamie Munoz, were present. Jules confronted Montoya, stating that she had been cleaning for a long time. Montoya answered, "I don't have a job for you. If you want a job, talk to Union." When repeating what Montoya said, Jules testified that he said, "[G]o to Union. I don't have a job." The foregoing exchange was spoken in English. Although Fritz Hector did not mention the presence of Jules or his wife, Marie Hector, Jules testified that Fritz Hector was present when she spoke to Montoya, "it was the three of us that were together at that moment." Jules claimed that she then asked Montoya "why you don't have a job for me because I'm from Union," and that Montoya answered, "Yes." She recalled that Montoya told both Fritz Hector and Marie Hector, "I don't have a job for you. Go talk to Union."

Montoya denied telling any employees that the reason they were not hired was related to their union activity, that he told employees that he had nothing to do with the hiring process.

Amparo Correa's native language is Spanish, and she testified through an interpreter. Correa began working for UNICCO in 2001. She worked in the HPD complex, and in 2007 was lead custodian on the night shift in the dental building. She applied at the job fair on February 10. She asked the male individual with whom she spoke whether she would continue to work "in the same job I was doing before." He answered that he did not know. Correa was not called to come to work. Despite that, she reported to the HPD complex shortly before 6 p.m. on Monday, February 19, with a number of other employees including Armando Pons and Rosario Lopez. Assistant Manager Melissa Tanon arrived carrying a sheet of paper and called the names of those who were to enter and go to work. Correa recalls that the names of three or four were not called, including herself. She asked Assistant Manager Tanon why she was not called and Tanon answered that the "people that were called were chosen." Correa asked if "it was because we were in the Union." Tanon answered that "she didn't know."

Armando Pons' native language is Spanish, and he testified through an interpreter. Pons began working for UNICCO at Nova in June 2004. He was responsible for floors and

housekeeping on the first and second floors of one of the buildings in the HPD complex on the night shift. He did not specify which building. Pons attended the job fair and turned in an application. On February 19 he came to the campus shortly before 6 p.m. He reported to the Physical Plant Building and was sent to the HPD complex. Assistant Manager Tanon had a list and began calling the names of the people that were to go to work. Pons' name was not called, nor were the names of Correa or Rosario Lopez called. Pons recalled that Correa asked Tanon who had made the list and that Tanon replied "the new Company." He asked why his name was not included, but Tanon did not answer him. Correa asked whether it was "due to the Union." Tanon answered that "she didn't know."

Rosario Lopez's native language is Spanish, and she testified through an interpreter. She began working for UNICCO at Nova in April 2002 and was a lead in housekeeping in Zone 2 of the HPD complex on the night shift. Although not called, she reported to the HPD complex shortly before 6 p.m. on February 19 where she and others waited outside. Assistant Manager Tanon came out with a list and informed the employees that the names she was calling were to enter. She began calling names. Lopez recalled that "several of us remained outside" because their names were not called. Amparo Correa asked Tanon why the names of those who remained outside had not been called, "was it because we were in the Union." Tanon answered that "this is the list of the chosen people. This is the list that Efrain [Montoya] gave her." Lopez recalled no response to Correa's question relating to the Union.

Frantz Merisier's native language is Haitian Creole, and he testified through an interpreter. Merisier had worked for UNICCO at Miami Country Day School and was transferred to the Nova campus in September 2006 after UNICCO lost that contract. He worked on the night shift as a floor cleaner in the Terry Building, part of the HPD complex. He applied at the February 10 job fair. The lady, who was "wearing a T-shirt with … TCB written" on it, took his application and asked him about his job to which he replied that he did "the floors." She stated that the Company would call him. TCB did not call. Although he had not been called, Merisier went to the HPD complex on February 19. While outside the building, he received a call on his cellular telephone from "two friends" whom he identified as Emile Desire and one of the children of Joel Miracle, whose name he did not know, telling him that Assistant Manager Melissa Tanon had called his name. He entered the building. When Tanon saw him, "her face changed." She asked whether the Company called him, and he untruthfully replied, "Yes." Tanon disputed his answer, stating that the Company had not called him. Merisier replied that two of his friends had called telling him that his name was on her list. Tanon replied that she did not call him, "I called another Frantz." According to Merisier, Tanon left and, after about 45 minutes, returned and stated that the Company had not called him. Merisier replied that his name was on her list, to which Tanon again stated that she had called another Frantz. Merisier testified that he asked whether it was "because I'm a union member you don't have any job for me," and that Tanon answered, "I don't have any job for union people." In a pretrial affidavit, Merisier stated that Tanon stated that "because I am a union member, she doesn't have any job for me."

According to Montoya, all employees first reported to the Physical Plant Building from which they were sent to their work locations. It would appear that the foregoing testimony was correct with regard to all but the second shift at the HPD complex. The mutually corroborative testimony of Pons, who went first to the Physical Plant Building and was sent to HPD, and Correa and Lopez, both of whom went directly to the HPD complex, confirm that, with regard to the second shift at HPD, employees were informed that they had been hired at that location.

Assistant Manager Tanon denied that she had a list and called out the names of the employees. She also denied being questioned by any employee regarding not being hired because of their union membership. Tanon denied even knowing how many employees TCB

had hired to work on night shift at the HPD complex. I find Tanon's testimony incredible. Amparo Correa, Armando Pons, and Rosario Lopez confirm that Tanon did have a list and called out names and that Correa asked whether the employees whose names were not called were not called "because we were in the Union." Correa and Pons agree that Tanon answered that "she didn't know." Notwithstanding Tanon's incredible testimony, her statements and conduct, as reported by the employees, do not suggest that she had any role in the selection of the employees. She told the employees that the list was made by "the new Company" and that she had been given the list by Montoya. Confirmation of that statement is established by her leaving Merisier to investigate after he untruthfully told her that he had been called by TCB. If she had a role in creating the list, no investigation would have been necessary.

Joel Miracle, the father of the unnamed "friend" to whom Merisier referred, had worked in the Family Center, one of the buildings subcontracted to Planned Building Services. He applied with Planned Buildings Services, but was not called. On February 19, he went to the campus and spoke with Carlos, the supervisor for Planned Building Services. Miracle recalled that, when he confronted Carlos about not having been called, that Carlos replied that "as I worked beforehand for UNICCO, that he couldn't give me a job."

Miracle, whose native language is Haitian Creole testified through an interpreter. A few days after his February 19 conversation with Carlos, Miracle returned to the campus and sought out Efrain Montoya, who had formerly been the UNICCO Custodial Manager, but who now was only Custodial Manager for the buildings being serviced by TCB. Although not testifying that he complained about not being hired by Planned Building Services, it appears that he did so, emphasizing his need for a job by explaining that he had seven children. He recalled that Montoya stated to him, "You working for UNICCO and Carlos told me you member from the Union so you can't do the job." The foregoing statement was made in English, and Miracle admitted that he does "not understand English very well."

On March 7, employee Victor Correa and supervisor Jamie Munoz engaged in a conversation relating to a complaint regarding Correa's job performance. In the course of the conversation, Correa testified that Munoz made statements relating to the lack of employment of three of the alleged discriminatees. Munoz did not testify.

Correa, whose native language is Spanish, testified through an interpreter. Correa had been employed in the Parker Building, part of the HPD complex, by UNICCO for several years. He actively supported the Union and engaged in the two strikes in 2006. Supervisor Munoz had observed him wearing prounion paraphernalia, including union pins and a union bracelet, but Correa did not claim that Munoz made any comments to him in that regard.

On March 7, supervisor Munoz called Correa to his office and spoke with him regarding a complaint about a job that he had performed improperly. The conversation was in Spanish. Munoz emphasized the necessity for doing a good job because TCB was "in a testing period of three months." Correa, who acknowledged that he was [t]aking advantage of that occasion," asked why "that group of employees were fired on that day," an apparent reference to the February change of employers. He asked "if they were fired due to discipline reasons, or if it was because of attendance, … or … conduct, or if it was due to another reason." According to Correa, Munoz replied that it "was because they showed a strong support to the Union." He stated that Correa was "lucky for being chosen to work for TCB because … the University, … the former company, and the current company and the supervisors knew that I was involved in the Union." According to Correa, Munoz then said that "it can happen to me the same as it happen to them, Mrs. Amparo Correa, Mr. Armando Pons, … and Mrs. Rosario Lopez."

Correa, in a pretrial affidavit, stated that he believed that all the employees who were hired supported the Union. On cross examination he acknowledged that TCB hired a number of UNICCO employees, including himself, who had participated in the strikes.

There is no evidence that supervisor Munoz was involved in any hiring decisions. Munoz reports to Assistant Manager Tanon.

D. Analysis and Concluding Findings

1. The Section 8(a)(1) Allegations

Subparagraph 8(a) of the complaint alleges that Custodial Manager Efrain Montoya, on February 19, threatened not to hire employees because of their union activities and support. The evidence relating to this allegation consists of the testimony of Eximene Jules, Marie Hector, and Fritz Hector. Jules recalled that she asked Montoya, "[W]hy you don't have a job for me because I'm from Union?" and that Montoya answered, "Yes." Marie Hector claims that she asked Montoya, "[O]kay, you don't have a job for me for why, because I'm a union member?" and that Montoya answered, "[Y]es, go to them, ask the Union to give you a job." The foregoing statements, if credited, establish that employees were informed that they had not been hired because of their union affiliation.

Neither Fritz nor Marie Hector mentioned that Eximene Jules, in what their testimony implied were separate individual conversations with Montoya, was present. Their testimony does not, however, exclude her presence. I am mindful of the language barrier involved in assessing the evidence regarding this violation. Although Fritz Hector testified in English, both Marie Hector and Jules testified through an interpreter. The testimony of Fritz Hector establishes that the conversation with Montoya was in English. Jules, who had worked at the HPD complex and applied with TCB, claims that she asked whether she did not have a job because she was "from Union" and that Montoya answered "Yes." Jules placed Fritz Hector as being present, "it was three of us that were together," when her conversation occurred, but Fritz Hector did not corroborate Jules' testimony regarding her question or Montoya's alleged response. Jules testified that Fritz and Marie Hector each asked Montoya why they did not have jobs, and were told, "I don't have a job for you. Go talk to Union." Thus, Jules does not corroborate the claim of Marie Hector that she asked whether she did not have a job because she was a union member and that Montoya answered, "Yes." Marie Hector had not applied with TCB. She was denied employment by Planned Building Services, not the Respondent. Fritz Hector, although working at the Sport Center, applied with TCB notwithstanding that the Sport Center work had been subcontracted to Planned Building Services. He recalled that Montoya told him that he could "go outside and talk to the Union to give you a job." Fritz Hector did not corroborate the testimony of either Marie Hector or Jules regarding one or both of them questioning Montoya regarding whether they had not been hired because of the Union.

The mutually corroborative testimony of Jules and of Fritz and Marie Hector establishes that, when they confronted Montoya with their failure to be hired, he told each of them to "talk to the Union." The Union was the collective bargaining representative of the UNICCO employees. Montoya's suggestion did not violate the Act, and it is not alleged to have violated the Act. Whether Fritz Hector, an alleged discriminatee and active supporter of the Union, did speak with the Union and whether the Union took any action on his behalf is not reflected in the record; however, Hector is still employed by UNICCO at a different location. Marie Hector had not applied with TCB. She was denied employment by Planned Building Services. Although I do not credit her uncorroborated testimony, I note that the complaint allegation relates only to the Respondent. I do not credit the uncorroborated testimony of Jules that Montoya informed her

that she had not been hired because of her union affiliation. I shall recommend that subparagraph 8(a) of the compliant be dismissed.

Subparagraph 8(b) of the complaint alleges that Tanon, on February 19, threatened not to hire employees because of their union activities and support. The evidence relating to this allegation consists of the testimony of Frantz Merisier that, when he asked whether it was "because I'm a union member you don't have any job for me," Tanon answered, "I don't have any job for union people."

As already discussed, I do not credit the denials of Tanon that she did not have a list or was questioned as to whether employees were not hired because of their union membership. Correa and Pons confirm that Tanon responded to the Correa's question relating to union membership by stating that "she didn't know." Notwithstanding my discrediting of Tanon, I find that she would not have abandoned that noncommittal "didn't know" response when speaking with Merisier. I have difficulty crediting Merisier who admitted untruthfully informing Tanon that he had been called by TCB. Merisier's reference to "two friends" having called him on his cellular telephone, one of them whose name he did not know, reflects a lack of precision in his testimony. People know the names of their friends. That lack of precision is present in the discrepancy between his testimony and his pretrial affidavit. In his pretrial affidavit, Merisier stated that Tanon stated that "because I am a union member, she *doesn't have any job for me*." [Emphasis added.] In testimony he stated that he asked whether it was "because I'm a union member you don't have any job for me" and that Tanon answered, "I don't have any job for union people." I do not credit the statement in the affidavit of Merisier that Tanon spontaneously stated that "because I am a union member, she doesn't have any job for me." Accepting the testimony of Merisier that he did ask whether it was "because I'm a union member you don't have any job for me," I find that Tanon, consistent with the last phrase Merisier attributed to Tanon in his affidavit, noncommittally replied that she "doesn't have any job for me." I shall recommend that subparagraph 8(b) of the complaint be dismissed.

Subparagraph 8(c) of the complaint alleges that the Respondent, through Custodial Manager Montoya, on February 21, threatened not to hire employees because of their union activities and support. This allegation is predicated upon the testimony of Joel Miracle. Miracle claims that, after he had spoken to Planned Building Services supervisor Carlos, Montoya told him that he was told by Carlos that Miracle was not hired by Planned Building Services because he was a member of the Union as a UNICCO employee. The foregoing hearsay statement, similar to what Carlos told Miracle directly, does not threaten any action by the Respondent. No amendment to the complaint was offered. The Respondent did hire employees who supported the Union. I shall recommend that subparagraph 8(c) be dismissed.

Subparagraph 8(d) of the complaint, alleges that the Respondent, through supervisor Jamie Munoz, on March 7, threatened not to hire employees because of their union activities and support. The uncontradicted testimony of Correa establishes that, upon asking why "that group of employees were fired on that day," Munoz replied that it "was because they showed a strong support to the Union." He then went on to state that Correa was lucky to have been hired and that it could happen to him. I need not speculate as to what prompted Correa, who acknowledged that he took "advantage of that occasion," to speak with his supervisor. Regardless of why he did so, Correa did not ask why employees were not hired. He asked why employees were fired.

The complaint alleges a threat of refusal to hire, not a threat of discharge. The brief of the General Counsel, in arguing that Munoz's comments threatened a refusal to hire, does not discuss his comments in the order in which Correa testified the statements were made. Correa

asked why employees were fired. The only employer that fired employees in February was UNICCO. Although Munoz attributed the discharges to employee support of the Union, there is no evidence that Munoz was privy to whatever considerations led UNICCO to retain some of the employees who had formerly worked at the Nova campus who were not hired by the Respondent or any of the subcontractors but to fire others. Fritz Hector, an open and active supporter of the Union, continued to work for UNICCO at another location. The retention of Hector belies Munoz's opinion that the firings by UNICCO, which had recognized the Union, related to union support. UNICCO is not a party to this proceeding.

Munoz's statement that Correa was lucky to have been hired threatened nothing. It was an "expression of personal opinion by a low-level supervisor." See *Universidad Interamericana*, 268 NLRB 1171, 1178 at fn. 23 (1984). There is no evidence that Munoz was privy to the hiring decisions of the Respondent, decisions made before he was employed by the Respondent and which resulted in the hiring of multiple employees who supported the Union, including Correa.

Munoz's statement that "it can happen to me the same as it happen to them," naming Amparo Correa, Pons, and Lopez, was a hypothetical observation that threatened no action by the Respondent. It could not constitute a threat of refusal to hire because Victor Correa had been hired. There is no allegation of a threat of discharge, and the Respondent fired no one.

Munoz's opinion that employees who were fired in February were fired because of their strong support of the Union did not mention the Respondent. The Respondent fired no one. Correa did not ask why employees were not hired. He asked why employees were fired. The only terminations that occurred in February were terminations by UNICCO. I shall recommend that subparagraph 8(d) of the complaint be dismissed.

2. The Refusals to Hire

The complaint, in paragraph 9, alleges that the Respondent discriminatorily failed to hire six named employees because of their union activities. In *Planned Building Services*, 347 NLRB 670 (2006), the Board reaffirmed that a modified *Wright Line* analysis was applicable to a successor's hiring practices.[3] In *Planned Building Service*, a majority of employees of the successor were not hired. In this case, although a majority of the predecessor's employees were hired, the General Counsel argues that six of the Union's most vocal and active advocates, the alleged discriminatees, were not hired because of their union activities.

In *Planned Building Services*, the Board noted that factors to be considered in determining a successor's motive regarding hiring included "expressions of union animus; absence of a convincing rationale for failure to hire the predecessor's employees, inconsistent hiring practices or overt acts or conduct demonstrating a discriminatory motive; and evidence supporting a reasonable inference that the new owner conducted its hiring in a [discriminatory] manner …." Id. at 673.

There is no evidence of union animus on the part of the Respondent. There is no

[3] *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). cert. denied 455 U.S. 989 (1982), holds that, to set forth a violation under Section 8(a)(3), the General Counsel is required to show by a preponderance of the evidence that animus against protected conduct was a motivating factor in the employer's conduct. Once this showing has been made, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

evidence that the UNICCO supervisors hired by the Respondent expressed animus to the Respondent's managers or identified any employees who should not be hired because of their leadership in union activities. The Respondent's decisions regarding hiring were made prior to the employment of any former UNICCO supervisors. District Manager Maestri's statements regarding the past practice of the Respondent made no commitment to hire. The representatives of the Union had to have known that his statement at the job fair, that "we're going to hire everyone, that's what we always do," could not be true insofar as work was to be subcontracted. Whether the statements were made in ignorance or to avoid a confrontation is immaterial insofar as they do not express animus. The failure of the Respondent to respond to the Union's demand for recognition was consistent with its denial of a bargaining obligation.

In this case, a majority of the predecessor's employees were hired; thus, an inference of discrimination due to failure to hire a majority of those employees does not exist. The Respondent's rationale, that it did not hire employees who worked in areas that Vice President of Operations Sierra had observed as being particularly dirty, was not demonstrated to be false.

The Respondent hired 147 employees. Sierra asked Montoya to call from 80 to 90 former UNICCO employees. Thus, from 57 to 67 former UNICCO employees, including the six alleged discriminatees, were not called, hired, or returned to their former positions. Sierra testified that he could not specifically recall why the six named discriminatees were not hired. He admits that after making his hiring decisions based upon his review of his notes regarding particularly dirty areas and his determination of the identity of the employees who worked in those areas, that he threw the notes away. He explained that he did not thereafter hire any of those employees because "it doesn't make sense if I don't hire somebody because of poor job performance, it doesn't seem right that I … hire them later on …."

The General Counsel argues that Sierra's destruction of his notes reveals the Respondent's discriminatory motivation. I agree that their destruction raises a suspicion that the notes, had they not been destroyed, would not correspond to the hiring rationale that Sierra claimed he followed. Nevertheless, as pointed out in *T. K. Productions*, 332 NLRB 110, 124 (2000), "suspicion does not even raise a presumption of illegality, much less proof. … . While, to be sure, suspicion may exist as to the real motivations and reasons which underlie … [the Respondent's actions,] suspicion breeds and feeds upon itself, and it may not form the core for inference nor serve as substitute for the substantial credible proof that the law requires.' *Laborers Local 282 (Elzinga-Lakin)*, 226 NLRB 958, 959 (1976)."

The General Counsel presented no evidence reflecting inconsistent hiring practices. Amparo Correa had worked as lead custodian in the dental building, part of the HPD complex, on second shift, the night shift. There is no evidence regarding whether the lead custodian on first shift was hired. Rosario Perez had worked as a lead in housekeeping on night shift in Zone 2 of the HPD complex. There is no evidence regarding whether the Zone 2 lead custodian on first shift was hired. Frantz Merisier worked as a floor cleaner on the night shift in the Terry Building. There is no evidence as to whether the first shift floor cleaner in that building was hired. The specific locations at which employees Eximene Jules and Armando Pons worked are not reflected in the record. In the absence of any evidence of inconsistency, I am unable to find that the Respondent engaged in inconsistent hiring practices. The record does not establish evidence of a hiring scheme designed to deny employment to the named discriminatees.

Although the failure of Sierra to recall the specific reason for the Respondent's failure to hire each of the six named discriminatees raises a suspicion that, if stated, the reason would be a discriminatory reason, suspicion is not "credible proof." The alleged discriminatees named in the complaint, along with from 57 to 67 other former UNICCO employees, were not hired by the

Respondent. The rationale the Respondent used in making its hiring decisions, i.e., the conditions that Sierra observed matched to the identity of the employees who worked in those areas, was not shown to be false. Sierra's inability to articulate a specific reason for the failure to hire each of the alleged discriminatees due to his destruction of his notes after making his hiring decisions raises significant suspicions, but suspicions are no substitute for proof.

As already noted, there is no evidence of animus on the part of the Respondent's managers who made the hiring decisions prior to the employment of any former UNICCO supervisors. There is no probative evidence of a hiring scheme designed to deny employment to employees who supported the Union, nor is there any evidence of inconsistent hiring practices. A majority of the workforce hired by the Respondent consisted of former UNICCO employees, including employees who had participated in the strikes and been photographed at union rallies.

The General Counsel argues that I should discredit the testimony of Montoya, who denied having any conversation relating to the Union with anyone from TCB, and Sierra, who denied that he "tried to find out which employees were strong Union supporters" or even asking "about Union support," and impute Montoya's knowledge to Sierra. That imputation would require that I infer that Sierra did ask about, and that Montoya did identify, individuals who engaged in significant union activity including each of the alleged discriminatees. The General Counsel further argues that I should discredit Sierra's testimony that he did not recall why he failed to hire each of the alleged discriminatees and infer that he did recall why he failed to hire them. Finally, the General Counsel argues that I should discredit Sierra's testimony that his determination not to hire was based upon whether "an area was not up to par, was neglected" and identifying the employees who worked in that area and find instead that his decision not to hire was based upon the discriminatees' strong support of the Union.

Thus, in order to find that the General Counsel sustained the burden of proof, I would have to rely upon three inferences: first that Montoya, contrary to his testimony and the testimony of Sierra, did make Sierra aware of the union activity of the alleged discriminatees; second, that Sierra, contrary to his testimony, did recall why he failed to hire the alleged discriminatees; and third, that Sierra, contrary to his testimony, made his hiring decisions based upon the alleged discriminatees' union activity rather than identifying the employees who worked in one of the areas that he determined were "not up to par, neglected."

The foregoing inferences do not constitute substantial evidence. The Board has long held that "[i]nferences must be founded upon substantial evidence upon the record as a whole" and since an inference is not substantial evidence, "an inference based on an inference is impermissible." *Steel-Tex Manufacturing Corp.*, 206 NLRB 461, 463 (1973); *Diagnostic Center Hospital Corp*, 228 NLRB 1215, 1216 (1977). This record does not establish that the Respondent denied employment to the alleged discriminatees because of their union activities. I shall recommend that paragraph 9 of the complaint be dismissed.

3. The Obligation to Bargain

Paragraph 10 of the complaint alleges the failure and refusal of the Respondent to recognize and bargain with the Union since March 9, and the Respondent's answer admits that refusal. The obligation to bargain is predicated upon the status of the Respondent as a successor. The parties stipulated that the Respondent, as of March 9, "employed a substantial and representative complement" of unit employees "as a majority" of its workforce that had been "previously employed by UNICCO," did hire a majority of former UNICCO employees, and that "the cleaning, janitorial, custodial, and housekeeping work" formerly performed by UNICCO

"has been performed … in a substantially similar manner" by the Respondent. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). The Respondent is a successor.

Notwithstanding its status as a successor, the Respondent contends that it is not obligated to bargain insofar as the unit is inappropriate. As already discussed, the Respondent decided to subcontract some of the work performed by UNICCO, the groundskeeping work and the work at certain buildings, to four subcontractors. The Respondent has ceased subcontracting the work initially subcontracted to one of those subcontractors, Exceed.

Although the answer of the Respondent raised multiple defenses, the parties have stipulated that the denial of the appropriateness of the unit is limited to the following issues:

A. The recognition of then SEIU Local 11 by UNICCO was unlawful.

B. The collective bargaining unit recognized by UNICCO for Nova Southeastern University is not appropriate for successorship purposes because the work formerly performed by UNICCO is now being performed the Respondent, Excel Corp., Planned Building Services, and Greensource Corp.

C. On the date the Respondent is alleged to have incurred a bargaining obligation … Exceed [which ceased to be a subcontractor] was performing the janitorial work for Nova Southeastern University at the East Campus Building, the Main Library, and the Dormitories at Central Campus.

Exceed ceased being a subcontractor approximately a month and a half or two months after February 19, and the Respondent employed Exceed's employees. The Respondent argues that Exceed was never shown to be a successor. That is irrelevant. Regardless of whether Exceed was a successor due to employment of former UNICCO employees, Exceed's employees became new employees of the Respondent after the bargaining obligation had attached. New employees are presumed to support a union to the same extent as employees in the employee complement. *Christopher Street Corp.*, 286 NLRB 253 at fn. 2 (1987).

The Respondent presented no evidence establishing that the recognition of the Union by UNICCO was unlawful. A successor seeking to avoid an obligation to bargain bears the burden of proof and must "affirmatively prove a lack of majority at the time of recognition." *Concord Services*, 310 NLRB 821, 822 (1993). The Respondent has not done so.

Although the Respondent decided to subcontract some of the work that had been performed by UNICCO, the Respondent's employees at Nova who had formerly been employed by UNICCO are performing the same work in the same buildings under the same supervision as they had been for the predecessor. The parties have stipulated that, as of March 9, former UNICCO employees constituted a majority of its workforce. Because of the subcontracting, the Respondent TCB's workforce was smaller that the workforce of UNICCO. A diminution of the size of a unit does not render the unit inappropriate. "The Board has long held, with court approval, that under proper circumstances, the obligation to bargain with an incumbent union may be found although the work force is considerably diminished by the transfer." *William B. Allen*, 267 NLRB 700, 705 (1983). See also *MSK Cargo/King Express*, 348 NLRB 1096 (2006).

A single employer bargaining unit is presumptively appropriate. See *Harbor Plywood Corporation*, 119 NLRB 1429, 1432 at fn. 4 (1958). The Respondent presented no evidence that would render a unit of its janitorial employees inappropriate. The precedent cited in the Respondent's brief is inapposite. In *Sears Roebuck & Co.*, 152 NLRB 45 (1965), the Board

found an overall warehouse unit appropriate, noting the integration of function among the various classifications of warehouse employees. In this case, there is no integration. Employees work in their assigned buildings and areas, the very assignments that were the predicate for the Respondent's hiring decisions. In *Ochsner Clinic*, 192 NLRB 1059 (1971), the Board found a unit of radiological technicians appropriate. The language quoted in the Respondent's brief is from Chairman Miller's dissent. *International Offset Corp.*, 210 NLRB 854 (1974), involved an economically motivated termination of operations after which the alleged successor did not hire a majority of the predecessor's employees.

The Respondent has cited no case holding that its decision to subcontract certain work previously performed by the predecessor provides a basis for depriving its employees of their collective bargaining representative. "[I]t is well established that the bargaining obligations attendant to a finding of successorship are not defeated by the mere fact that only a portion of the former union-represented operation is subject to a sale or transfer … so long as the unit employees … constitute a separate appropriate unit and comprise a majority of the unit …." *Paramus Ford*, 351 NLRB 1019, 1023 (2007), citing *M.S. Management Associates*, 325 NLRB 1154, 1155 (1998). A single employer unit of full-time and regular part-time employees of TCB performing cleaning, janitorial, custodial and housekeeping employees at the Nova campuses constitutes a separate appropriate unit. The Respondent, by failing and refusing to recognize and bargain with the Union, violated Section 8(a)(5) of the Act.

Conclusions of Law

By failing and refusing to recognize and bargain with Service Employees International Union, Local 32BJ, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having failed and refused to recognize and bargain with Service Employees International Union, Local 32BJ, the Respondent must recognize and bargain with the Union as the exclusive collective bargaining representative of the employees in the appropriate unit and, if an understanding is reached, embody that understanding in a signed agreement.

The Respondent must also post an appropriate notice. Counsel for the General Counsel requests that the notice be posted in English, Spanish, and Haitian Creole. I concur. As already noted, testimony herein was elicited through both a Spanish and Haitian Creole interpreter.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, TCB Systems, Inc., Miami, Florida, its officers, agents, successors, and assigns, shall

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Failing and refusing to recognize and bargain collectively in good faith with Service Employees International Union, Local 32BJ, as the exclusive collective bargaining representative of the employees in following appropriate unit:

All full-time and regular part-time cleaning, janitorial, custodial and housekeeping employees employed by Respondent who are assigned to perform work at Nova Southeastern University campuses in Miami-Dade County and Broward County, Florida.

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

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

(a) Recognize and bargain with Service Employees International Union, Local 32BJ, as the exclusive collective bargaining representative of the employees in the appropriate unit and, if an understanding is reached, embody that understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facilities at Nova Southeastern University campuses in Miami-Dade County and Broward County, Florida, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The notices shall be posted in English, Spanish, and Haitian Creole. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 9, 2007.

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

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

Dated, Washington, D.C. October 16, 2009

_____
George Carson II
Administrative Law Judge

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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 fail and refuse to recognize and bargain collectively in good faith with Service Employees International Union, Local 32BJ, the exclusive collective bargaining representative of you who are in the following appropriate unit:

All full-time and regular part-time cleaning, janitorial, custodial and housekeeping employees employed by Respondent who are assigned to perform work at Nova Southeastern University campuses in Miami-Dade County and Broward County, Florida.

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 recognize and, on request, bargain with the Union and, if an understanding is reached, embody that understanding in a signed agreement.

TCB SYSTEMS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

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

201 E. Kennedy Blvd., South Trust Plaza, Suite 530, Tampa, FL 33602–5824, (813) 228–2641,
Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228–2455