NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

ABC Industrial Laundry, LLC d/b/a Universal Laundries & Linen Supply *and* America Ortiz Vazquez *and* Maria Guadalupe Rojas *and* Martha Castillo. Cases 28–CA–22133, 28–CA–22219, and 28–CA–22286

March 2, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On September 28, 2009, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board[1] has considered the judge's decision and the record in light of the exceptions and briefs,[2] and has decided to affirm the judge's rulings,[3] findings,[4] and conclusions[5] and to adopt the recommended Order as modified.[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, ABC Industrial Laundry, LLC d/b/a Universal Laundries & Linen Supply, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Selecting for layoff and laying off its employees because it suspected they supported the union activities of their fellow employees."

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

Dated, Washington, D.C. March 2, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, 590 F.3d 849 (10th Cir. 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

[2] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] The Respondent has excepted to the judge's ruling striking portions of the testimony of Respondent's CEO Moshe Levy because the Respondent violated the judge's sequestration order. Having reviewed the struck testimony, we conclude that it would not affect our findings here and thus the judge's ruling was, at most, harmless error.

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

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) of the Act by selecting for layoff and laying off employees Maria Guadalupe Rojas and Martha Castillo, we find, in agreement with the judge, that the Respondent's selection of Rojas and Castillo to view a union-related video evinces the Respondent's suspicion of their union activities and support. In the absence of evidence of the video's content, however, we do not rely on the video as evidence of the Respondent's antiunion animus. We do not adopt the judge's finding that the Respondent's failure to recall Rojas and Castillo violated Sec. 8(a)(3) and (1), as that finding would not materially affect the remedy.

The judge found, and we agree, that the Respondent unlawfully threatened that selecting a union would be futile when Plant Manager Kobi Levy told employee America Ortiz Vazquez that other laundries had unions but his did not. Accordingly, we find it unnecessary to pass on the judge's finding that Moshe Levy's statement that he was not "going to give a pay increase because it was a small company" similarly conveyed futility. Any such finding would be cumulative and would not affect the remedy.

We also adopt the judge's finding that the Respondent, on several occasions, interrogated its employees regarding their union sympathies and activities, in violation of Sec. 8(a)(1). We find it unnecessary to pass, however, on the judge's finding that Kobi Levy's solicitation of questions following the presentation of the union-related video constituted an unlawful interrogation, as any such finding would be cumulative and would not affect the remedy.

[5] There are no exceptions to the judge's recommended dismissal of the allegation that the Respondent unlawfully discharged employee Alejandra Romero.

[6] We shall modify the judge's recommended Order and substitute a new notice to conform to the violations found.

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 discharge you because we suspect you have engaged in activities in support of a union.

WE WILL NOT select you for layoff and lay you off because we suspect you supported the union activities of your fellow employees.

WE WILL NOT interrogate you regarding your union sympathies and activities and the union sympathies and activities of your fellow employees.

WE WILL NOT threaten you with discharge and/or deportation in order to discourage you from engaging in activities in support of a union.

WE WILL NOT threaten you with unspecified reprisals in order to discourage you from engaging in support for a union.

WE WILL NOT threaten you that selecting a union to represent you will be futile.

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

WE WILL, within 14 days from the date of the Board's Order, offer America Ortiz Vazquez, Maria Guadalupe Rojas, and Martha Castillo full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make America Ortiz Vazquez, Maria Guadalupe Rojas, and Martha Castillo whole for any loss of earnings and other benefits resulting from their respective discharge and layoffs, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of America Ortiz Vazquez and the unlawful layoffs of Maria Guadalupe Rojas, and Martha Castillo, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharge and layoffs will not be used against them in any way.

ABC INDUSTRIAL LAUNDRY, LLC D/B/A UNIVERSAL LAUNDRIES & LINEN SUPPLY

Winkfield F. Twyman, Jr., Esq., for the General Counsel.
Gregory E. Smith, Esq. and *Malani L. Kotchka, Esq. (Lionel Sawyer & Collins),* of Las Vegas, Nevada, for the Respondent.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The original and amended unfair labor practice charges in Case 28–CA–22133 were filed by America Ortiz Vazquez, an individual, on September 15 and December 30, 2008, respectively; the unfair labor practice charge in Case 28–CA–22219 was filed by Maria Guadalupe Rojas, an individual, on November 7, 2008; and the unfair labor practice charge in Case 28–CA–22286 was filed by Martha Castillo, an individual, on December 17, 2008.[1] Based upon his investigation of the aforementioned unfair labor practice charges, on February 23, 2009, the Regional Director for Region 28 of the National Labor Relations Board, herein called the Board, issued a second consolidated complaint, alleging that ABC Industrial Laundry LLC d/b/a Universal Laundries & Linen Supply, herein called Respondent, engaged in acts and conduct violative of Section 8(a)(1) and Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent timely filed an answer to the second consolidated complaint, essentially denying the commission of any of the alleged unfair labor practices. Based upon a notice of hearing, the above matters came to trial before the above-named administrative law judge on May 5 and 6, 2009, in Las Vegas, Nevada. At the trial, the General Counsel and Respondent were each afforded the opportunity to call and to examine witnesses on its behalf; to cross-examine its opponent's witnesses; to offer into the record any relevant documentary evidence; to orally argue points of law; and to file a posthearing brief. Both counsel for the General Counsel and counsel for Respondent filed posthearing briefs, and said documents have been carefully examined by me. Accordingly, based upon the record as a whole, including the posthearing briefs and my observation of the respective demeanor, while testifying, of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits that, at all times material herein, it has been a State of Nevada limited liability company with an office and place of business located in Las Vegas, Nevada, and has been engaged in the business of providing laundry services to

[1] Unless otherwise stated, all events herein occurred during 2008.

hotels. Further, Respondent admits that, during the 12-month period ending September 11, 2008, in conducting its above-described business operations, it purchased and received at its facility in Las Vegas, Nevada, goods valued in excess of $50,000, directly from suppliers located outside the State of Nevada. Based upon the foregoing, Respondent admits that, at all times material herein, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that, at all times material herein, Culinary Workers Union Local 226 affiliated with UNITE HERE (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

A. The Issues

In the second consolidated complaint, the General Counsel contends that Respondent violated Section 8(a)(1) and (3) of the Act by, on or about September 10, discharging its employees, America Ortiz Vazquez and Alejandrina Romero; on or about September 29, discharging its employee, Martha Castillo; and, on or about September 30, discharging its employee, Maria Guadalupe Rojas. The General Counsel further contends that Respondent violated Section 8(a)(1) of the Act by interrogating employees about their activities in support of the Union; by threatening employees with discharge because of their activities and support for the Union; by warning its employees it would be futile for them to select the Union as their bargaining representative; by threatening employees with deportation because of their support for the Union; and by threatening employees with suspension and/or discharge because of their activities and support for the Union. Respondent generally denied any of the above-described unfair labor practice allegations.

B. The Alleged Unfair Labor Practices

1. The Facts

Respondent, which commenced its business in 2007, operates a commercial laundry in a 30,000 square foot facility in Las Vegas, Nevada, utilizing equipment which permits it to launder 100 percent cotton fabrics as well as poly-cotton materials. Moshe Levy, a seven and a half percent shareholder in the business, is the managing partner and Respondent's CEO, and his son, Kobi Levy, has been the plant manager since the end of 2007. Upon entering the front of Respondent's building, the secretary's office, in which there is a desk against the back wall and opposite the door, and the office of the chief engineer are on the left side of a corridor along with a storage room and, on the right side, are two restrooms. At the end of the corridor is a door, leading to the laundry plant.[2] To the right of the front door are stairs leading to the second floor of the facility on which Respondent's executive offices, including that used by Moshe Levy, and a lobby area are located. The Wynn Las Vegas Hotel is the only Las Vegas hotel, which utilizes 100 percent cotton sheets, pillow cases, and table clothes, and, while Respondent did not launch operations in 2007 with the assumption that the said hotel would be its only client, the Wynn Las Vegas immediately began giving it "samples" for cleaning. At the time, the Wynn Las Vegas contracted its laundry services to another commercial laundry, which had constructed a new facility especially adapted to the hotel's needs; however, throughout 2007, Respondent performed an increasing amount of the Wynn Las Vegas' laundry services, correcting problems caused by the existing contractor and doing some spa and food and beverage laundry. Then, on December 24, 2007, Moshe Levy was summoned to the hotel's offices and informed that, commencing the following week, Respondent would be given the entirety of the Wynn Las Vegas' laundry for cleaning. Thereafter, during the initial 7 months of 2008, Respondent's facility was extremely busy with all of the Wynn Las Vegas' business, and, according to Moshe Levy, ". . . we started working day and night in order to . . . finish all the work . . ."—approximately 60 to 65,000 pounds of laundry per day. As of August 2008, Respondent employed between 55 and 60 individuals, operating its equipment and performing various ancillary tasks,[3] including sorting and stacking. Directly beneath Kobi Levy[4] in the management hierarchy are Ron Brassman and Carmela Cruz Sarabia, herein called Cruz, who is a supervisor or manager for Respondent, an admitted supervisor and agent within the meaning of Section 2(11) and (13) of the Act, and the individual who performs translations from English to Spanish and Spanish to English for Respondent, and below Cruz are three women also known as supervisors, including Ana Munoz, who, according to Moshe Levy, are responsible for ". . . training the girls and watching that everything is okay."

America Ortiz Vazquez was employed by Respondent from November 2, 2007 until she was terminated on September 10, 2008. She worked as a catcher in the laundry—"I am the one who received the clothes once it was ironed. I would straighten it up and then I would pack it up on the cars." Although there is no record evidence as to which of Respondent's employees first contacted the Union or precisely when such occurred, Vazquez testified that she was a supporter of the Union and engaged in actions commensurate with being a union proponent. In the latter regard, she attended union meetings, and "I would invite my co-workers and . . . if they accepted, then I would tell the people at the Union and they would speak to them." Vazquez further testified that, on September 9, Cruz, whom she knew as Carmen Garcia, approached her at work and told her to go to the secretary's office on the first floor. According to Vazquez, upon arriving, she found Kobi Levy, Cruz, and the secretary, Mary Lou ____, waiting for her. Someone closed the door, and, with Cruz translating, Levy ". . . asked me if I was happy at my job." Vazquez said, yes. "Then, he asked me if I had any problems with the supervisor," and Vazquez

[2] On a sign, posted by the entrance into the laundry area, is wording, prohibiting the use of cameras and cell phones inside the plant.

[3] Most of the work, such as washing, drying, ironing, and folding, is done by machine.

[4] Respondent admits that Moshe Levy and Kobi Levy are supervisors and agents of Respondent within the meaning of Sec. 2(11) and (13) of the Act.

responded that she had no such problems. "Then, he asked me if I was in the union." Vazquez replied, denying any such involvement, "and then he told me he didn't believe me that there were people that was saying that I was with the union, and I denied it. I told him that perhaps they had seen me on the street . . . with some people from the Union, and that is why they might have thought I was with the union." Levy then ". . . told me to tell him the truth, because if the wanted to, he could in two minutes find out whether or not I was with the union, and that, if he found out I was with the union, not [only] would I just be fired from my job, but that he was going to get me out of the country. I continued to deny it, and he said that many laundry places had a union but that this did not, and then he said to go back to work."[5]

Vazquez further testified that, the next day, September 10, in approximately the middle of the work day, Cruz again came to her work station and told her to go to the secretary's office on the first floor. Upon arriving, she observed another employee, Alejandrina Romero,[6] Cruz, and Ana Munoz[7] waiting in the room. . . . Cruz began by asking both employees "'what is going on with you guys?'" Vazquez replied she did not know, but Romero looked at her and said "'We're here because of the union.' To this, ". . . I said 'but I am not with the union.' And [Romero] said, 'You called me over the phone.' I denied it. And then [she] told me that Kobi told her, 'If I give him just a single name of someone that was with the Union, I wasn't going to lose the job. . . . And your name was the first one I could come up with.' I told her, 'Are you certain that I am with the union,' and she told me, 'Yes, you called me over the phone.' I continued to deny it."[8] At this point, Kobi Levy entered the secretary's office, sat down, was quiet for a moment, and then, with Cruz translating, asked me why I had lied to him. "Why had I told him I wasn't with the union when I really was? I continued to deny it, and [Romero] kept saying to me 'It is just that I told him if I didn't give him a name, I was going to be fired.' I kept telling [Romero] 'Can you prove that I am with the union?' She said 'Yes, because you called me. That is why.'" At this point, Levy said that he did not believe either employee, accused both women of lying to him, and said both were fired.[9]

Maria Guadalupe Rojas, who was employed by Respondent from August 30, 2007 until on September 30, 2008 as a catcher and a packer in the laundry, testified that she became aware of the union organizing at Respondent's facility some time during the last 3 months of her employment and that she attended union meetings. She recalled being taken into a company office on three occasions and asked about union activities and specifically remembered one such occasion approximately a month prior to her layoff when she met with Carmela Cruz, whom she knew as Carmen Garcia, and Kobi Levy. Previously, with Cruz translating, Levy had asked her ". . . what was going on, why was I doing that," and Rojas had been nonresponsive. On this occasion in response to the same question, she admitted ". . . that the people from the union had called me, but it was just a phone call, and he said that I should have told him about that because it related to the company." Rojas replied that she considered it "private to me" and that she did not owe him "an explanation." To this, Levy ". . . said that to think through what it was what I was doing because it was not going to be good for us." Levy failed to specifically deny either the incident or the comments attributed to him by Rojas.

Respondent attributed any interrogations of its employees and the discharges of Vazquez and Romero to the purported theft of a portion of a list of its employees' names and telephone numbers. In these regards, Carmela Cruz testified that an alphabetized list of the first names of Respondent's employees and their telephone numbers, consisting of several separate pages, was attached, by tape, to the wall behind the desk of Respondent's secretary, Mary Lou, in her first floor office[10] and that Mary Lou would utilize this list in order to telephone and ask employees to work on their days off. During his cross-examination of Cruz, who had been called as a witness by counsel for the General Counsel on the first day of the hearing, Respondent's counsel showed her Respondent's Exhibit No. 1, a six page list of names and redacted telephone numbers with no apparent pages missing or ripped apart,[11] and asked "is that the list to which you referred in your testimony" but with the last names and telephone numbers redacted, and Cruz answered, "yes." During the second day of the trial, called as a witness by counsel for Respondent, Cruz abruptly changed her testimony, stating that, as the document did not contain the names of employees, who had been laid off later in the month, Respondent's Exhibit No. 1 was not the September 2008 list of Respondent's employees' first names and telephone numbers. Reminded, by me, of her previous testimony, Cruz averred that Respondent's attorney had actually ". . . asked me if this is like the paper that was posted on the office. Not exactly . . . . I answered a question as this is like the list that you saw in the office."[12] Ultimately, regarding the above exhibit, Cruz averred,

[5] Vazquez did not know to which union Kobi Levy was referring; he just said "the union."

[6] Vazquez testified that Romero did not have an established job; rather, "she would switch around in different areas."

[7] According to Vazquez, while she was required to wear a blue shirt with her name in the front while working, Munoz wore a white shirt as did the other company supervisors. Also, Munoz was paid on a salary basis and could transfer workers from job to job. While the General Counsel contends that Munoz is a supervisor within the meaning of Sec. 2(11) of the Act, as she did not engage in any of the unfair labor practices herein, I decline to make such a finding.

[8] During cross-examination, Vazquez admitted that she had, in fact, spoken to Romero over the telephone about the Union and that she was not telling the truth during meeting on September 10 in front of Cruz.

[9] Neither party called Romero as a witness; as a result, there is no evidence as to her version of the foregoing incident. I do note that, by all accounts of their clash when confronted by Kobi Levy on September 10, her interests and those of America Vazquez were adverse and that Respondent chose to believe Romero and rehired her a week after discharging her.

[10] As stated above, the wall, on which the list was posted, is opposite the office door.

[11] The list of names goes from Adelita through Yesenis.

[12] At this point, Respondent's attorney stated that Respondent's Exhibit No. 1 ". . . was represented to be a recreation of the list." Asked if he had utilized the term "recreation" the day before, the attorney trumpeted, "I most certainly did, your honor. I was very careful . . . ." A

"This is how [the list] looked." Contradicting Cruz, Kobi Levy testified that the asserted list, consisting of five or six separated pages, was posted "on the left side wall of the secretary." As to evidence probative of the existence of the list, Respondent failed to call as a witness the secretary, Mary Lou, and offered no explanation for its failure to do so.

Regarding how Respondent learned that a portion of the list may have been stolen, Cruz testified that, some time prior to the discharges of Vazquez and Romero, "a lot of people" began complaining to her about phone calls from and visits to their homes by union officials. According to Cruz, she learned of one such home visit on a Friday prior to the discharge of Vazquez when she approached a group of employees, including Carmen Rojas, and Rojas ". . . told me . . . a [man and a woman] went to her house. . . . She . . . was going out to buy some things [at] the store, and she told [her visitors] she will come back. When she [returned] to her house, they are . . . there waiting for her." Then, according to Cruz, Rojas said she invited the two people into her house. They said they were union representatives, asked if she wanted to support the union, and asked her to "sign some papers." Rojas refused to sign anything until the union representatives explained what signing the papers meant. The female union representative said Rojas should sign and then she would explain the meaning of the forms. Cruz further testified Rojas then told her ". . . that she had seen a list and . . . they have [the] list. They told her that America give it to them." Cruz added that Rojas said she asked the union representatives specifically about the list ". . . because it was strange for her to [see] . . . phone numbers and the names on their hands'" in front of her. Cruz recalled Rojas saying she was not ready then to support the union and wanted to speak to her coworkers about it and added that the supervisor Ana Munoz was with her at her home at the time the union representatives came to the house. Cruz next testified she spoke to Munoz "a few minutes" after speaking to Rojas, and Munoz ". . . told me that it was true . . ." but, other than assertedly hearing the name America, could not corroborate what the union officials said to Rojas. Cruz also testified that she informed Kobi Levy about the telephone calls and visits to employees' homes by union agents, including the Carmen Rojas episode; however, Levy failed to corroborate Cruz that she specifically informed him of the Rojas incident.[13] Likewise, Levy recalled that employees were ". . . complaining that there are people that are calling their houses . . . or waiting [there] when they come from work and they come to me and they said 'You are the only one who has our numbers and our addresses, so it has to come from you.'"

According to Levy, aware that a list of employees' names and telephone numbers had been posted in the secretary's office, he immediately went there and observed that the "bottom" page of the list was missing and that the bottom quarter of another page had been ripped off.[14] On this same point, Carmela Cruz testified that, after hearing from employees about the union agents' visits and telephone calls to their homes, she went to the secretary's office with Kobi Levy and observed one of the pages of the list of names and telephone numbers ripped apart, with the portion of the page with phone numbers missing. Then, the secretary, Mary Lou,[15] pointed to the list on the wall and told them a page was missing. Kobi Levy further testified that, immediately upon becoming aware of what appeared to be a theft, he instructed the secretary to remove the remaining pages of the list of names and telephone numbers from the wall and to place the information in the office computer.

Then, Levy testified, he informed his father Moshe of the missing pages from the list of names and telephone numbers, and the latter instructed Kobi to find out what was happening. Kobi averred that he and his father were especially concerned as August 2008 was an especially hard time for the business with the occurrence of several suspicious and unusual incidents— ". . . we have a lot of problems from our competition. . . . I'm talking stealing and shooting, and people taking pictures of what we did . . . ." According to Kobi, pursuant to his father's instructions, using Cruz as his interpreter, he began interrogating Respondent's employees.[16] In this regard, after initially asserting that the alleged theft of a portion of the employee telephone list was Respondent's issue and denying a union was ever Respondent's concern (". . . the union, for us, wasn't the issue, and today is not the issue also"), Levy ultimately conceded that a union was mentioned during these interrogations ". . . because when I know that the list came—in this point, it came to a union." He added, "Of course I asked . . . if they got a call from the union. I said the word union. I'm not going to lie and say I didn't say the word union, but the union wasn't the issue . . . it could be the IRS, it could be the union." Contrary to his assertion, Levy's issue, in fact, appears to have been the union, for, as Levy admitted, "the question [to each employee] was do you know who's calling the people in behalf of union . . . ?"[17] During cross-examination, Levy continued to maintain that the issue was not the union and said he only questioned those employees who had reported telephone calls to their homes. Asked how he knew which employees to question, Levy said "at the beginning they came to me. And then it was one after the other, one after the other. And I wasn't talking with all of them in the office. Some of them I met in the plant . . . and we start talking. It wasn't a formal talking. I just

review of the transcript fails to support the assertions of either Cruz or Respondent's attorney.

[13] Neither Rojas nor Munoz testified at the trial, and Respondent failed to offer any explanation for the failure of both to testify. Of course, I recognize the hearsay nature of Cruz's uncorroborated testimony regarding Rojas's comments. While the Board requires that I receive such testimony, the weight afforded to it is subject to my discretion.

[14] Contradicting Levy, Cruz testified that he was aware of the missing page only because the secretary told him a page was missing.

[15] There is, of course, no corroborating evidence regarding pages of the putative list ripped apart or missing; nor is there any explanation as to why the secretary, Mary Lou, failed to inform Respondent about the asserted missing pages. I again note that Mary Lou failed to testify and that Respondent offered no reason for not calling her as a witness.

[16] As to the number of employees to whom he spoke about the Union, Levy said, "I don't remember but more than ten."

[17] Apparently, realizing his mistake, Levy quickly reversed himself, stating ". . . again, we didn't know it was the union or not, because I was a hundred percent sure that this was one of our competition."

wanted to know what's going on."[18] Eventually, Levy testified, "I come up with the name America," and learned that the only employee with America as a first name was America Vazquez. Thereafter, ". . . I went to my father. I told him everything . . . . about it, and he said go ahead and talk to her and this is what I did."

Kobi Levy testified that "my father" made the decision to terminate America Vazquez and that he is "a hundred percent" sure of that. Thus, in accord with his father's instructions, Levy asked Carmela Cruz to bring Vazquez to the chief engineer's office, and, with Cruz translating, he asked Vazquez ". . . who took the list from the board?" At first, Vazquez denied taking the list of names but, under Levy's persistent questioning, including a threat to contact the Las Vegas police about the theft, she ". . . said, okay, I . . . .' This is what I understood from Carmela, 'I took the list, but I didn't give it to . . .the union.'"[19] Hearing this admission, Levy further testified, he told Vazquez to return to work and then reported to his father, telling him that, at first, Vazquez lied in denying she took the list and that he told Vazquez she was lying.

"Because I knew she was lying." His father[20] then ". . . told him that if she is the one who took the list, to let her go home. He wanted to call the police, and I said, no." Next, Kobi Levy had Alejandrina Romero summoned to the secretary's office and asked her if she had taken part of the list of employees' names. Romero replied ". . . that whoever took the list is America and not her." Then, Levy testified, he instructed Romero to remain, and ". . . called [Vazquez] to the office. . . . And then they start arguing in Spanish, which I didn't understand. . . . I didn't understand a word of what they saying, and I said, 'You know what, both of you, just go away from here. And this is what happened."[21] Asked why Respondent fired Vazquez, Levy said the only reason was that "she took the list of name[s] of people that . . . belonged to the company and . . . used it." Asked why he also fired Romero, Levy answered, "Because I didn't have the time even to talk to her. . . . and she said that she didn't take the list. . . . I wasn't so sure I needed to talk to her more." Nevertheless, he had her remain in the office as Vazquez was brought back, "and it was what I expected it to be. . . . So because I wasn't sure about both of them, I told them to go away. I mean, for America I can tell for a hundred percent, she was the one who took the list. . . . She was the one . . . . because she admitted it, second . . . because the people came to me and said the name America. . . . I don't care who she's giving the list to, but she's the one who took the list. . . . She took the list from the office."[22]

Regarding the discharges of alleged discriminatees Vazquez and Romero, Cruz, who stated that Kobi Levy terminated both employees but that she had no knowledge of the reason for their discharges, testified that she was present at both meetings in the secretary's office between Kobi Levy and Vasquez and acted as the interpreter. While unable to recall much about the initial meeting, she did recall Vazquez saying ". . . that [Romero] was the one who took the list."[23] Then, she and Levy met with Romero and the latter ". . . said that she didn't know about [the list] . . . . She heard that it was America . . . the one who took the list, and they were bringing people to the Union." Because the two women were "contradicting" each other, Kobi Levy instructed her to bring Vazquez back into the room. Cruz did so, and then the two employees immediately ". . . started arguing. They said, 'No, you did it. No, you did it.'" According to Cruz, they were arguing about the list with each blaming the other for taking it. Then, Levy, who had left the office before Cruz returned with Vazquez, entered the office, "and then he asked who took the list." At this, the two alleged discriminatees resumed their arguing, with each blaming the other for stealing it. Finally, Levy said ". . . 'that's enough. Both of you go out of here.'" He then turned to Cruz and instructed her to ". . . 'tell them that this is not because of the union' because both of them were mentioning the union . . . 'tell them it is because of the list.'" At this point, Kobi Levy walked out of the office, and Cruz told the two women that they had been fired. Contradicting Levy, asked if America Vazquez admitted she was the one who had stolen the list of names, Cruz responded, "Not that I can remember."

Cruz further testified that Romero telephoned her at home later during the evening, ". . . and she told me that America as

[18] Asked what he meant by wanting to know what was "going on," Levy replied, "When I saw that the list was missing . . . all the names that were in this page was missing, those were the people that were being addressed. So when I started to see and to put one to one together, I took eventually the list and I went to this, and this, and that, and back and forth." Levy never directly answered the question.

Levy denied saying to any employee, give me a name and you can keep your job.

[19] Asked if his questions to Vazquez only concerned the list, Levy said ". . . it's no union. That's it." Asked if his questions to Vazquez related to his suspicion that she was the one who had given the stolen information to the Union, Levy said, "I have no other, and . . . so I was pretty sure that it was her."

America Vazquez denied being aware that a list of names and phone numbers was attached to the wall above the secretary's desk in her office. She further denied that the list was mentioned during her September 9 and 10 meetings with Kobi Levy or that, during said meetings, Levy accused her of taking the list. Moreover, Vazquez denied being aware a list of Respondent's employees' names and phone numbers had been taken or, while admitting informing the Union how to contact her fellow employees, giving employees' phone numbers to the Union. Finally, Vazquez specifically denied stealing a portion of Respondent's list of employees' names and telephone numbers from the secretary's office.

[20] Moshe Levy testified at the hearing that Vazquez was terminated for "stealing documents from the company" and, while having no personal knowledge, asserted she also admitted to the theft. Other than the foregoing, Moshe Levy failed to corroborate the testimony of his son inasmuch as portions of his testimony were stricken from the record due to Respondent's violation of a sequestration order.

[21] Levy conceded he never said the employee were fired, said he maintained he only mentioned the list to both employees, and denied mentioning the word union.

[22] Levy denied knowing anything about Romero's involvement with the Union and professed not to care. Further, other than knowing she gave the list of names to a union, Levy denied knowing the extent of Vazquez' involvement.

[23] Testifying on the first day of the trial, Cruz recalled Kobi Levy asking Vazquez to return the list, and, when she denied having it, "he said that a lot of people told him that they saw her coming out of the office with a paper." But, "she still denied it."

pleading with her that 'Yes, I was the one who was telling the Union to call the people, you want to come with me?'"[24] In the same vein, Moshe Levy testified that, approximately a week after the discharges, he telephoned Romero at home, and ". . . I asked her directly who stole the documents, and she told me that she did not take anything, that America stole it, and they were fighting about it, and she is telling me the truth, and by looking at her eyes and asking her I believed her." Accordingly, he offered to return Romero to work, and she accepted. Then, perhaps realizing the incongruity of his testimony, Levy changed his account, stating that the foregoing conversation occurred in his office at Respondent's facility—"she came to work. She wanted to talk to us. I spoke to her and decided to hire her back."

Maria Guadalupe Rojas testified that, on September 24, she was working her usual job and that, at approximately 4 .pm., Carmela Cruz approached her, and "she took me out of my . . . area of work. Then, ". . . she asked me to make a report regarding the Union." According to Rojas, Cruz handed her a blank sheet of paper and said ". . . to give a report on what I knew about the union. . . . I asked her what would happen if I didn't do the report. She said that she would have to ask Kobi or otherwise they wouldn't let us punch in." Also, Rojas testified, "Cruz mentioned to me that she wanted me to mention America . . . ." Thereupon, Rojas began writing on the sheet of paper "what I knew of the Union" without mentioning any names or detailing her own involvement with the union—"I only mentioned that people from the union had spoken to me." She then signed and dated the document. Later, Cruz retrieved the sheet of paper from Rojas, and the latter observed Cruz also collecting papers from other workers. Carmela Cruz failed to deny the foregoing testimony.

Martha Castillo worked for Respondent as an ironer in the laundry from December 29, 2007 until September 29, 2008. There is no evidence that she engaged in any activities on behalf, or in support, of the Union, and, when asked if Castillo engaged in union activities, Rojas replied, "no." In any event, according to Castillo, at approximately 11 p.m. on September 27, Kobi Levy summoned her to Moshe Levy's office on the second floor of Respondent's facility. When she arrived, she observed several supervisors, including Cruz, and at least three other employees, including Guadalupe Rojas, already in the room. With Cruz translating, Moshe Levy said ". . . that he was going to introduce us to a company representative." The representative, who Castillo described as being "tall, fat, bald, and white," then introduced himself and, with Cruz translating, said ". . . he was going to show us a video regarding the Union." The man then played the video, which lasted for 20 minutes and which presumably portrayed the Union in a dissentient manner, and, upon its conclusion, said ". . . that it wasn't a good thing for us to be in the Union." Then, with Cruz translating, Moshe Levy said that, if we were in the Union because of pay increases, that he wasn't going to give a pay increase because it was a small company." Kobi Levy then asked if there were any questions. There were none, and the employees returned to work. Maria Guadalupe Rojas also recalled being present for the showing of this video; however, she remembered viewing it "twenty days prior" to her layoff.

Moshe Levy's account of the showing of this video was rather bizarre. According to him, "I don't know what happened . . . . somebody approached . . . me and he said that there is a trial against us about meetings, activities and all that. I didn't understand him, he said, 'we want to talk to the girls here to explain to them what it means.' I didn't know where they were coming from. . . . I said 'okay, if you want to talk to them about union or whatever, non-union or whatever, talk' . . . . When I realized what is going – I left the place and I sat in my room, showed the video, then he called me back and he said he wanted to come back." According to Levy, he refused the offer and averred that showing the video was a mistake. Asked who watched it, Levy replied "supervisors;" however, he later conceded "some regular people, too" watched it. Asked if he said anything prior to showing the video, Levy said, "When I told them somebody is here that is coming to show us what is the Union, or against, I wasn't myself. I didn't know. And that's it. Asked by me if I should conclude these people just showed up uninvited or unsolicited and said they wanted to show a film, Levy replied, "I don't know how they do it. . . . I didn't know the company. They heard the lawsuit that we had . . . ." Finally, Levy asserted the video incident occurred in October ("Yeah, something in October"),[25] and asserted that Castillo and Rojas fabricated their respective testimony, regarding having been present when the video was shown. Later, given an opportunity by counsel to change his testimony, Levy stated the showing of the video "maybe" was after the layoffs, "but it was certainly after the whole situation happened, like the lawsuit against us and everything."

Rojas testified that, on September 30, after two days off, she arrived at work and noticed that her name and that of a coworker, Martha Castillo, who also was returning after two off days, were not on the work schedule. Moments later, a shift supervisor approached and told the two employees their names were not on the schedule ". . . because we had been laid off." The supervisor was unable to explain the reason for their layoffs and suggested that they speak to either Moshe Levy or Kobi Levy or the secretary, Mary Lou. The latter arrived at the laundry a short while later but also was unable to explain the reason for their layoffs. She added that Moshe or Kobi would be able to give them an explanation but that neither would be at the plant for the next two or three days. Thereafter, on the following Thursday, Rojas came to Respondent's facility and, with Mary Lou translating, spoke to Moshe Levy. The latter explained that employees would be laid off for 30 to 40 days and ". . . they would call me because work had 'gone down'—and that I would get called later." Moshe added that employees were being laid off and not discharged. Castillo recalled that she was informed of her layoff from work on September 29. On that date, according to Castillo, upon arriving for work, Cruz approached her and said she was being laid off pursuant to Kobi Levy's order. Contrary to Moshe Levy's assurances,

[24] Cruz's testimony was contradictory on this point. Thus, earlier she claimed that Romero said Vazquez had been "threatening" her.

[25] Given an opportunity to reconsider his testimony as to when the video was shown, Levy again said he believed it was after the layoffs.

neither alleged discriminatee was ever recalled to work.

In Respondent's defense, Moshe Levy testified that, commencing in August, the amount of laundry from the Wynn Las Vegas dropped to approximately 40,000 pounds per day due to a decline in occupancy at the hotel caused by the nation-wide recession. As a result, he decided to lay off seven or eight employees, and ". . . we told whoever I laid off, I told them, 'come back in December.' Why? Because the Encore opened in December. So . . . we had again more employees to bring over."[26] As to how employees were chosen for layoff, "I selected them by their work. If they were catchers and two people, I took one from each position so that I won't have double." Asked how he chose, Levy replied, "just by picking, that's all . . . . I just pick a number. I didn't pick a person specifically." He confirmed that Rojas and Castillo were included in the layoff but denied being influenced by union involvement or knowing any employees who were supporters of the Union. Continuing, Levy testified that he met with five employees, who had been selected for layoff, on Sunday, September 28. "I explained to them that their work [has dropped dramatically] and show them . . . we are starting to work at 9:00 and a commercial laundry usually starts at 5–6 o'clock . . . and I told them that we have to lay them off . . . because we don't have work. And I told them in December to come back because we are getting them work, and I want them to do the work." He added that the reason he told the workers to return in December is because "I knew before" that Steve Wynn would be opening his Encore Hotel that month. Further, while conceding that, in the past, Respondent had laid off employees and then recalled them, Levy averred that he had done so ". . . because we didn't know what we were getting from the week. We had no contract. We just worked." If work came in, ". . . I have to finish it up tomorrow." However, when he spoke to the employees in September ". . . because I knew when we were getting work . . . I had no problem telling them come on December, we are working." Finally, asked if Rojas or Castillo had just walked into the laundry in December he would have returned them to work, Levy replied "absolutely, yes."[27]

Carmela Cruz corroborated Moshe Levy, testifying that five or six employees were laid off in September. Specifically, she identified employees, Citlalli Misqua, Griselda Ramirez, and Annabelle Aruvias, as well as Rojas and Castillo as the employees, who were laid off. Also, she denied Castillo's testimony regarding having informed the alleged discriminatee she had been laid off.

2. Legal analysis

The General Counsel alleges that Respondent discharged its employees, America Vazquez, Alejandrina Romero,[28] Maria Guadalupe Rojas, and Martha Castillo, in violation of Section 8(a)(1) and (3) of the Act. He further alleges that Respondent violated Section 8(a)(1) of the Act by various actions including interrogating its employees concerning their activities in support of the Union, threatening its employees with suspension, discharge, and/or deportation because of their support for the Union, and warning its employees it would be futile for them to select the Union as their bargaining representative. Given the conflicting accounts regarding the incidents at issue herein, it is obviously essential that I resolve the credibility of the several witnesses presented by both the General Counsel and by Respondent. As to this, the most impressive of the witnesses were Rojas and Castillo. Each appeared to be testifying in a veracious manner and conscientiously attempting to recall events and conversations several months in the past. Therefore, I shall credit the candid testimony of each and, in particular, note that neither Kobi Levy nor Carmela Cruz specifically denied comments attributed to each by Rojas and that Moshe Levy and Kobi Levy failed to specifically deny Castillo's testimony regarding their comments after the showing of the union-related video. Likewise, noting her demeanor as a witness, I believe America Vazquez testified in a generally trustworthy manner. In this regard, the alleged discriminatee candidly admitted that, while being interrogated by Kobi Levy, she dissembled when she denied having telephoned Romero about the union. As to Carmela Cruz, whose demeanor was that of a witness testifying in a manner designed to buttress her employer's legal position, I was nonplussed on the second day of the hearing by her mendacity in asserting to me that Respondent's attorney used the words "like the list" in the questions, to which she responded on the previous day while identifying Respondent's Exhibit No. 1 as the list of first names and telephone numbers, which had been attached to the wall directly behind the secretary's desk.[29] Concerning Kobi Levy, whose demeanor, while testifying, was that of a disingenuous witness, noting that Cruz, directly contradicted him, I believe that his assertion that America Vazquez admitted stealing the list of names and telephone numbers was an utter calumny and that, given his contradictory testimony, his protestation, the Union was not Respondent's "issue" underlying its actions herein, was a like fabrication. Given the foregoing, I am unable to credit either the deceitful Kobi Levy or the perfidious Cruz whenever the testimony of each is contradicted by another, more credible witness or is uncorroborated.[30]

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[26] Levy conceded this was a change from Respondent's past practice with regard to layoffs when the company recalled laid-off employees when business improved.

[27] On this point, Kobi Levy contradicted his father, testifying that Respondent began performing work for the Encore Hotel in January 2009— "The Encore we started in January, this January."

[28] Respondent's counsel request that I draw an adverse inference from the General Counsel's failure to call Romero as a witness. Perhaps in other circumstances such would be warranted; however, inasmuch as Respondent reinstated Romero after just a week supposedly because it believed she was not the one who had taken the telephone list, the alleged discriminatee was available to both parties to testify. Therefore, I shall not draw the requested adverse inference.

[29] Likewise, I am equally concerned by Respondent's attorney's shockingly faulty recollection regarding his asserted use of the word "recreation" in reference to said exhibit.

[30] Carmela Cruz offered hearsay testimony regarding a conversation with an employee, Carmen Rojas, in which the latter assertedly informed her about a visit to her home by union agents and said she observed a list of names in the hands of one agent, who said America had given it to them. Respondent failed to call Rojas as a corroborating witness and offered no explanation for its failure to do so. Accordingly, not only do I not believe her testimony but also I shall give no weight to Cruz's uncorroborated hearsay testimony.

Specifically, as compared to Levy and Cruz, I shall credit the more candid Vazquez as to the events of September 9 and 10. Finally, Moshe Levy likewise impressed me as being a generally untrustworthy witness. In particular, while I believe him as to Respondent's need to reduce its work force in September 2008, his strange testimony, related to the circumstances surrounding the showing of the presumably anti-union video, and his insistence said video was shown in October after the September layoffs was not worthy of belief. In these circumstances, I particularly place no reliance upon his testimony regarding his method of selection of employees for the above layoff.

Based upon my foregoing credibility resolutions and the record as a whole, I find that, sometime in late August or early September, upon learning that union agents had been telephoning Respondent's employees and visiting their homes pursuant to a nascent organizing effort, Kobi Levy and Respondent's highest-ranking supervisor, Carmela Cruz, embarked upon a campaign not to discover who was responsible for stealing a portion of the list of the names and telephone numbers of Respondent's employees[31] but, rather, to uncover the identities of those employees who were shepherding the union's inside organizing efforts and to discharge them and to coerce and restrain other employees from engaging in support for union organizing. In this regard, I find that, by his own admission, Kobi Levy interrogated more than ten of Respondent's employees, asking them if they knew who was calling on behalf of the union. I further find that, in late August or early September, Maria Guadalupe Rojas was questioned about union activities three times by Respondent; that, on one such occasion, she was summoned from her work station to an office and, with Cruz interpreting, questioned there by Kobi Levy; that, during the meeting, Rojas volunteered that union agents had telephoned her at home; and that Levy immediately asked ". . . what was going on, why was I doing that?" After Rojas responded that it was merely a phone call, which she considered it a private matter and for which she did not owe him an explanation, Levy said it related to the company and told Rojas ". . . to think through what it was . . . I was doing because it was not going to be good for us." Further, I find that, on September 9, Levy ordered America Vasquez to report to the secretary's office, closed the door, and, with Cruz translating, after some preliminary questions, rather than about a missing portion of a list of names and telephone numbers, interrogated the alleged discriminatee as to whether she was "in the union" and, after she denied it, said he did not believe her and "people" said she was with the union. After Vazquez repeatedly denied it, Levy said she should tell the truth and warned ". . . that if he found out I was with the union, not only would I . . . be fired from my job but . . . he was going to get me out of the country." He added that other laundries had unions "but that his did not." Next, I find that, on September 10, when Cruz alone met with Vazquez and Romero in the secretary's office, in obvious reference to Levy's question the day before, she asked the two employees "'what's going on with you guys?'" Clearly understanding the intent of the question, Romero said they were in the room because of the union, and Vazquez again denied any involvement with a union. Romero responded that Kobi Levy told her, if she gave him a name of someone with the union, she would not be fired and that Vazquez was the first person she could name. Vazquez asked if she was certain; Romero replied, yes, because Vazquez had telephoned her; and Vazquez denied ever telephoning Romero about a union. The "back and forth" between the two alleged discriminatees continued until Kobi Levy entered the room. He began by turning to Vazquez and asking why she had lied to him—"Why had I told him I wasn't with the union when I really was?" As previously, Vazquez denied any union involvement, and she and Romero continued their argument concerning union activity.

Pointing to the questions posed to Rojas by Kobi Levy in late August or early September, the questions posed to Vazquez by Levy on September 9, the questions posed to Vazquez and Romero by Cruz and Levy on September 10, and the admissions by Levy regarding his questioning of, at least, ten employees, the General Counsel argues that Respondent violated Section 8(a)(1) of the Act by interrogating employees as to their union activities and sympathies. In *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom, *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), the Board concluded that it would no longer follow an unlawful per se approach to employer interrogations of employees and announced a new, "basic" test for evaluating the legality of an employer's interrogations of its employees concerning their protected concerted activities— "whether under all the circumstances the interrogation reasonably tends to restrain, coerce, and interfere with rights guaranteed by the Act." Id. at 1177. Subsequently, in *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), the Board discussed "some areas of inquiry that may be considered" in applying the *Rossmore House* test to an employer's interrogation of any of its employees, who are not "open and active" union adherents. These, "relevant factors" include (1) the background (the surrounding circumstances including unlawful threats and acts of discrimination); (2) the nature of information sought; (3) the identity of the questioner; (4) and the place and method of interrogation. Id. at 1218. While these factors should be considered, they "are not to be mechanically applied in each case" and are not "prerequisites" to a finding of coercive interrogation. *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 835 (D.C. Cir. 1998); *Medicare Associates*, 330 NLRB 935, 939 (2000); *Rossmore House*, supra at 1178 fn. 20.

Initially, having concluded that Respondent was bent upon

Also, Respondent failed to call its secretary, Mary Lou, as a witness to corroborate the testimony of Kobi Levy and Cruz regarding the purported existence of a list of names and telephone numbers affixed to the wall behind her work desk and the theft of a portion of said list by an unknown individual. Further, Respondent offered no explanation for her failure to testify. In these circumstances, noting the deceitful testimony of Cruz and Levy, I place no reliance upon the testimony of either regarding the existence of such a list or the alleged theft of a portion of it.

[31] Simply stated, I do not believe Kobi Levy that Respondent's main concern was ascertaining who was responsible for stealing pages from the list of names and telephone numbers posted in the secretary's office. Rather, based upon the record as a whole and his admission, regarding his questioning of employees, I believe his concern was a union's use of Respondent's employees' names and telephone numbers to aid its organizing efforts.

discovering the identities of the main union adherents amongst its employees, I agree that Kobi Levy"s admitted questioning of, at least, ten of Respondent's employees concerning telephone calls to them on behalf of the union, his interrogation of Maria Guadalupe Rojas after she admitted being telephoned at home by union agents, Levy's September 9 interrogation of America Vazquez (was she "in the union"), Cruz's September 10 questioning of Vazquez and Alexandrina Romero ("what's going on with you guys"), and Levy's additional questioning of Vazquez and Romero that day were coercive and violative of Section 8(a)(1) of the Act. Thus, there is no evidence that the three alleged discriminatees were open and avowed union adherents inside Respondent's facility, and I do not believe Respondent had a lawful purpose for questioning any of its employees. Further, the types of questions, designed to discover its employees' union sympathies and activities and those of their fellow employees, were among those the Board has traditionally found to be coercive and unlawful. *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418, 420 (2004); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958. 959 (2004); *TKC, A Joint Venture*, 340 NLRB 923 fn. 2 (2003).[32] Finally, with regard to the interrogations of Rojas and Vazquez on September 9, I note that the questioning was particularly coercive, having been conducted by the plant manager and son of the managing partner of the business, in a company office, in Vazquez's case with the door closed, and in conjunction with unlawful threats. *Donaldson Bros. Ready Mix, Inc.*, supra.

Next, I find that, late in the afternoon on September 24, Cruz approached Rojas in her work area, handed her a sheet of paper, and demanded that Rojas give her ". . . a report as to what I knew about the union," including information on Vazquez's role in the union organizing. Rojas asked what would happen if she refused to do so, and Cruz said ". . . that . . . they wouldn't let us punch in . . . ." Finally, I find that, after the showing of the union-related video on September 27 and after the company representative said it would not be good for the employees to select a union to represent them, Moshe Levy warned the employees, who were present, that "if we were in the union because of pay increases . . . he wasn't going to give a pay increase because it was a small company," and his son Kobi closed the meeting by asking the employees if there were any questions. With regard to Cruz's demand that Rojas give her a report concerning the union activity at the plant including Vazquez's role in the organizing, in agreement with counsel for the General Counsel that Cruz's act was violative of Section 8(a)(1) of the Act, I believe that her demand for such a report was akin to verbally interrogating Rojas for the same information and was inherently coercive as it concerned the alleged discriminatee's protected concerted activities and those of a fellow employee. Further, I note that, in response to Rojas's expressed reluctance to acquiesce to her unlawful demand, Cruz threatened her with discharge if she refused to comply. As to Kobi Levy's seemingly innocuous request for employees' questions after the showing of the union-related video on September 27, given the context (the employees were together in a room with supervisors, Respondent's labor relations consultant, the plant manager, and Respondent's managing partner, who had just warned them regarding the futility of selecting a union as their bargaining representative) and the obvious fact that positive union-related questions would reveal them as union sympathizers, I agree with the General Counsel that Levy's question was coercive. That each employee understood this is clear as not one asked a question. Accordingly, I find Levy's question to have been violative of Section 8(a)(1) of the Act.

The General Counsel next contends that, in order to dissuade its employees from supporting a union, Respondent threatened employees with discharge and/or deportation in violation of Section 8(a)(1) of the Act. In these regards, during his conversation with Rojas in late August or early September, after unlawfully interrogating her about her telephone conversation with union agents and after Rojas insisted such was a private matter and said she did not owe him an explanation, Kobi Levy warned Rojas that her conversation with union agents related to the company and ". . . to think through what it was . . . I was doing because it was not going to be good for us." Further, on September 9, after Vazquez repeatedly denied any involvement with a union, Levy said he did not believe her and warned ". . . that if he found out I was with the union, not only would I . . . be fired from my job but . . . he was going to get me out of the country." Moreover, on September 24, when Rojas expressed her reluctance about writing a report concerning the union activity amongst Respondent's employees, Cruz warned that she would inform Levy and ". . . they wouldn't let us punch in . . . ." It is, of course, unmistakable and traditional Board law that, as such statements "reasonably tend to coerce employees in the exercise of their [Section 7] rights," an employer violates Section 8(a)(1) of the Act by explicitly threatening loss of employment in order to discourage its employees from engaging in union activities. *Trump Marina Hotel Casino*, 353 NLRB No. 93 slip. op. at 5 (2009); *White Oak Manor*, 353 NLRB No. 83, slip. op. at 4 (2009); *Clinton Electronics Corp.*, 332 NLRB 479 (2000). Herein, Levy's September 9 threat to fire Vazquez from her job because of her suspected involvement with a union and Cruz's September 24 threat to Rojas that she would not be permitted to punch in, a prerequisite for working, if she did not report about the union activity at Respondent's facility constitute clear threats of discharge, patently violative of Section 8(a)(1) of the Act. Further, the Board ". . . recognize[s] that threats involving immigration or deportation can be particularly coercive. Such threats place in jeopardy not only the employees' jobs and working conditions but also their ability to remain in their homes in the United States." *North Hills Office Services*, 346 NLRB 1099, 1102 (2006); *Smithfield Packing Co.*, 344 NLRB 1, 9 (2004). Levy's September 9 threat to Vazquez that he was going to get her out of the country if he discovered she was supporting the union constituted an explicit threat that he would take unspecified action regarding her immigration status and was, therefore, violative of Section 8(a)(1) of the

[32] The fact that Cruz may not have specifically mentioned the word union in her questioning of Vazquez and Romero on September 10 does not detract from the coercive nature of the question. Thus, neither alleged discriminatee was an open and avowed union supporter, and, having been interrogated by Levy about her union sympathies and activities the day before, Vazquez certainly understood the tenure of Cruz's question. *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1123 (2002).

Act. Finally, after Rojas insisted that her conversation with a union agent was a private matter and that she did not owe Levy an explanation, the latter warned Rojas that she should think through what she was doing because ". . . it was not going to be good for us." In my view, Levy's warning constituted a threat to Rojas of unspecified reprisals in order to discourage her from engaging in activities in support of a union, and the Board has long held that such threats designed to discourage employees from engaging in their Section 7 rights are violative of Section 8(a)(1) of the Act. *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204 (2007); *California Gas Transport*, 347 NLRB 1314, 1315 (2006).

As a final alleged violation of Section 8(a)(1) of the Act, the General Counsel contends that Respondent unlawfully threatened its employees that selecting a union as their bargaining representative would be futile. In this regard, counsel for the General Counsel points to two comments, the first by Kobi Levy and the second by his father, Moshe Levy. Thus, I have found that, during his meeting with Vazquez on September 9, after threatening the latter with discharge and with deportation if he (Levy) discovered Vazquez was a union adherent, Levy said that other laundries had unions but that his did not and that, after showing the union-related video to several employees on September 27, Moshe Levy told them that, if they were supporting a union in order to get a increase in pay, ". . . he wasn't going to give a pay increase because [Respondent] was a small company." With regard to Kobi Levy's comment to Vazquez, I note, initially, that, in his post-hearing brief, counsel for the General Counsel misstated the record, writing that Levy said ". . . while many other laundry facilities may be unionized, *his would not be*." Nevertheless, in the context of his threats of discharge and of action against her immigration status, Vazquez reasonably may have interpreted Levy as warning that Respondent would remain a nonunion laundry notwithstanding its employees' desire for union representation. Of course, an employer's warning to its employees that it would not accept a union as its employees' bargaining representative constitutes ". . . a threat that the employees' efforts to gain such representation would be futile" in violation of Section 8(a)(1) of the Act, and I so find. *ADB Utility Contractors, Inc.*, 353 NLRB No. 21, slip. op at 2 (2009); *GATX Logistics*, 330 NLRB 481, 488 (2000). Likewise, I believe that Moshe Levy's September 27 comment after the showing of the video was an unlawful warning to the listening employees that selecting a union to bargain in their behalf for a wage increase would be futile inasmuch as he would never agree to such a demand. Thus, rather than discussing the vagaries of the collective bargaining process, Levy threatened that Respondent would become "punitively intransigent" in the event its employees selected union representation and, therefore, violated Section 8(a)(1) of the Act. *Federated Logistics & Operations*, 340 NLRB 255 (2003).

Turning to the discharges of employees Vazquez and Romero on September 10 and the layoffs of Rojas and Castillo at the end of September, the General Counsel alleges that Respondent, in fact, not only discharged Vazquez and Romero but also Rojas and Castillo in violation of Section 8(a)(1) and (3) of the Act. In these regards, in accord with my credibility resolutions, I find that, on September 10, when Kobi Levy entered the office in which Carmela Cruz had been speaking to Vazquez and Romero and the two alleged discriminatees were arguing about Vazquez's involvement in union organizing, he was silent for a moment and then asked Vazquez why she had lied to him about not being in the union when she really was. Vazquez continued to deny it and once again asked Romero if the latter could prove she was in the union. To this, Romero again said Vazquez had telephoned her on behalf of the union. At this point, Levy said he did not believe either employee, accused both of lying to him, and said both employees were fired. Further, I find that Respondent laid off Rojas and Castillo on or about September 30; that Cruz informed Castillo she was laid off, explaining that Kobi Levy had ordered her layoff; that Rojas returned to the plant 2 days later and spoke to Moshe Levy, who said the laid-off employees would be off work for 30 to 40 days because work was down and "they would call me" about returning to work; and that Respondent failed to recall either Rojas or Castillo for work in December notwithstanding a significant increase in its business due to the opening of the Encore Hotel.

Counsel for the General Counsel and counsel for Respondent agree that whether Respondent, in fact, violated the Act by discharging the four alleged discriminatees must be determined by utilizing the *Wright Line* analytical guidelines. Thus, in order to establish a violation of Section 8(a)(1) and (3) of the Act under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982),[33] "'the General Counsel bears the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity.'" *St. Margaret Mercy Healthcare Centers*, *supra*, at 203; *North Carolina License Plate Agency #18*, 346 NLRB 293 (2006); *Donaldson Bros. Ready Mix, Inc.*, supra, at 961. Further, once the burden has shifted to the employer, the crucial inquiry is not whether the employer could have engaged in the alleged unlawful acts but whether it would have done so absent the alleged discriminatees' union activities or support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene's Bargain Basement*, 299 NLRB 183 (1990). Moreover, pretextual discharge cases should be viewed as those in which ". . . the defense of business justification is wholly without merit," and the "burden shifting" analysis of *Wright Line* need not be utilized. *Arthur Young & Co.*, 291 NLRB 39 (1988); *Wright Line*, supra, at 1089, n. 5. Finally, regarding the latter point, "it is . . . well settled when a respondent's stated reason for its actions is found to be false, the circumstances warrant the inference that the true motive is an unlawful one that the respondent desires to conceal." *Flour Daniel, Inc.*, 304 NLRB 970 at 970 (1991); *Shattuck Denn Mining Corporation v. NLRB*, 362

[33] The Board's *Wright Line* guidelines were approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S..393 (1983).

F. 2d 466 (9th Cir. 1966).

With regard to America Vazquez, I believe counsel for the General Counsel has met his initial burden of establishing that Respondent was unlawfully motivated in discharging the alleged discriminatee. In this regard, I find that Vazquez was an active supporter of the Union. Thus, she testified, and there is no dispute, that she attended union meetings, spoke to employees about the Union, and gave union agents the names those employees, whom, she believed, would support an organizing campaign by the Union. Next, the record is demonstrable that Respondent believed or, at least, suspected that Vazquez was an ardent and active union proponent. As to this, Kobi Levy admitted that his interrogations of Respondent's employees, concerning who was calling on behalf of a union, yielded the name America, which he subsequently connected to America Vazquez. Moreover, on September 9, Levy averred to Vazquez that "people" had informed him she was with the union, and, on September 10, he accused Vazquez of lying to him when she denied any involvement with the Union. Finally, on September 24, when she asked Maria Guadalupe Rojas to draft a report on the union activity at Respondent's commercial laundry, Carmela Cruz specifically demanded that she write about Vazquez. While the *Wright Line* guidelines require that the General Counsel establish the employer's knowledge of an alleged discriminatee's union activities, ". . . suspicion is sufficient to satisfy the *Wright Line* requirement that the General Counsel prove knowledge of union activity." *Desert Pines Golf Club*, 334 NLRB 265, 275 (2001); *Kajima Engineering & Construction, Inc.*, 331 NLRB 1604 (2000). Finally, that Respondent harbored unlawful animus toward Vazquez is palpable and indisputable. On this point, I have previously concluded that, after she repeatedly denied any involvement with a union, Kobi Levy threatened Vazquez, warning, if he subsequently learned she was, in fact, a union supporter, he would not only fire her but also would ensure her deportation from the United States. Also, I have found that Levy warned employees that conversations with union agents would not "be good for us" and that, after alleged discriminate Rojas expressed reluctance about reporting on Respondent's employees' union activities, Carmela Cruz warned her that Respondent would not permit employees, who failed to do so, to clock in for work.

In the foregoing circumstances, I believe, the burden of persuasion shifted to Respondent to establish that, notwithstanding its unlawful animus, it, nevertheless, would have terminated Vazquez. Succinctly put, Respondent failed to meet its burden of proof. In this regard, Respondent contends that it terminated the alleged discriminatee because she purloined a portion of the list of employees' first names and telephone numbers, which was posted in the secretary's office. However, given my belief that Kobi Levy and Carmela Cruz each paltered herein and the convoluted and contradictory nature of the testimony of each regarding the existence of the aforementioned list and the purported theft of a portion of it, absent the corroborating testimony of the secretary, Mary Lou, I am unable to conclude either that such a list was ever posted in her office or that a portion of such a list was ever stolen. Further, I do not believe Kobi Levy that, in late August and September, Respondent's main focus was on discovering who was responsible for the putative theft. Rather, based upon the ample record evidence, I believe Respondent's efforts were directed at unmasking the union adherents amongst its employee complement and at coercing the remainder from engaging in support for a union. Thus, instead of inquiring about the missing portion of the list, Levy admitted that his interrogations of Respondent's employees consisted of him asking who was calling them on behalf of the union, and I have specifically credited Vazquez that, on September 9, rather than concerning the missing portion of the list, Levy's questions to her consisted of him repeatedly asking whether she was "in the union." Moreover, Respondent offered no actual evidence that Vazquez was responsible for the alleged theft, and, of course, most damaging to Respondent's asserted defense, is that, while Levy maintained Respondent terminated Vazquez because she admitted to him having pilfered the portion of the aforementioned list, Carmela Cruz, who interpreted for Levy, failed to corroborate him on this crucial and importunate point. Accordingly, contrary to Respondent, rather than based upon her involvement in the theft of missing portions of a list, the overwhelming record evidence is that, given Levy's interrogations of employees, his interrogation of Vazquez, Cruz's demand that Rojas draft a report on Respondent's employees' union activities and specifically those of Vazquez, and Levy's threat of termination and deportation to Vazquez if he discovered her union adherence, Respondent discharged Vazquez for unlawful reasons in violation of Section 8(a)(1) and (3) of the Act, and I so find.

Turning to the discharge of Alejandrina Romero, I do not believe that the General Counsel has met its initial burden of proof by establishing Respondent was unlawfully motivated in terminating her. Thus, there is no record evidence that Romero engaged in any union activities or that Respondent knew or suspected her of supporting the union organizing at the laundry. While counsel for the General Counsel argues Respondent "associated" Romero with the suspected union sympathizer Vazquez, the credible record evidence is that Romero apparently was one of the employees, who informed Kobe Levy that the latter had telephoned Romero regarding the union, an event which, in Levy's presence on September 10, Romero adamantly insisted occurred and Vazquez just as vehemently denied.[34] Confronted with this "she said, she said" situation, Levy abruptly terminated Romero, who, I believe, Respondent required to be present in the room to provoke an admission from Vazquez of her involvement with a union, as well as Vazquez, who was the actual object of Respondent's animus. In my view, notwithstanding the existence of significant record evidence establishing Respondent's patent animus toward union supporters, Levy discharged Romero not because of its unlawful animus but, rather, in an act of pique resulting from the failure of Respondent's scheme to deceive Vazquez into admitting her involvement with a union.[35] In these circum-

[34] Vazquez testified that, at one point, Romero accused Kobi Levy of threatening to terminate her and saying, if she gave him the name of just one union supporter, he would not discharge her. This hearsay testimony was not corroborated, and I shall give it no weight.

[35] I agree with counsel for the General Counsel that the record is devoid of an explanation for the discharge of Romero; however, such

stances, I am unable to find that the General Counsel established that Respondent was unlawfully motivated and terminated Romero in violation of Section 8(a)(1) and (3) of the Act and shall recommend dismissal of this complaint allegation.

Concerning Respondent's layoff of Maria Guadalupe Rojas, the credible record evidence is that she attended several union meetings prior to being laid off by Respondent at the end of September. Moreover, the record establishes that Respondent suspected that she was engaged in union activities or, at least, was a union supporter. Thus, not only did Kobi Levy interrogate her on this subject at which point Rojas admitted that union agents had telephoned her at home but also Carmela Cruz demanded that she submit a written report as to her knowledge of the union activity at Respondent's laundry and Rojas was one of just four employees, including Martha Castillo, who were required to attend the showing of the union-related video on September 27. Further, as previously discussed, there is ample record evidence of Respondent's general animus toward union supporters. More particularly, Levy tenebrously warned Rojas that engaging in union activities would not be good for employees, and Cruz directly threatened Rojas with discharge if she refused to provide Respondent with the aforementioned report on union activities amongst the employees at the laundry. In these circumstances, the counsel for the General Counsel met his initial burden of establishing that Respondent was unlawfully motivated in laying off the alleged discriminatee.

As to whether Respondent met its *Wright Line* burden of proof and established that it would have laid off Rojas notwithstanding its unlawful animus against union adherents, I accept, and have no reason to doubt, that, by September 2008, Respondent's business situation had deteriorated to a degree necessitating the layoffs of employees and that, in fact, Respondent laid off some employees for business considerations. However, while Moshe Levy, who admitted having selected the individuals for layoff, explained he basically chose one person from each job classification in the laundry without regard for names, he failed to adequately explain how he selected Rojas, in particular, from among the presumably numerous employees in her job classification. Thus, given the extent of Respondent's unlawful animus, I do not believe his assertions that he acted without knowledge of any of the employees, whom he chose for layoff, or that he acted without knowledge or suspicion of said employees' support for a union. This is particularly true regarding Rojas as Respondent specifically required her to draft a report on her knowledge of the union activities of its employees and unlawfully warned her of the consequences of not doing so. Moreover, that Moshe Levy was very much concerned about the union organizing amongst Respondent's employees is demonstrated by Respondent's general animus against union supporters and the facts that he facilitated and arranged for[36] the showing of the union-related video to four employees in late September and that he subsequently warned said employees about the futility of selecting a union for the purpose of representation. In these circumstances, I believe that Levy, on behalf of Respondent, selected Rojas for layoff because he knew or suspected her support for the on-going union organizing amongst Respondent's employees. Accordingly, I find that Respondent failed to meet its burden of proof and that it selected Rojas for layoff, laid her off, and then failed to recall her in December in violation of Section 8(a)(1) and (3) of the Act.[37]

With respect to alleged discriminatee, Martha Castillo, there is, of course, no record evidence that she engaged in any union activities and Rojas added that Castillo was not a participant. Nevertheless, I believe the record warrants the conclusion that Respondent suspected her of supporting the union organizing activity amongst the laundry employees. Thus, I believe Castillo that she was among four employees, who were required to attend the showing of the union-related video in late September, and, other than Moshe Levy's bizarre testimony, Respondent offered no explanation as to why it selected Castillo to attend. In my view, there can but one explanation—Respondent believed or suspected she was a union adherent. Finally, as mentioned above, the record is replete with evidence of Respondent's animus toward employees who engaged in activities in support of a union or were union adherents. In these circumstances, I believe counsel for the General Counsel sustained his burden of proof that Respondent harbored unlawful animus in laying off Castillo.

In contrast, I do not believe Respondent sustained its burden of proof by establishing that it would have laid off the alleged discriminatee notwithstanding its unlawful animus. In this regard, I reiterate my view that, in September 2008, Respondent's deteriorating business situation necessitated the laying off of a portion of its work force. Further, as with alleged discriminatee Rojas, I likewise believe that Moshe Levy failed to adequately explain why he selected Castillo rather than another employee in her job classification for layoff. Moreover, as stated above, I do not credit his assertion that he engaged in the selection process without knowledge or, at least, suspicion of Castillo's union sympathies. Three factors convince me that said view is correct. First, of course, the record evidence is manifest with regard to Respondent's unlawful animus. Next, Respondent offered no explanation for requiring Castillo to view the union-related video. Finally, in accord with my aforementioned credibility resolution, despite the fact that business conditions had sufficiently improved by December or January 2009 so as to warrant such and despite its past practice of recalling laid-off employees, Respondent failed to recall Castillo for work. Therefore, I am unable to conclude that Respondent selected Castillo for layoff notwithstanding its unlawful animus toward suspected union supporters and find that, in including her in its September layoff of employees and failing to recall her in December, Respondent engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

does not excuse the General Counsel from meeting its *Wright Line* burden of proof.

[36] I do not accept his preposterous explanation for the circumstances surrounding the showing of the union-related video.

[37] In this regard, noting a change from Respondent's past practice, I do not credit Moshe Levy's assertion that he told all the laid-off employees they should call in December as to recall. Rather, I believe Rojas that Levy told her Respondent would notify, call her when there was sufficient business improvement to warrant recall.

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. By interrogating its employees regarding their union sympathies and activities and the union sympathies and activities of their fellow employees, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

4. By threatening its employees with discharge and/or deportation in order to discourage them from engaging in support for union organization, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

5. By threatening its employee with unspecified reprisals in order to discourage them from engaging in support for union organization, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

6. By threatening its employees that selecting a union to represent them would be futile, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.

7. By discharging its employee, America Vazquez, because it suspected that she was participating in union activities, Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act.

8. By selecting for layoff, laying off, and eventually failing to recall Maria Guadalupe Rojas and Martha Castillo, because it suspected they supported the union organizing amongst its employees, Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act.

9. Respondent's above-described acts and conduct affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. Unless set forth above, Respondent engaged in no other unfair labor practices.

REMEDY

I have found that Respondent engaged in serious unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. Accordingly, I shall recommend that it be ordered to cease and desist from engaging in such acts and conduct. Generally, I shall recommend that Respondent be ordered to cease and desist from interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act. Specifically, as I have found that Respondent unlawfully discharged its employee, America Vazquez, and unlawfully selected for layoff, laid off, and failed to recall its employees, Maria Guadalupe Rojas and Martha Castillo, I shall recommend that it be ordered to offer Vazquez, Rojas, and Castillo reinstatement to their former positions of employment and, if said positions no longer exist, to substantially equivalent positions with no loss of seniority or other rights and privileges previously enjoyed, and make each whole for any loss of earnings and other benefits, computed on a quarterly basis from, in the case of Vazquez, from September 10, 2008 and, in the cases of Rojas and Castillo, from September 30, 2008 to the date of a proper offer of reinstatement to each, less any interim earnings, as prescribed in *F.W.Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[38] Further, I shall recommend that Respondent be ordered to expunge from its records any references to its unlawful discharge of Vazquez and unlawful selections for layoff and layoffs of Rojas and Castillo and inform each that such has been done. Finally, I shall recommend that Respondent be ordered to post a notice to its employees, advising them of its unfair labor practices and the steps it is required to take to remedy them.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[39]

ORDER

The Respondent, ABC Industrial Laundry LLC d/b/a Universal Laundries & Linen Supply, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging its employees because it suspected they have engaged in activities in support of a union;

(b) Selecting for layoff, laying off, and failing to recall its employees because it suspected they supported the union activities of their fellow employees;

(c) Interrogating its employees regarding their union sympathies and activities and the union sympathies and activities of their fellow employees;

(d) Threatening its employees with discharge and/or deportation in order to discourage them from engaging in activities in support of a union;

(e) Threatening its employees with unspecified reprisals in order to discourage them from engaging in support for a union;

(f) Threatening its employees that selecting a union to represent them would be futile;

(g) 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 and purposes of the Act.

(a) Within 14 days from the date of this Order, offer to its employees, America Vazquez, Maria Guadalupe Rojas, and Martha Castillo, immediate and full reinstatement to their former jobs, or, if said jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make Vazquez, Rojas, and Castillo whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision;

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the above unlawful discharge and layoffs, and within 3 days thereafter notify Vazquez, Rojas, and Castillo, in writing, that this has been done

[38] Counsel for the General Counsel's request for a change in the manner of the interest calculation is best made to the Board. Accordingly, I shall not rule on it.

[39] 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.

and that the discharges and layoffs will not be used against them in any way;

(c) 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;

(d) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached notice, in English and Spanish, marked "Appendix."[40] Copies of the notice, on forms provided by the Regional Director for Region 28, 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. 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 September 1, 2008.

(e) 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. September 28, 2009

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 discharge our employees because we suspect they have engaged in activities in support of a union.

WE WILL NOT select for layoff, lay off, and fail to recall our employees because we suspect they supported the union activities of their fellow employees.

WE WILL NOT interrogate you regarding your union sympathies and activities and the union sympathies and activities of their fellow employees.

WE WILL NOT threaten you with discharge and/or deportation in order to discourage you from engaging in activities in support of a union.

WE WILL NOT threaten you with unspecified reprisals in order to discourage you from engaging in support for a union.

WE WILL NOT threaten you that selecting a union to represent you will be futile.

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

WE WILL, within 14 days from the date of the Board's Order offer our employees, America Vazquez, Maria Guadalupe Rojas, and Martha Castillo, immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make each employee whole for any loss of earnings and other benefits suffered as a result of our discrimination against each of them.

WE WILL, within 14 days from the date of the Board's Order remove from our files any references to our unlawful discharge of Vazquez and our unlawful layoffs of Rojas and Castillo and, within 3 days thereafter, notify each, in writing, that this has been done and that our unlawful acts will not be used against them in any way.

ABC INDUSTRIAL LAUNDRY, LLC D/B/A UNIVERSAL LAUNDRIES & LINEN SUPPLY

[40] 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."