

Cintas Corporation and UNITE HERE. Cases 4–CA–34160, 4–CA–34161, and 4–CA–34345

January 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On September 20, 2006, Administrative Law Judge Ira Sandron issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party filed answering briefs, and the Respondent filed a reply. The General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief. The Charging Party also filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions and briefs² and has decided to affirm the judge's rulings,³ findings,⁴ and conclusions, as modified, and to adopt the recommended Order as modified and set forth in full below.

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.

² The Respondent filed a request for oral argument as well as a motion to supplement the record. The General Counsel and the Charging Party filed oppositions to the motion to supplement. In addition, the Charging Party filed a motion to strike from the Respondent's reply brief any references to the Respondent's motion to supplement. The Respondent filed an opposition to the Charging Party's motion to strike. As stated in fn. 3 below, we affirm the judge's ruling that evidence of the Charging Party's nationwide organizing campaign is not relevant to the issues in this case. As the Respondent's motion to supplement and its request for oral argument pertain only to the nationwide campaign, we deny both the motion and the request.

In addition, the Respondent filed a citation of supplemental authority to *Register Guard*, 351 NLRB 1110 (2007). The General Counsel filed a response opposing that filing. We have accepted the Respondent's submission pursuant to *Reliant Energy*, 339 NLRB 66 (2003).

³ For the reasons discussed by the judge, we affirm his ruling to exclude evidence of the Union's nationwide, multiyear campaign against the Respondent. In doing so, we find it unnecessary to rely on the judge's observations regarding the burden that would be imposed by expanded litigation.

⁴ The Respondent and the Charging Party have 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully reviewed the record and find no basis for reversing the findings.

The Respondent operates numerous facilities throughout the United States and Canada in providing corporate-identity uniforms and related services to its customers. This case involves allegations of unfair labor practices at facilities in Charlotte, North Carolina, and Branford, Connecticut. The judge found that the Respondent committed several violations of the Act, all but one of which occurred at the Charlotte facility.⁵ For the reasons discussed by the judge, we adopt his findings that the Respondent violated Section 8(a)(3) by issuing warnings to Charlotte facility employees Candy Galdamez, Ana Callas, Raquel Cruz, Rosa Cruz, and Emelinda Rivera for wearing union stickers and/or hats.⁶ We also adopt his findings that the Respondent violated Section 8(a)(1) by telling Galdamez not to display a union hat in her work area and impliedly threatening to discharge her if she again wore a union hat or a union sticker.

Contrary to the Respondent, *Register Guard*, supra, which issued after the judge's decision, does not require a different result with respect to the findings of unlawful disparate treatment. The Respondent clearly discriminated against protected activity in its actions regarding the wearing of union stickers and hats. It allowed employees to wear nonunion adornments to their uniforms while prohibiting *only* union-related adornments; thus, its restriction on the use of uniforms to display adornments was not "nondiscriminatory," as required under *Register Guard*. Id. at 1114. With regard to hats, the Respondent permitted some employees to wear head scarves and it simply asked employees to remove noncompany hats other than prounion hats, without disciplinary consequences. Further, the Respondent permitted employees to keep numerous personal belongings in their work areas. In contrast, the Respondent verbally warned Galdamez for wearing a union hat and for placing it in her work area, and it later impliedly threatened to discharge

⁵ No exceptions were filed to the judge's findings that the Respondent did not violate the Act: (1) by actions in connection with handbilling that occurred at its Charlotte facility on the morning of January 13, 2003; (2) when Charlotte General Manager Robbie Poole met with employee Ana Callas on January 30, 2004; (3) by Charlotte Production Supervisor Steven Coleridge's February 20, 2004 statement to employee Raquel Cruz regarding a union flyer; (4) by soliciting Branford employees to sign a June 15, 2005 letter to the Connecticut Department of Environment Protection (DEP); and (5) by the circulation of a July 2005 Branford employee letter to the DEP.

⁶ We reject the Respondent's argument that Sec. 10(b) of the Act barred allegations based on the warnings to Callas, the Cruzes, and Rivera. The warnings are encompassed by a timely-filed charge alleging the specific conduct and naming Galdamez. Further, the judge granted the General Counsel's motion at hearing to amend the complaint to identify the three additional employees prior to litigation of this issue. The Respondent raised the same defense with respect to all. There is no basis for finding that the Respondent was prejudiced by the judge's ruling.

her if she wore the hat again. Consequently, the Respondent engaged in “disparate treatment of activities or communications of a similar character because of their union or other Section 7-protected status.” *Id.* at 1118.⁷

We affirm the judge’s finding that the Respondent violated Section 8(a)(1) of the Act by directing Rosa Cruz to put a union flier inside her wallet or pocketbook, take it home, and not show it to anybody. The Respondent claims that Cruz violated a no-distribution policy by giving the flyer to another employee at her workstation during working time, but there is no evidence that Coleridge told Cruz that she had violated such a policy or that she would have reasonably understood that Coleridge was invoking the policy. In any event, the direction to Cruz to conceal the flier and to take it home was an overbroad and disparate prohibition of the possession and display of union literature anywhere on the Respondent’s premises.

We also affirm the judge’s finding that the Respondent violated Section 8(a)(1) by confiscating union fliers in the Charlotte facility employee break room. We agree with the judge that the Respondent did not effectively repudiate its unlawful confiscation, but we find it unnecessary to pass on the judge’s statement that the Respondent failed to state that it would not interfere with employees’ Section 7 rights in the future.⁸

Contrary to the judge, we find that the Regional Director for Region 4 erred when setting aside a settlement agreement with respect to an allegation that on January 13, 2003, the Respondent violated Section 8(a)(1) of the Act by calling the Charlotte police. This allegation was one of many in charges filed by the Union against the Respondent in numerous regional offices during 2003. The General Counsel appointed the Regional Director for Region 4 to coordinate the handling of all charges filed by the Union against the Respondent. On January 7, 2004, the Respondent signed a settlement agreement spe-

cifically covering, *inter alia*, the allegation that it unlawfully summoned police to its Charlotte facility. On January 20, the Regional Director for Region 4 approved the settlement agreement, but the Union declined to sign. Accordingly, the Union preserved the right to appeal the agreement to the General Counsel.

On March 2, 2004, the Union filed new unfair labor practice charges about events at the Charlotte facility with Board Region 11. On March 26, this Regional Office sent a letter to the Respondent discussing the new allegations. Meanwhile, the Union’s appeal period for seeking review of the settlement agreement ended on March 31. On April 5, while investigation into the new Charlotte facility charge was ongoing, the Regional Director for Region 4 directed the Respondent to comply with the settlement agreement. The Respondent then did so by posting a notice to Charlotte facility employees that specifically stated, among other things, that it would not summon police to remove union organizers engaged in protected leafleting outside the Respondent’s property.

Subsequently, however, the Regional Director for Region 4 set aside the settlement agreement on the ground that the allegations at issue in the March 2 charge involved “postsettlement” violations that were sufficiently serious to so warrant. The judge found that the Regional Director acted properly in this regard. For the following reasons, we disagree.

A settlement agreement may be set aside, and unfair labor practices found based on presettlement conduct, if, as relevant here, “postsettlement” unfair labor practices are committed. See, e.g., *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 53 (2006). The question here is whether the conduct at issue in the new March 2 charge is properly characterized as postsettlement. Consistent with precedent, we find that the conduct was, rather, presettlement.

In *Ventura Coastal Corp.*, 264 NLRB 291 (1982), the Board adopted a judge’s finding that certain activity was “presettlement” conduct disposed of by a settlement agreement, even though the conduct was brought to the Region’s attention after the settlement agreement had been approved and the period for filing an appeal had passed. *Id.* at 298. After the Regional Director approved the settlement agreement, the appeal period passed, and the Region transmitted notices for the respondent to post, the charging party wrote a letter to the Region and complained about certain aspects of the respondent’s compliance, including the failure to post notices in Spanish. *Id.* The charging party also stated that it would shortly be filing additional unfair labor practice charges, which it later did. *Id.* Despite this information, the Regional Director sent bilingual notices to the respondent, and the

⁷ We do not rely on the judge’s statement that the Respondent could rely on “special circumstances” to justify directing Galdamez to remove her hat. The facial legality of a policy against the wearing of noncompany hats and the direction that Galdamez remove her hat were not at issue. The General Counsel only alleges disparate treatment of employees for wearing union hats and keeping them at their workstation. We also find no need to address the General Counsel’s argument that the Respondent failed to demonstrate “special circumstances” to justify a policy prohibiting the wearing of union insignia on employee uniforms. The finding of an additional violation would be cumulative and would not materially affect the remedy for the Respondent’s unlawful disparate treatment of employees wearing union insignia.

⁸ While not necessarily agreeing with all of the factors required for an effective repudiation under *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), Member Schaumber agrees that the Respondent failed to effectively repudiate this violation because the scope of the repudiation was not coextensive with the scope of the violation. See, e.g., *Chinese Daily News*, 346 NLRB 906, 906 fn. 4 (2006).

respondent complied by posting them. *Id.* The Board affirmed the judge's finding that "before any 'fail-safe' point had been reached in the settlement process," the Regional Director had an actual indication from the charging party that additional charges would be filed, and there was "no reason why the Regional Director could not have withdrawn his approval of the settlement at that point." *Id.* Accord: *Leeward Nursing Home*, 278 NLRB 1058, 1085 (1986) (settlement was approved October 28, charge was filed on November 4, and as it was "unlikely that [r]espondent had taken any substantial action in compliance with the settlement by that November 4 date, . . . the settlement process had not passed any 'fail-safe' point as of November 4, . . . and there appears to be no reason why the Regional Director could not have withdrawn his approval of the settlement at this point, pending investigation" into the new charges).

In the present case, as in *Ventura Coastal Corp.* and *Leeward Nursing Home*, the settlement process had not reached any "fail-safe" point by April 5, 2004, after expiration of the Union's appeal period, when the Respondent was directed to take the necessary steps to comply. By that time, the General Counsel's agents were already investigating the new unfair labor practice allegations that the Regional Director later relied on to set aside the settlement agreement. If the Regional Director believed that the new allegations might warrant such action, the Regional Director could have withdrawn approval of the settlement at that point, pending further investigation of the new allegations. Instead, the Regional Director directed the Respondent to comply with the settlement agreement and set aside the agreement only after the Respondent had fully complied with it.

For these reasons, we find that the Regional Director erred by setting aside the settlement agreement. Accordingly, we reverse the judge and dismiss the complaint allegation that the Respondent violated Section 8(a)(1) by summoning police to the Charlotte facility in response to leafleting on January 13, 2003.

As part of the Union's campaign at the Respondent's Branford facility, the Union solicited employees to sign letters that it sent to Terminix and TruGreen, two of the Respondent's major customers, contending that the Respondent was not providing proper training and information about toxic materials. In late July 2005, Branford Plant Manager Eric Pepe called employee Berta Campos to his office. Speaking through an interpreter, Pepe asked Campos whether her purported signature on one letter to Terminix and Trugreen was authentic. Pepe had received information that signatures on this letter were forged. Although Campos signed other such letters, she replied that her signature on this particular letter ap-

peared to have been forged. Either at the same meeting or shortly thereafter, Pepe asked Campos to sign an affidavit summarizing what she had told him, and she did so. In relevant part, the affidavit stated that Campos had "never sent any letter like [the purportedly forged letter] to any customer of Cintas." As the meeting ended, Pepe told Campos to "be careful, that her signature [was] being used on documents without her authorization."

The judge found that the Respondent violated Section 8(a)(1) by interrogating Campos about the genuineness of her signature on a union-initiated document relating to employees' health and safety. However, he concluded that Pepe did not unlawfully interrogate her about her union activity "per se" or solicit her to sign a letter disputing union claims or to renounce information requests.

The Respondent contends that Pepe focused exclusively on the forgery of Campos' signature on a single letter, which Campos admitted she did not sign, and even if this letter constituted protected concerted activity, Campos herself did not engage in that activity. Accordingly, the Respondent argues, nothing that transpired between Pepe and Campos could have reasonably tended to interfere with her statutory rights. For its part, the Union excepts to the judge's failure to find that Pepe's request that Campos sign the affidavit was unlawful.

We need not pass on whether Pepe's inquiry about the authenticity of Campos' signature on the particular letter they discussed constituted unlawful interrogation.⁹ The affidavit thereafter proffered to Campos was not limited to a declaration that she did not sign this letter. Instead, it stated that Campos had not signed *any* letter to *any* customer of the Respondent. The broad language of the affidavit therefore constituted interrogation into whether Campos had participated in any other concerted letter writing activity, including protected activity, in support of the Union's campaign. See, e.g., *Gaetano & Associates*, 344 NLRB 531, 540 (2005), *enfd. mem.* 183 Fed.Appx. 17 (2d Cir. 2006) (citations omitted) (employer solicitation to sign document stating that they were not union members constituted unlawful interrogation because it tended to force employees to declare whether or not they were sympathetic to a union). Campos testified that she had signed other letters, but even if she had not, the Respondent's request that she sign the affidavit would reasonably be interpreted as an attempt to elicit information about her union sympathies and protected activity beyond the scope of her forged signature on one letter. Accordingly, we reverse the judge and find

⁹ We also need not pass on the whether Pepe's statement to "be careful" was an unlawful threat, as such a finding would be cumulative of other threats found in this case and would not materially affect the remedy.

that the Respondent thereby engaged in an unlawful interrogation in violation of Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative Law Judge as modified and set forth in full below and orders that the Respondent, Cintas Corporation, Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their protected activities.

(b) Issuing written or verbal warnings to employees because they have demonstrated support for the Union.

(c) Implying to employees that they will be discharged if they demonstrate support for the Union.

(d) Confiscating union flyers from employees on non-worktime in a nonwork area and telling them they cannot read such flyers there.

(e) Engaging in discriminatory disparate treatment by telling employees that they cannot have union flyers in their work areas and must take them home.

(f) Engaging in discriminatory disparate treatment by telling employees they cannot display union hats in their work areas.

(g) Engaging in discriminatory disparate treatment by telling employees they must remove union stickers from the shirts of their uniforms.

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

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

(a) Within 14 days of the Board's Order, remove from its files any references to the February 16, 2004 verbal warning and the March 1, 2004 written warning issued to Candy Galdamez; and the March 1, 2004 verbal warnings issued to Ana Callas, Maria Raquel Cruz, Rosa Cruz, and Emelinda Rodriguez, and within 3 days thereafter, notify them in writing that this has been done and that the warnings will not be used in any way against them.

(b) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix A," in English and Spanish, at its Charlotte, North Carolina facility, and post copies of the attached notice marked "Appendix B," in English and Spanish, at its Branford, Connecticut facility.¹⁰ Copies of the notices, on forms

provided by the Regional Director for Region 4 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 facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notices to all current employees and former employees employed by the Respondent any time since February 9, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

APPENDIX A

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 issue you verbal or written warnings because you have demonstrated support for UNITE HERE (the Union).

WE WILL NOT imply to you that you will be discharged for demonstrating your support for the Union.

WE WILL NOT confiscate union flyers from you on your nonwork time in a nonwork area and tell you not to read such flyers there.

WE WILL NOT engage in discriminatory disparate treatment by telling you not to have union flyers in your work area and that you must take them home.

WE WILL NOT engage in discriminatory disparate treatment by telling you not to display union hats in your work area.

¹⁰ 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."

WE WILL NOT tell you to remove union stickers from the shirt of your uniform.

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

WE WILL within 14 days of the Board's Order, remove from our files any references to the February 16, 2004 verbal warning and the March 1, 2004 written warning issued to Candy Galdamez; and the March 1, 2004 verbal warnings issued to Ana Callas, Maria Raquel Cruz, Rosa Cruz, and Emelinda Rodriguez, and within 3 days thereafter, notify them in writing that this has been done and that the warnings will not be used in any way against them.

CINTAS CORPORATION

APPENDIX B

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 interrogate you concerning your protected activities.

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

CINTAS CORPORATION

Terri A. Craig, Rosetta B. Lane, and Lisa Shearin, Esqs., for the General Counsel.

Joel H. Kaplan, Brian M. Stolzenbach, and Armanda Sonneborn, Esqs. (Seyfarth Shaw LLP), of Chicago, Illinois, for the Respondent.

Judiann Chartier and Brent Garren, Esqs., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. The amended con-

solidated complaint¹ stems from unfair labor practice (ULP) charges filed by UNITE HERE (the Union) against Cintas Corporation (Respondent or the Company) for conduct that occurred at its Branford, Connecticut (Branford) and Charlotte, North Carolina (Charlotte) facilities. Violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) are alleged.

Pursuant to notice, I conducted a trial in Hartford, Connecticut, on March 13–15, 2006, and at Concord, North Carolina, on March 27–31, and May 1–3, 2006, at which the parties had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.²

The General Counsel, the Union, and Respondent filed helpful posthearing briefs that I have duly considered. Respondent filed a motion to strike certain statements from the Union's posthearing brief, to which the Union filed a response and a motion to strike certain statements from Respondent's posthearing brief. Respondent, in turn, filed a response in opposition to the Union's motion to strike. They are received as Respondent's Exhibit 51, Union's Exhibits 11(a) and (b), and Respondent's Exhibit 52, respectively.

Respondent contends that certain statements in the Union's brief misrepresent the facts. However, such statements are in the nature of legal argument as to the conclusions to be drawn from certain facts of record, and striking legal argument serves no purpose.

Respondent also contends that the last sentence of the first paragraph on page 6 of the Union's posthearing brief should be stricken as a misstatement of fact. The Union concedes this was an error and does not oppose striking that sentence. I therefore grant Respondent's motion to strike it.

Respondent further asserts that the Union's references in its brief to Union's Exhibit 6(b) should be stricken because that document was only marked for identification and never offered or admitted in evidence. The Union calls this another error and, again, does not oppose striking such references. Accordingly, I also grant this part of Respondent's motion.

Respondent's response to the Union's motion to strike does not address the Union's argument that references in Respondent's brief to rejected exhibits (R. Exhs. 20–22) should be stricken. It does defend references in its brief to a website article concerning a defamation suit brought by an unrelated company against the Union. I grant the Union's motion to strike references to both rejected exhibits and the defamation suit. In sum, only documents of record are appropriately cited in posthearing briefs to the trial judge. See Section 102.45(b) of the Board's Rules; *King Soopers, Inc.*, 344 NLRB 842 fn. 1 (2005).

¹ GC Exh. 1(www), filed after the close of hearing. Respondent's answer is received in evidence as GC Exh. 1(xxx).

² Respondent filed a motion to correct the transcript, dated August 3, 2006, which is received in evidence as R. Exh. 50. The Union's response, dated August 8, 2006, is received in evidence as U. Exh. 10. To the extent that Respondent's motion is unopposed, it is granted. On the few proposed corrections to which the Union objects, I am unable to recall exactly what was said on the record and therefore cannot resolve the disagreement.

Issues

Since about January 2003, the Union has been engaged in an ongoing organizing campaign to represent Respondent's employees at numerous locations. Respondent argued from the outset of this proceeding that the Union's activity on a nationwide basis has been unprotected and that it filed ULPs for harassment and other illegitimate purposes, therefore rendering unprotected the union activities of particular employees at Branford and Charlotte. Accordingly, Respondent urged, I should expand the scope of inquiry at trial beyond the specific allegations to include evidence of the Union's conduct and motives throughout its over 3-year organizing drive.

On the contrary, I deemed it appropriate to limit the scope of the issues litigated to the events specified in the complaint.³ As I stated on the record, the question of whether particular employees' activities were protected must be determined from their activities and motives, not what the Union intended and did at the national level. To have imputed the latter to the employees, in the absence of evidence of specific knowledge, would have perverted common law principles of agency and run contrary to the purposes of the Act. Respondent provided no evidence or offers of proof that any of the employees who were the subjects of alleged ULPs at either Branford or Charlotte were privy to the Union's nationwide strategies.

Aside from the nexus issue, accepting Respondent's contention would have required an analysis of hundreds of ULP charges the Union has filed, many of which have been settled.⁴ Meaningfully evaluating them in an effort to decide the Union's motives would have been an impossible undertaking. Moreover, the result would have been a trial lasting for an indeterminate number of months that would have imposed a crushing burden on the other parties, as well as on the Agency's hearing process.

The specific issues before me are as follows:

Branford—2005⁵

1. Did Daniel Bonelli, general manager, or Eric Pepe, plant manager, coerce employees by soliciting them at a group meeting in mid-June to sign a letter against the Union's position opposing Respondent's water discharge permit application? Did that letter constitute a threat of plant relocation because of the Union's/employees' actions in opposition to the permit?

2. Did Respondent, prior to July 26, assist employee Milagros Rupert in preparing a letter against the Union's position on the permit and in soliciting employees to sign it? If so, did Respondent thereby threaten to relocate the plant because of the Union's/employees' actions opposing the application?

3. Did Pepe, in about late July (a) interrogate Berta Campos concerning her union activities; (b) solicit her to sign a letter

³ The Board, on July 11, 2006, denied Respondent's request for special permission to appeal my rulings, without prejudice to its right to renew its contentions in any exceptions it might file to my decision.

⁴ The Union has filed approximately 140 charges nationwide, of which at least 60 have been settled.

⁵ All dates hereinafter for Branford occurred in 2005, unless otherwise indicated. The stated allegations and dates are based on my evaluation of the evidence, not necessarily what is in the complaint. The same holds true for the Charlotte allegations.

prepared by Respondent disputing union claims; (c) ask her to sign a letter renouncing her demand for material safety data sheets (MSDS) from Respondent's customers; and (d) warn her to "be careful" about engaging in union activities?

Charlotte

2003 Allegations

1. On the morning of January 13, 2003, when nonemployee union organizers were attempting to distribute union leaflets to Respondent's employees, did Respondent's agents engage in unlawful surveillance or otherwise interfere with employees' interactions with those organizers?

2. That afternoon, did Stephen Coleridge, production supervisor, summon the police to interfere with organizers who were attempting to distribute union leaflets to employees?

3. Was the informal settlement agreement (SA) reached in Case 11-CA-19841, approved on January 20, 2004, properly set aside with regard to settlement of the above allegations because of Respondent's further violations of the Act at Charlotte in 2004?

2004 Allegations

1. Relating to dress code policy

1. Did Coleridge, on about February 9 (a) announce to Maria Raquel Cruz a/k/a Raquel Cruz (Cruz) a policy prohibiting employees from wearing union buttons, stickers, or pins on the shirts of their uniforms; and (b) require her to remove a union sticker from her shirt?

2. Did Coleridge, on February 16 (a) advise Candy Galdamez of a policy prohibiting employees from wearing anything in addition to Respondent's standard uniform; (b) tell her she could not wear a union hat inside the facility, including at her workstation; (c) tell her to remove the hat; and (d) issue her a verbal warning for wearing it?

3. Did Coleridge, on March 1 (a) announce to Galdamez and Ana Callas a policy prohibiting employees from wearing union stickers on their uniforms; and (b) require them and Cruz to remove union stickers from the shirts of their uniforms?

4. Did Mark Stoy, plant manager, on March 1, implicitly threaten Galdamez with discharge if she again wore a union hat or a union sticker?

5. Did Respondent, on March 1, issue verbal warnings to Callas, Cruz, Rosa Cruz, and Emelinda Rivera because they wore union stickers? On the same day, did Respondent issue Galdamez a written warning for the same reason?

2. Relating to solicitation and distribution

1. Did Coleridge, on about February 10, prohibit Cruz from showing a union leaflet to other employees?

2. Did Coleridge, on about February 20, when employees were in the break room (a) announce a policy prohibiting them from distributing or possessing union leaflets during nonwork-time in nonwork areas; and (b) enforce the policy by confiscating union flyers from them?

3. The 8(a)(1) statements

1. Did Robbie Poole, general manager, on January 30 (a) interrogate Callas concerning her union activity; (b) inform her

that Respondent had a rule prohibiting such activity; and (c) warn her not to violate the rule?

2. Did Poole, at a group meeting on February 19 (a) threaten employees that Respondent would close the facility, that the employees would lose their jobs, and that other employers would not hire them if they selected the Union as their collective-bargaining representative; and (b) tell employees that their selecting the Union as their collective-bargaining representative would be futile because Respondent would never allow the Union to represent them?

3. Did Stoy, on about February 23 (a) instruct Cruz not to speak at its meetings with employees concerning information she received about the Union; and (b) solicit her to report such information to him privately?

Facts

Based on the entire record, including the pleadings, testimony of witnesses, and my observations of their demeanor, documents, and stipulations of the parties, I find the facts as follows.

Regarding credibility, I have found the testimony of many witnesses reliable on some points but not on others. The Board has stated that witnesses may be found partially credible because the mere fact that a witness is discredited in one instance does not automatically mean that the witness must be discredited in all respects. *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 799 (1970). Rather, it is appropriate to weigh the witness' testimony for consistency throughout with the evidence as a whole. *Id.* at 798–799; see also *MEMC Electronic Materials*, 342 NLRB 1172, 1200 fn. 13 (2004), quoting *Americare Pine Lodge Nursing*, 325 NLRB 98 fn. 1 (1997) (noting that when examining testimony, a trier of fact is not required “to accept the entirety of a witness’ testimony, but may believe some and not all of what a witness says”); *Excel Container*, 325 NLRB 17 fn. 1 (1997) (stating that it is quite common in all kinds of judicial decisions to believe some, and not all, of a witness’ testimony). When there was conflicting testimony and an absence of definitive extrinsic evidence, my credibility resolutions sometimes turned on a determination of which witness’ version of events seemed more plausible.

Respondent, a Washington corporation, headquartered in Cincinnati, Ohio, operates numerous facilities throughout the United States and Canada and is engaged in providing corporate identity uniforms and related services. Since about January 2003, the Union has been engaged in an ongoing nationwide organizing campaign seeking to represent Respondent’s employees. Respondent’s counsel stipulated to Respondent’s animus during the timeframe relevant to the allegations in the complaint.⁶

The majorities of employees at both Branford and Charlotte are of Hispanic origin and have Spanish as their primary language. Respondent uses the term “partner” for an employee.

Facts—Branford

At its Branford facility, Respondent employs approximately

⁶ Tr. 12 (Charlotte). Hereinafter, transcript references for the Branford portions of the decision refer to the Branford transcripts; for the Charlotte portions, the Charlotte transcripts.

80 production workers, who clean uniforms that Respondent rents to customers. Two such employees testified: Berta Campos, for the General Counsel; Milagros Rupert, for Respondent. Plant Manager Pepe and Brian Cardozo, a supervisor, were also witnesses.

On April 22, 2004, Respondent signed a settlement agreement encompassing the following conduct at Branford: engaging in unlawful surveillance of union organizers, soliciting employees to revoke their union authorization cards, congratulating those who circulated antiunion petitions in the presence of other employees who refused to sign them, interrogating employees concerning their union sympathies, threatening employees with discharge if they discussed their work evaluations with other employees, and discharging employees because they supported the Union.⁷ The General Counsel has not contended that Respondent violated the terms of this agreement, which was never revoked, and no underlying facts were presented as background evidence here.

1. Respondent’s water permit application

Many of the Branford allegations stem from Respondent’s application to the Connecticut Department of Environmental Protection (DEP) for a permit to expand its water discharge capacity at this facility.

A number of organizations, labor or environmental, expressed positions opposing the permit. The Union was one of them, voicing objections by letter dated March 3, to DEP.⁸ Its thrust was environmental, as would logically be expected when addressing an environmental agency, but there also were repeated references to Cintas employees. For example, on page 1: “[W]e believe the draft permit still fails to adequately address spill prevention and control, training of workers and supervisors on pre-treatment requirements and the handling of shop rags;” and, on page 5: “The training should include methods of protecting the environment as well as protection of employee[sic], who are the first line of defense for the environment and the community.”

In its March notice of intervention,⁹ the Union continued to address matters pertaining to Cintas employees; on page 2: “It is demonstrable that in-plant safety and health concerns are intimately related to a laundry’s environmental impacts . . . ;” and on page 3, “the Union contended that the training procedures that Respondent proposed were (1) inadequate, in that they were insufficiently detailed and there was no indication that training would be available in the Spanish language, and (2) incomplete in that they failed to mandate training for all employees in spill prevention and response.”

DEP granted the Union’s petition to intervene. In subsequent filings, the Union continued to raise, among its issues, employees’ training in the area of chemical spills and environmental hazards.¹⁰ DEP issued a final decision on the permit on November 29, based on an agreement between DEP staff, Respondent, and the Union as intervenor.¹¹

⁷ U. Exh. 4.

⁸ U. Exh. 7.

⁹ R. Exh. 9.

¹⁰ See R. Exhs. 11 & 12.

¹¹ U. Exh. 5.

During the course of DEP proceedings, the Union solicited employees to sign a petition opposing the permit.¹² This was never in fact filed with the DEP, as reflected by a certification from DEP that the only correspondence it received purported from Cintas employees was a letter supporting the permit, received July 26 (the July letter).¹³

It is undisputed that on one occasion, management held a meeting of employees in the cafeteria, solicited them to sign and send to the DEP hearing officer a letter in support of Respondent's application for the permit, and said that employees could sign it if they liked.

Campos gave the date of the meeting as July 26, identifying the July letter as the document that was circulated that day. However, DEP stamped this undated letter as received on July 26, and I credit Rupert's testimony that she prepared it and solicited other employees to sign it outside the context of a management meeting. Consistent with Rupert's testimony was Cardozo's testimony that a proposed letter bearing a date of June 15 (the June letter),¹⁴ was the one management showed to employees at the cafeteria meeting, the date of which he could not recall. In the absence of reliable evidence as to the precise date, I find the best estimate is in about mid-June.

Although Campos testified that Cardozo was the one who solicited employees to sign the letter, I find more likely Cardozo's testimony that either Pepe or Bonelli, managers over him in the chain of command, conducted the meeting and that his role was to translate what they said into Spanish.

Based on the above, I find that Respondent, through Bonelli and/or Pepe, in about mid-June, solicited employees to sign a letter supporting Respondent's water permit application.

This letter mentioned nothing about the Union or its opposition to the permit application. Included in the letter was this language:

[F]urther restrictions on our water use and discharge could cause our company to relocate to an area that has more reasonable permit standards. A relocation of our facility would be an economic hardship that neither I nor any of the other partners here at Cintas would want.

As with the employee petition opposing the permit, this letter was never filed with DEP.

The July letter that was filed with DEP was signed by a number of employees, including Campos. Voicing support for the permit application, it stated that the Union was "on the wrong side" of the issue. Rupert testified that, solely on her own initiative and with the aid of a nonemployee, she drafted, produced, and distributed this letter and learned where to send it, without any management assistance or involvement. Further, she asserted that after getting some signatures, she gave it to her sister, also an employee, to distribute to other coworkers and never saw it again before it was mailed to DEP from Respondent's facility. Who actually sent it from there remains a mystery.

¹² GC Exh. 3, an undated petition from five individuals, including Campos, identifying themselves as "Cintas worker[s]."

¹³ GC Exhs. 6 & 10.

¹⁴ U. Exh. 6(a).

Rupert's testimony was somewhat implausible on its face. Nevertheless, she testified consistently and without hesitation that the above occurred, and nothing in her testimony contradicted this. Nor was there anything in her demeanor suggesting that she was not being truthful. Although implausible, her testimony was not implausible to the point of being improbable beyond the pale of believability. No witnesses contradicted her, and Pepe and Cardozo denied any role in this letter. Indeed, Campos testified that she told Respondent's attorneys that she understood that Rupert had written the July letter and that no company representatives had been involved in its preparation or distribution. Mere suspicion that Respondent's management may have been involved cannot serve as a substitute for evidence.

Accordingly, I credit Rupert, Pepe, and Cardozo and find that Respondent's agents were not involved in the preparation of the July letter or its distribution to employees. Accordingly, I need not address its contents.

2. Letters to Respondent's customers/MSDS sheets

MSDS contains information about chemicals, pesticides, herbicides, or other toxins that might be found on customer uniforms that Respondent cleans. By letter dated January 7,¹⁵ several employees, including Campos, requested that Respondent provide them with MSDS for major customers Terminix and Trugreen Chemlawn (Trugreen).

On July 1, Pepe called Campos into his office. As per her earlier request, he gave her MSDS for Terminix and Trugreen. He asked her to sign an acknowledgment that she had received them, and she did so.¹⁶

During the water permit water application process, the Union also solicited employees to sign letters to Terminix and Trugreen, contending Respondent was providing improper training, denying requests that MSDS' be provided, and not furnishing other information on toxic chemicals on uniforms.¹⁷

Pepe, Cardozo, and Campos all testified about a meeting when Pepe called Campos into his office and had Cardozo act as interpreter. The topic was whether Campos had in fact signed one of those letters on which her signature appeared, or whether it was forged. The genesis of the meeting was that Pepe had received information from corporate headquarters that employee signatures were forged on some of the letters being circulated by the Union.

According to Pepe and Cardozo, they had only one meeting with Campos on the subject, and on that day, July 26, she signed an affidavit.¹⁸ Campos, however, said there were two meetings, the first in mid-June or early July, and that at the later meeting she was presented with the proposed affidavit and asked to sign it.

Pepe testified that at the meeting, Campos signed a "form af-

¹⁵ U. Exh. 3. I take administrative notice that "Enero" is Spanish for January.

¹⁶ GC Exh. 2; R. Exh. 7.

¹⁷ See GC Exhs. 4, 5(c), which are identical in text but different in the number and placement of signatures, including where Campos' name is located.

¹⁸ GC Exhs. 5(a) and (b) (Spanish original and English translation, with the date of July 26 on the former).

fidavit.” This suggests that the detailed July 26 affidavit was prepared later. Further, the language of the July 26 affidavit strongly implies there was a previous meeting. Whether there were two meetings or one, I would expect the affidavit to have been presented to Campos fairly close in time to the conversation regarding her signature. Accordingly, I find that in about late July is the best approximation for when the meeting in question occurred.

At trial, Campos was frequently equivocal and tentative and, at times, totally contradictory, in testifying about what she signed and did not sign, and what exactly she told Pepe. I realize that during the course of her testimony, she was shown numerous documents, many of which were photocopies with her purported signature. Granted, also, Campos may have been intimidated by management’s presence and the court process, as argued by the General Counsel. Regardless, I can not find that she was a wholly reliable witness.

In one critical respect, her testimony fully comported with that of Pepe and Cardozo—and with her affidavit to Respondent: she unequivocally told Pepe that her signature on a Terminix/Trugreen letter (GC Exh. 5(c)) was forged.¹⁹

After Campos said this, Pepe asked if she would sign an affidavit confirming in writing what she had said. He told her it would be completely voluntary, and there would no repercussions regardless of what she decided to do. She signed such an affidavit within a short time. Therein, Campos stated that when Pepe had shown her the letter:

[M]y immediate response was one of surprise and confusion. I was also very concerned because I did not know what they were talking about and because I had never sent any letter like this to any customer of Cintas. At that point, I was shown a copy of the letter attached hereto, which is made to look like it was signed by me and has my name listed. I never signed this letter and I did not authorize anyone to sign this letter on my behalf. What’s more, it is clear that it is not my signature because among other things my name is incorrectly written. I am very upset that someone would forge my signature on this letter and I will provide whatever assistance I can to help uncover who did this terrible thing.

I credit Pepe’s and Cardozo’s consistent testimony that, at the end of the meeting, Pepe told Campos to be careful because her signature was being used on documents without her authorization. I note that Campos’ version was not necessarily at odds with theirs; she testified, that, “[t]hey just said to be careful, but I don’t know why.”²⁰ Her reaction to the remark was “just normal. I went back to work. I didn’t pay any attention to it.”²¹

Conclusions

Starting with the allegations pertaining to the water permit application, I have found no evidence of management’s involvement in the July 2005 letter, and therefore no violation

can be attributed to Respondent based on its language, or otherwise.

As to the June 15, 2005 letter that Respondent solicited employees to sign in support of the permit application, the following language is alleged to have been unlawfully threatening:

[F]urther restrictions on our water use and discharge could cause our company to relocate to an area that has more reasonable permit standards. A relocation of our facility would be an economic hardship that neither I nor any of the other partners here at Cintas would want.

Initially, I reject Respondent’s contention that the Union’s opposition had nothing to do with protected activity under the Act but rather was related to environmental concerns. Since the sole focus of DEP was on environmental issues, the Union’s couching its opposition to the permit on environmental grounds was only natural. In any event, throughout the process, the Union voiced objections to the permit in part on the need for better employee training and protections in dealing with hazardous wastes. This clearly impacted on employees’ health and safety and, therefore, on their terms and conditions of employment.

Returning to the letter’s contents, *NLRB v. Gissel Packing Co.*, 393 U.S. 575, 618 (1969), is the benchmark case in the area of employer’s statements to employees about the consequences of unionization. To be found lawful and noncoercive, predictions of adverse effects must be based on objective facts or reference demonstrably probable consequences beyond the employer’s control. *Id.*; *Dallas & Mavis Specialized Carrier Co.*, 346 NLRB 110 (2006).

The language of the paragraph in question clearly conveyed that the operative body that could cause a need for relocation “to an area that has more reasonable permit standards” was the DEP, if that agency made the decision to deny the permit. Logically, had the agency denied the permit, it would have been a decision contrary to Respondent’s desire for such and, hence, beyond Respondent’s control.

Moreover, in order to establish a violation, the General Counsel must demonstrate a connection between the Union’s presence and the outside factors that could result in adverse consequences to employees. *Chinese Daily News*, 346 NLRB 906, 908 (2006). Neither the Union nor its opposition to the permit was mentioned in the letter. Even if that opposition was implicitly referenced, it is difficult to see how employees could conclude that the denial of the permit by DEP would be based on their union activities or the Union’s organizing efforts.

In sum, the June 15, 2005 letter merely raised the prospect of plant relocation if the State agency decided to deny Respondent’s application for an expansion of its water treatment capacity. I conclude that this could not have reasonably been construed as a threat of reprisal against employees for engaging in union activity and, hence, was not coercive of their Section 7 rights. Ergo, I similarly conclude that Respondent’s circulation of the letter could not reasonably have been seen by employees as directed against the Union or their union activities.

I now turn to Pepe’s meeting with Campos in about late July 2005, when he questioned her about her signature on a union-initiated letter to a customer of Respondent. Contrary to Respondent’s position, I conclude that such letters had a sufficient

¹⁹ Tr. 136, 152–153, 171.

²⁰ Tr. 106. See also her testimony at Tr. 111, where she stated that Cardozo made the comment. I believe it more likely that he was translating for Pepe, who conducted the meeting.

²¹ Tr. 197.

nexus to employees' health and safety issues to afford protection under Section 7 of the Act to employees involved in them.

The employees did not lose that protection because of the fact that the letters were sent to major customers of Respondent and accused Respondent of not providing its employees with proper training, denying their requests that MSDS be provided, and not furnishing other information on toxic chemicals. The letters limited their criticisms of Respondent to those narrow subjects and did not "disparage" the Respondent's products or integrity in general. I note that even had the letters raised questions about services or products Respondent provided to customers, they would still be found protected. See *Professional Porter & Window Cleaning Co.*, 263 NLRB 136, 138-139 (1982), *enfd. sub nom. NLRB v. Professional Porter*, 742 F.2d 1438 (2d Cir. 1983) (employee letter to employer's main customer attacked quality of service employer provided to customer); *Aviation Service Co. of New Jersey*, 248 NLRB 229 (1980), *enfd. 636 F.2d 1210* (3d Cir. 1980) (letter disseminated to employer's customers raised questions about the safety of employer's maintenance procedures).

Similarly, inaccuracies or misstatements in the letters did not ipso facto render them unprotected. *Sprint/United Management Co.*, 339 NLRB 1012, 1017 (2003); *Professional Porter & Window Cleaning*, *supra* at 139. Rather, it must be shown that any such inaccuracies or misstatements rose to the egregiousness of "disloyal, reckless, or maliciously untrue." See *TNT Logistics North America, Inc.*, 347 NLRB 568 (2006) (claim that management solicited employees to falsify logs was bogus); *Senior Citizens Coordinating Council of Riverbay Community, Inc.*, 330 NLRB 1100, 1107 fn. 17 (2000); *Delta Health Center*, 310 NLRB 26, 43 (1993), *enfd. mem. 5 F.3d 1494* (5th Cir. 1993). Nothing contained in the letters fit into any of those categories.

For the above reasons, I conclude that Respondent's interrogation concerned Campos' protected activity.

Interrogations of employees are not per se violative of Section 8(a)(1); instead, the Board uses a totality-of-circumstances test to determine whether an interrogation is coercive of employees' rights under the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), *enfd. sub nom Hotel Employees Local 11 v. NLRB*, 760 F.2d 1005 (9th Cir. 1985). See also *Central Valley Meat Co.*, 346 NLRB 1078 (2006). Factors considered include any background ULPs, the nature of the information sought, the level of the questioner (how high in the supervisory chain), the place and method of interrogation, and whether the employee is an open and active union supporter. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).

In *Foamex, Inc.*, 315 NLRB 858 (1994), the Board, reversing the judge, found coercive a manager's interrogation of individual employees concerning their signatures on a pronoun letter, in the context of numerous ULPs. Aside from those reasons for finding the interrogations violated the Act, the Board stated that "ascertaining the authenticity of the employees' signatures" did not constitute a legitimate reason justifying interrogation concerning their protected activities." *Id.* The Board noted that the employer had other means of finding out the information, such as comparing the signatures on the letter with those that were in the employees' personnel records. Respondent could have done

that in this case rather than interrogate Campos.

Following *Foamex*, I find that Respondent did not have a valid purpose for the interrogation, and it possessed alternative ways of obtaining the information that were less intrusive in Campos' Section 7 rights. Additionally, the plant manager conducted the interrogation in his office, with no one else but another supervisor present. These factors lead me to conclude that, under all the circumstances, Respondent's interrogation was coercive. According, Respondent violated Section 8(a)(1) by interrogating Campos about the genuineness of her signature appearing on a union-initiated document relating to employees' health and safety.

However, I do not conclude that Pepe interrogated Campos about her union activity per se, or "solicited" her to sign a letter disputing union claims or to "renounce" her demand for MSDS' from Respondent's customers. He merely questioned her about whether the signature on the letter was hers.

Finally, I do not conclude that Pepe's remark at the conclusion of the meeting, that she "be careful" because her signature was being used on documents without her authorization, was coercive. On the contrary, it was a reasonable caution based on her expressed anguish at having had her name forged.

Facts—Charlotte

1. Handbilling on January 13, 2003

A brief description of the physical layout of the plant and its surroundings is helpful in putting in context what occurred. The facility, located on Harris Technology Boulevard, is the last building before the street dead ends. On the other side of the street is a business park entered into by a driveway on the boulevard, which is 40-foot wide from curb-to-curb. Two driveways or entrances lead into the facility, which have been identified as entrance A, the furthest from the dead end, and entrance B. See General Counsel's Exhibit 18, an aerial view, and General Counsel's Exhibit 19, an annotated diagram.

I am cognizant of the hiatus of over 3 years between the events in question and when witnesses testified about them before me, in March and May 2006. Diminution of recall, especially when it comes to precise times and specific details, is inevitable, and discrepancies in testimony between witnesses called by a party may lessen their reliability as witnesses but does not necessarily mean lack of candor.

Three witnesses testified for the General Counsel: nonemployee handbillers Mary Ann Logan (who was in charge), Gwendolyn Miller, and Eulacey Stephenson. Similarly, Respondent called three witnesses on these allegations: Mark Stoy, general manager; Mike Roberts, service manager under Stoy; and Stephen Coleridge, a supervisor.

The evidence contains two documents that were prepared close in time to January 13: Logan's action report, prepared within days of the handbilling, and Respondent's counsel's position letter dated March 14, 2003.²² Because of their much greater proximity in time to the events vis-à-vis the testimony, I am inclined to afford them some weight, even realizing their following limitations. Logan's notes were hearsay as far as what occurred in the afternoon, and statements in a position

²² U. Exh. 8; GC Exh. 30, respectively.

letter, although binding on a respondent, are not quite up to the level of evidence of statements to which a witness has sworn in an affidavit. Further, both documents carried the potential of being self-serving.

A. Morning Events

Witness testimony, the action report, and the position statement all agree that the five female nonemployee handbillers first positioned themselves at a facility entranceway at about 5 a.m., and I so find that to be their time of arrival. It was dark outside, and the street lights were still on. No cars were parked along the street at that hour, nor were any employees coming in or out of the facility.

The women shortly thereafter split up, with Logan and Miller going to entrance B. About 10–15 minutes later, Roberts came out of the building and walked up to within 10 or less feet of them. There is no dispute over the gist of the ensuing conversation. He asked what they were doing there, and Logan replied they were handbilling. Roberts told them not to go on company property, and Logan responded they were not on it. He left.

Thereafter, Logan and Miller stood at either side of entrance B and held out flyers as trucks left or cars entered. In order to give the vehicle's passenger a flyer, one of them had to cross into the driveway. The same held true of the handbillers at entrance A. At least 20 cars entered and at least 15 trucks left, most at entrance B. Between the five handbillers, they gave out only two flyers total. They left at between about 6:30 and 6:45 a.m., when it was getting lighter outside.

A no-trespassing/no-solicitation sign inside the premises was 66–69 feet from where Logan and Miller engaged in handbilling activities at entrance B (the distance to entrance A was much greater). At various times that morning, Stoy, Roberts, Coleridge, and another individual who is no longer employed came out of the building and stood by that sign.

Consistent with Logan's action report, Logan, Miller, and Stephenson, all testified that as vehicles later entered or departed through the entrances, management representatives at various times stood by that sign and either beckoned incoming vehicles to enter or outgoing trucks to leave.

Respondent's witnesses and position statement did not dispute that testimony. According to the latter, in view of the darkness and reports of near accidents, Stoy and later Roberts "assisted directing traffic" for about 30–45 minutes, to ensure that employees slowed down and entered or departed the parking lot safely.²³ Stoy testified there was much incoming and outgoing vehicles at one point, leading him to decide that someone needed to "direct traffic," a role he said was performed by Roberts.

Roberts, however, did not support Stoy's claim that the volume of traffic of entering and departing vehicles created a problem. On the contrary, he testified that he gestured to "less than a handful" of exiting trucks to stop, did not gesture to any incoming cars, and that at that time of the morning, there was "not much traffic."²⁴

In agreement with Roberts but not Stoy, Coleridge recalled no time when a car was coming in at the same time a truck was leaving. He further testified that the amount of time an outgoing truck or incoming car would be delayed by the taking of a flyer was less than a minute, comporting with Miller's testimony that trucks left about 1 to 3 minutes apart. Finally, he testified that he did not consider the handbillers to constitute a major traffic impediment problem in the morning.

The testimony of Roberts and Coleridge supports the testimony of Logan, Miller, and Stephenson that at no time was a truck leaving at the same time as a car was entering, and that their presence created no traffic problems, and I so find. I note that this determination is logically consistent with the fact that only two vehicles stopped to get flyers.

Based on the above, I find that it was the dark outside during at least most of the time the morning handbilling occurred; handing vehicle drivers flyers required a handbiller to cross into the driveway; Stoy and Roberts, from a distance of at least 66 feet from the handbillers, directed incoming cars to enter and outgoing trucks to leave; and the handbillers at no time created any kind of traffic problem.

B. Afternoon Events

The following facts are undisputed. The handbillers returned to the facility at about 1 p.m., soon after which Logan left for an appointment. Cars were parked on both sides of the street, but there is no evidence that the handbillers interfered with any moving traffic or damaged property in any way. At about 1:15 p.m., Respondent, through Coleridge, called the police to speak to them. An unidentified police officer arrived at the facility and spoke with them at entrance B, after which he reported to Coleridge what he had told them. They left after that, as per Logan's earlier directive that they do so if the police came. No officer testified, and there is no police report or other documentation in the record.

Coleridge testified that, on his own, he called the police department at 1:15 p.m. and said there were handbillers outside the facility on the boulevard and traffic coming down the street, and he thought it was unsafe for them.²⁵ I find it difficult to believe that a supervisor would have taken it upon himself to call the police without first checking with, and obtaining the approval of, higher management authority present at the facility that day, to wit, Stoy. Moreover, his professed concern for the safety of the handbillers rings false. In the morning, they stood by the entrances in the dark and there was a potential safety hazard, yet no representative of Cintas called the police department. Further, there is absolutely no evidence that vehicular traffic posed any kind of safety threat to the handbillers in the 15-minute interval between their arrival and his phone call.

Coleridge denied ever telling the police to instruct the handbillers to leave the facility. He also testified that he did not speak to the police officer who arrived on the scene until after the latter had spoken to the handbillers. However, I find to the contrary, based on Miller's credited testimony that a representa-

²³ No witness testified about any near accidents.

²⁴ Tr. 1278, 1296.

²⁵ The position statement added "property risks" to "potential safety concerns" as his reasons for summoning the police, but Coleridge said nothing about the former.

tive of the Company came out when the officer arrived and talked with him, as well as the statement in Respondent's position letter that, "[w]hen the police arrived, Mr. Coleridge explained the situation."²⁶

Miller and Stephenson gave differing accounts of what the office told them. Miller testified in considerably greater detail than Stephenson, both in regard to what he said and in general. Miller also appeared to be quite candid. For example, when asked on cross-examination about the police officer's demeanor, she replied that she did not find him intimidating. Accordingly, I credit Miller's version that the officer came over and told them they could get a citation if they blocked traffic, but it would be fine if they stayed on the concrete and handed out flyers.

Coleridge testified that after the officer spoke with the handbillers, he reported back to Coleridge that he had instructed them to leave. As it is hearsay, I will not consider the statement evidence of the truth of the matter asserted therein. Respondent's position letter states that officers reported back that they had asked the handbillers to leave because they were obstructing traffic.

Coleridge's testimony concerning what the officer reported back to him, as well as the position letter, constitute circumstantial evidence that Coleridge had requested police action; otherwise, there would have been no reason for the officer to report back to Coleridge what he told them.

Based on the above, I do not credit Coleridge on his interaction with the officer or his professed reasons for summoning the police. Accordingly, there is no reliable evidence on exactly what, if anything, he requested they do.

Conclusions

With regard to what occurred in the morning, management may lawfully simply observe the handbilling activities of non-employees at its premises. See *Partylite Worldwide, Inc.*, 344 NLRB 916 (2005); *Milco, Inc.*, 159 NLRB 812, 814 (1966), *enfd.* 388 F.2d 133 (2d Cir. 1968). However, surveillance can be deemed coercive, depending on the totality of facts and circumstances. *Partylite Worldwide*, above; *Brown Transportation Co.*, 294 NLRB 969, 971-972 (1989).

Respondent raises the following justifications for its agents beckoning to vehicles: traffic issues and safety concerns, more specifically the safety of the handbillers.

Having found that the handbillers created no traffic problems, I reject that first claim. The second contention has more merit. It was dark outside during most of the time the handbillers stood by the entrances that morning, and giving a flyer to a vehicle's driver, whether departing truck or entering car, required a handbiller to cross into the driveway. I conclude that management had a reasonable concern that a handbiller could be injured by an incoming car or outgoing truck, with the potential for personal injury and a lawsuit being filed against Respondent.

As far as unlawful surveillance and interference with employees, as alleged by the General Counsel, I find it significant that the management representatives were at least 66 feet away

from the closest handbiller and entering vehicles. See *Brown Transportation*, *supra*. This was not a situation in which the representatives hovered near the handbillers or otherwise engaged in any kind of menacing behavior. Contrast, *Partylite Worldwide*, *supra*. Indeed, in the only conversation the handbillers had with a Cintas representative, Roberts merely told them to stay off company property.

Further, in these circumstances, especially when it was dark outside, I doubt that employees entering the facility would have been able to see management's gestures when they turned into the entrance and saw the handbillers. Accordingly, I cannot conclude that such gestures would have discouraged entering employees from taking flyers had they otherwise wished to do so.

As to the outgoing drivers, none of them testified. Management's mere act of gesturing them to leave did not amount to telling them not to take a flyer or otherwise coerce them, especially when a driver could have stopped to take one and been delayed only briefly before continuing to drive out into the street.

Accordingly, I conclude that management's conduct in the morning amounted to neither unlawful surveillance nor interference with interaction between the nonemployee handbillers and employees.

As to the afternoon's events, it was light outside when Coleridge called the police, and the record reveals no legitimate safety or property concerns. Nor has Respondent shown there were any other conditions outside that created a bona fide reason for summoning the police to talk to the handbillers. In the absence of such, the inference is, and I find, that Respondent, through Coleridge, took that action simply to intimate or harass them. This amounted to an effort to interfere with lawful union activity. See *Venetian Casino Resort, LLD*, 345 NLRB 1061 (2005); *Gainesville Mfg. Co.*, 271 NLRB 1186, 1188 (1984). In fact, this was exactly the effect, since they left the facility immediately after their conversation with the policeman, as per Logan's prior directive.

Therefore, Respondent violated Section 8(a)(1) when Coleridge summoned the police to interfere with nonemployees engaged in handbilling for the Union.

2. 2004 Allegations

Credibility resolution is the key to deciding most of these allegations. I have already addressed the principle that witnesses may be found believable on some matters but not others.

The following employee witnesses testified on behalf of the General Counsel: Ana Callas, Raquel Cruz, Candy Galdamez, and Maria Martinez. All are production employees.

I find that Galdamez was the most reliable. Although defensive in demeanor, she exhibited good recall, was consistent in her answers on both direct and cross-examination, and readily responded to questions posed to her.

Callas and Cruz, the most active union supporters from this record, were not wholly credible. Callas was frequently evasive, especially on cross-examination, and she tended to stray from the question when answering, leading me to suspect that she was trying to think out her answers rather than answering spontaneously based on recall. She was also impeached by her

²⁶ GC Exh. 30 at 3.

NLRB affidavits on a couple of matters, as well as inconsistent at times in her testimony.

For example, Callas' testimony was contradictory and confusing as to whether she had been told that she could not wear noncompany hats, caps, pins, or badges prior to March 1, 2004, when she wore a union sticker at work. She testified that the statement in her March 25, 2004 affidavit that she was told this in early February 2004 was a "mistake" on her part,²⁷ because she did not wear anything after receiving such a directive. Yet, she later testified that on February 4, 2004, she started taking notes of events occurring at the plant and that she had these notes at the time she gave both her affidavits but did not need them because she had memorized relevant dates. I would expect in that circumstance that she would not have made such a "mistake" in her March 25, 2004 affidavit.

She also testified that she gave her notes to the Union, which was not able to locate them during the trial. I would also normally expect that such notes would have been retained in light of the likelihood that they might be needed in later litigation. Indeed, Charlotte was but one of Respondent's facilities involved in the Union's nationwide organizing campaign.

On another matter, Callas first testified on cross-examination that management in 2004 announced a prohibition against non-company hats or caps, pins, buttons, and badges at a meeting, not individually. After Respondent's counsel read a statement in her second affidavit that employees were told individually, she was equivocal and evasive as to what was said to her on an individual basis.

Cruz, similarly, was impeached by statements made in an affidavit, portions of her testimony were contradictory (especially regarding the February 23, 2004 meeting and what Stoy said to her after its conclusion), and she seemed to confuse separate management meetings. Cruz also took notes of what was taking place at the plant but averred that she destroyed them after June or July 2004. My comments regarding Callas' notes apply equally. Further, on one matter, she stated she was refreshed by what she said in an affidavit, but on others, said that she was not; and, on certain subjects, Cruz testified readily but on others was much more hesitant.

Martinez appeared to be candid, but the reliability of her testimony was diminished by her limited recall, limited language skills (she testified that she does not speak or understand English and is essentially illiterate in her native language of Spanish), and her clear distress at having to testify; at one point, she broke into tears. I note in this regard that she frequently darted glances at management representatives, as if intimidated by their presence.

Turning to Respondent's witnesses, Robbie Poole, Mark Stoy, Stephen Coleridge, Mike Roberts, Nelson Santiago, and Francisco Colon testified as representatives of Respondent, and Rosa Franco was called as an employee witness.

General Manager Poole was not a fully credible witness. He appeared ill at ease, a demeanor I would not normally expect from someone in a high-level management position. Further, he did not always seem forthright. On the matter of what jewelry

female employees can wear, his testimony was shifting and evasive and contradicted by Stoy. He first testified on cross-examination that earrings are "not okay," then that, "I don't recall the policy covering that," and, finally, "I do know that women wear earrings in the uniform policy, yes."²⁸ His failure to give a straight answer to a simple question undermined his credibility, as did his other testimony about employees wearing jewelry, as described below.

I also find it odd that he did not generate or keep any records of the small-group meetings he held with employees in February 2004 concerning the Company's unionized Detroit facility. Again, Respondent was in the midst of a nationwide union organizing campaign, with future litigation a real possibility, and I would expect some documentation would have been maintained.

Nor was Supervisor Coleridge fully reliable. As noted earlier, I have not credited his testimony regarding his interaction with the police on January 13, 2003. Moreover, his recall of events in 2004 was quite limited in scope.

As far as the 2004 events, Plant Manager Stoy was generally consistent, detailed, and not always in agreement with the testimony of his superior, Poole. He was for the most part credible, although he equivocated at times on the issue of female employees wearing scarves and, as previously noted, some of his testimony regarding the traffic situation on the morning of January 13, 2003, was not supported by other company representatives.

Employment Practices Manager Franco Colon testified solely about management's January 30 meeting with Callas, at which he served as a translator. His testimony was consistent with Poole's and Stoy's, and I credit it.

Sales Representative Roberts, who served as a Spanish language interpreter at several management meetings with employees in 2004, testified credibly that his sole role was to translate for management and that he did not say anything to employees beyond that. I so find. The same holds true of the role of Administrative Assistant Santiago. I do not believe that either of them made substantive statements to employees at meetings other than to serve as conduits. As such, both were agents, not only apparent but actual, for Respondent, and I so find (Respondent's answer denied Santiago's agency status).

Franco is a production employee. She appeared candid, her testimony about what she told Stoy was consistent with his account, she testified she is on friendly terms with Callas, and she has no stake in the proceedings. These factors lead me to find her a credible witness.

The Charlotte facility, a rental division of Cintas, launders, sells, and distributes, corporate uniforms. The production side of the plant has industrial equipment and processes garments. In the relevant timeframe, there were approximately 55 production employees on the first shift (6 a.m.–2:30 p.m.) and 35 on the second shift (2:30–11 p.m.), as well as 45 sales and service representatives (SSRs) or truck drivers, whose working hours varied depending on the locations of customers. Production employees were afforded a one-half-hour lunchbreak, and two 15-minute breaks. For first shift, the first break was from 9–

²⁷ Tr. 359. See R. Exh. 17. She gave a second affidavit on June 16, 2004. R. Exh. 18.

²⁸ Tr. 1046–1048.

9:15 a.m., and the second break, from 1–1:15 p.m. Almost all first-shift employees used the breakroom aka lunchroom for their first break, and some also used it for the afternoon break.

Respondent at all times material has had a progressive discipline system: counseling or verbal warning, formal (written) warning, probation, suspension, and discharge.²⁹ Verbal warnings are the lowest form of discipline placed in an employee's personnel file and do not require an employee to sign any acknowledgement.

A. Allegations Relating to Dress Code

At all times material, Respondent has provided and replaced, free of charge, uniforms for production employees, consisting of dark navy blue pants and a light blue V-neck short-sleeved shirt. The employee's name is on a patch on the right side of the shirt; on the left side is a patch with the company logo. In cold weather, employees can wear long-sleeved white or navy blue T-shirts under the uniform shirt. Respondent provides no cleaning allowance, but employees can get uniforms cleaned at the plant for no charge.

The two categories of items specifically involved in this case are: (1) headwear, including hats/caps and other scarves; (2) items worn on clothing, including jewelry pins and stickers.

All policies in place at Charlotte are issued by corporate headquarters, none being unique to the facility. In 2004, there were two written sources for dress code policies: the corporate-wide policy, and rental division policies. All of the employees who engaged in union activities were production employees, so only the policies and practices relating to production partners are germane to this decision.

The rental division uniform/dress code policy dated July 27, 2000,³⁰ incorporated an "Exhibit B," which specified that all visible garments worn by partners must be navy except for normal white T-shirts. The only specific mention of headwear in the policy was that SSRs or drivers must wear specified caps. The corporate uniform/dress code dated November 26, 2003,³¹ stated that all production partners were required to wear the official company uniform while on the job. As to jewelry, females were permitted to wear earrings "in their ears only." There was no mention of headwear.

The Company issues two types of hats with the Cintas logo, one heavier duty for cold weather.³² There was conflicting testimony as to when they first became available to production employees and whether it was before or after Respondent became aware of the union organizing campaign at the facility, in late 2003 or early 2004. In any event, for at least several years, production employees have been offered a choice of ordering one Cintas hat or the other.

In both of Callas' affidavits,³³ she stated that prior to start of the Union's organizing campaign in November 2003, employ-

ees could wear noncompany baseball caps, knit caps, and lapel pins, but after that, they were told they could no longer wear noncompany hats or caps, pins, buttons, or badges. On the other hand, Cruz, in her March 24, 2004 affidavit stated that, "In the past, whenever anyone tried to wear a button, sticker or pin, the company made them take it off. The company has a policy, which they have had for some time, that employees can't wear or display anything on their work clothes."³⁴ It is not clear whether they were including the wearing of jewelry. Nevertheless, on cross-examination, Cruz stated that although prior to 2004, the Company stated employees had to comply with the dress policy at all times, this was not enforced.

As far as head covering, Galdamez testified that prior to February 2004, Emelinda Rivera and another employee wore bandanas in work areas two or three times a week. Rivera continued to do so after that time and was warned about it. The last time Galdamez observed her wearing a bandana was about 5 months ago. Galdamez further testified that Rivera and another employee also wore non-Cintas hats before February 2004. Rivera has continued to wear such hats and been told many times by supervisors to remove it. To her knowledge, whenever a supervisor observes a production employee wearing a non-Cintas hat, the supervisor tells the employee to remove it.

Stoy's testimony supported Galdamez'. Thus, he testified that Rivera has worn a "colorful" floral print scarf and, although he claimed that he has seen this "maybe three times at most," during the entire time he has been at the facility, he earlier testified that "[A] lot of times we'll make her tuck it into her shirt if it dangles. . . ."³⁵ Implicit in this testimony is that Rivera continues to frequently wear a scarf. She has never been disciplined.

Stoy further testified that although employees are not required to wear hats, they must wear one of the two Cintas hats if they do wear one, and are asked to remove non-Cintas hats. This was consistent with Callas' testimony that, when she wore a non-Cintas hat about 1-1/2 years ago, a supervisor told her to take it off and went to get her a Cintas hat. She did not receive any discipline. It also comported with Galdamez' testimony, above.

As to jewelry, the official policy, set out in General Counsel's Exhibit 15(a), is that female employees can wear jewelry only in their ears. However, I credit the consistent testimony of Callas, Cruz, and Galdamez that employees Patricia (Lay or Light) and her daughter Amanda has for years regularly worn holiday and other types of pins on their uniform shirts.

In contrast, Poole testified that the first time he observed these employees wearing pins was after the first week of this trial, although he has seen them once or twice a day during his tenure at the facility (he arrived in January 2004). He further testified that he told them to remove the pins. This testimony strikes me as contrived, self-serving, and unbelievable in the absence of any explanation of why they suddenly would have started wearing such items, and I do not credit it.

Further, Poole's testimony that loose jewelry, including

²⁹ See GC Exh. 29.

³⁰ GC Exh. 14. A superseding rental division uniform/dress code policy, dated November 17, 2005, continued to incorporate exh.B. See GC Exh. 16.

³¹ GC Exh. 15(a).

³² See GC Exhs. 17(a) and (b), the first a baseball style hat; the second, a winter toboggan-type cap.

³³ R. Exhs. 17 and 18.

³⁴ R. Exh. 23 at 2. She gave another affidavit on May 11, 2004, R. Exh. 24.

³⁵ Tr. 1222, 1195 (emphasis added).

bracelets, is prohibited, was contradicted by Stoy. Stoy testified that, despite the official policy that female employees can wear only earrings, they are also allowed to wear necklaces, rings, and bracelets; in fact, he stated that female employees can wear as much as jewelry as they wish, provided no safety issue is presented.

I now turn to discipline of other employees for violations of the dress code, including wearing non-Cintas hats or stickers of any kind. There is no evidence that prior to February 9, 2004, any employees received verbal warnings for such.³⁶ Respondent prior to that date issued only one written warning for any kind of dress code violation, to Cruz in November 2001 for not wearing a white shirt under her uniform.³⁷

Stoy testified that there have been times when employees wore Dallas Cowboys or skull-and-crossbones hats to work, but that he was not aware of any verbal or written warnings issued to them. He also testified that he has occasion to tell employees about once a month, on the average, to remove inappropriate items but has never issued a verbal or written warning to any of them.

Based on the above, I find that female employees may wear “colorful” scarves/ bandanas, provided there is no safety issue; employees are asked to remove non-Cintas hats; although employees on a regular basis are asked to remove items from their person, they do not receive any kind of discipline; and only three employees have been disciplined for violations of the dress code since at least as far back as November 2001, none of which involved the wearing of hats or personal, nonclothing items.

In light of these findings, I need not address the matter of “casual days,” about which the testimony of no two witnesses was the same. In any event, Respondent was free to set aside certain days when adherence to its normal dress standards was relaxed, and there is no allegation that Respondent made any changes in casual days in violation of the Act.

Nor, in view of my findings above, need I address any facts relating to arguments that Respondent’s actions against the employees in question was justified by the image the Company wished to present to customers and prospective customers who visited the plant. In practice, Respondent clearly did not strictly follow its own official dress policy, and it allowed other employees to wear “colorful” scarves and jewelry pins.

Finally, I need not rely in making any findings or conclusions in this area on Respondent’s Exhibit 40, which I conditionally admitted over the objections of the General Counsel and the Union that it should have been rejected because it was not produced in compliance with subpoena. The General Counsel’s and Union’s motions to strike Stoy’s related testimony is thus moot.

February 9, 2004

On this date, eight or so employees, including Callas and Cruz, wore union stickers to work. Callas testified that the

³⁶ See GC Exh. 56, from Respondent’s position statement of May 21, 2004. Verbal warnings were issued to two employees on April 13, 2004, for wearing jackets not in compliance with the dress code. GC Exhs. 45 and 46.

³⁷ Id.; GC Exh. 44.

stickers were for \$1-an-hour raise, in English or Spanish.³⁸ On the other hand, Cruz testified that the stickers had the words “Uniform Justice” in English or Spanish. However, in her May 11, 2004 affidavit, she stated that the sticker had a dollar sign.³⁹ When asked about this discrepancy on cross-examination, she testified that the dollar sign was not on the sticker and that it could have been a “mistake” in the affidavit.⁴⁰ Coleridge and Stoy also testified that the stickers were for \$1-an-hour raise, and I credit them and Callas and so find.

In any event, Cruz testified that she wore a sticker above the Cintas logo on the left side of the uniform blouse. Coleridge, her supervisor, passed by and told her to remove it and throw it away. She took it off and put it on her forehead. He told her to take it off, and she put it on her arm.

Coleridge denied this incident took place. As stated earlier, neither he nor Cruz were fully credible witnesses on all matters on which they testified. Nevertheless, I do not believe that, despite her confusion over which sticker she wore, Cruz manufactured the incident. Her recall of what took place was sufficiently detailed, and I credit her that it did occur. I note that she described conduct on her part that was belligerent and could have been construed as insubordination, inconsistent with a deliberate effort to make herself look good and Coleridge bad and thereby malign Respondent.

Accordingly, I find that Coleridge told Cruz to remove a union sticker from her uniform on February 9, 2004. There is no evidence that management or supervisors said anything to any of the other employees who wore stickers that day. In fact, Stoy testified that he observed employees wearing \$1-raise stickers on that occasion but did not direct supervisors to do anything.

On February 11, Calles and Cruz brought to management a petition from employees requesting a \$1-an-hour raise.⁴¹ It was forwarded to corporate headquarters.

February 16, 2004

I credit Galdamez’ account—not specifically denied by Coleridge—of what took place between them on February 16, as follows.

On that date, Galdamez wore a UNITE hat after she came to work.⁴² She was hanging shirts when Coleridge told her she had to take the hat off and put it away because it was not in compliance with company policy. She placed it in her purse. She was not told anything about receiving a verbal warning for wearing it.

Coleridge did not testify about his exact words to Galdamez. Consistent with Galdamez’ version, Stoy testified that Coleridge informed him that he (Coleridge) had told Galdamez that wearing the hat in a work area violated the Company’s no-solicitation rule and that he was going to issue her a verbal warning for wearing the hat and placing it in her work area. I credit this testimony inasmuch as the statement accorded with Coleridge’s other statements and conduct during this same period. The warning Galdamez later received set forth a differ-

³⁸ See GC Exhs. 33–35.

³⁹ R. Exh. 24.

⁴⁰ Tr. 694.

⁴¹ R. Exh. 43.

⁴² See GC Exh. 49.

ent reason: “wearing a winter hat, black in color.”⁴³

Stoy conceded that employees, who are not provided lockers, are free at their workstations to keep personal belongs, including such items as lunchboxes, purses, jackets, and books, as long as they do not interfere with work. Coleridge similarly testified that Respondent does not impose restrictions on personal items employees can bring to work. I credit their testimony and so find.

As opposed to the allegation in the complaint, Galdamez did not testify about any contact with Stoy that day. Nor did her testimony reflect the allegation that Coleridge said she could wear nothing in addition to the Company’s standard uniform.

With the possible exception of Galdamez, Respondent has never issued any warnings to employees for violating the no solicitation rule. Nor has Respondent, from 2001 to the present, issued any warnings to employees for having any prohibited items in their work areas.

March 1, 2004

On March 1, a number of employees wore union (uniform justice) stickers to work,⁴⁴ including Callas, Cruz, Rosa Cruz, Galdamez, and Rivera. All but Galdamez, who received a written warning, were written up for verbal counselings or warnings.⁴⁵ Stoy and Coleridge offered differing testimony as to who made the decision to issue them: Stoy testified that he and Coleridge together made the decision, but Coleridge testified that the decision was his alone. Either way, Stoy was aware of the warnings at or near the time they were issued. Stoy offered no explanation on the record as to why he deemed warnings were warranted on March 1, whereas he had seen no reason the previous month to issue warnings to the employees whom he observed wearing \$1-an-hour raise stickers.

Callas, Cruz, and Galdamez all testified about conversations they had with management on the subject that morning. The testimony of Coleridge and Stoy was not inconsistent with their testimony, which I credit.

Callas was in her work area when Coleridge told her to take off the sticker, saying she could not wear it in the plant. She asked why. He responded that the rules of the Company did not permit wearing it; that employees could only wear the company uniform. Callas did not remove the sticker. Coleridge returned about 15 minutes later and said that Stoy wanted to see her in the office.

She accompanied Coleridge there. Stoy told her he was calling her in because she could not wear the sticker; Cintas policy was that employees could wear only a uniform. She asked what was wrong with wearing the sticker, and he replied that she could not wear something that was not the color of the uniform and could wear only a white or navy blue undershirt. She took the sticker off, put it on a flyer, and gave it to him. He said nothing about her receiving a verbal warning. She was not aware of such until only a few weeks before trial.

Cruz wore a union sticker on the right side of her uniform

shirt, over her name. As she was working, Coleridge came over and asked her to take it off. She placed it on her arm. He told her the uniform was not to put stickers on. He said nothing about her getting a verbal warning. She was not aware of receiving such until being prepared for trial.

Galdamez wore a sticker on the left side of her shirt, not covering any letters on the uniform. Coleridge approached her in her work area and asked her to take the sticker off. She placed it on her forehead, and he told her to remove it. She replied that it was her body and not part of company policy, but she took it off and put it in her pocket.

Later that morning, Coleridge called Galdamez to the office, where Stoy was also present. Stoy stated this was her second warning, because she had been warned the first time about wearing the union hat, and a third warning could result in her being fired. She was shown a memo of a February 16, 2004 verbal warning, along with a written warning on March 1, 2004, for “wearing stickers on the front and back of uniform blouse.”⁴⁶

As noted above, contrary to Stoy, Coleridge testified that he made the decision to discipline the employees on March 1, after determining that wearing the union stickers violated company policy. He further testified that he told all of them (other than Galdamez) they had received a verbal warning within a day or so of March 1. However, I do not believe that Callas and Cruz were untruthful in testifying that management never told them they had received verbal warnings, an important event I am certain they would have recalled had it happened. Stoy testified that employees are normally advised orally they have received verbal warnings, but he did not aver personal knowledge that the employees in question were so told.

Conclusions

Section 8(a)(3) and (1)

The framework for analyzing alleged violations of Section 8(a)(3) is *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel must make a prima facie showing sufficient to support an inference that the employee’s protected conduct motivated an employer’s adverse action. The General Counsel must show, either by direct or circumstantial evidence, that the employee engaged in protected conduct, the employer knew or suspected the employee engaged in such conduct, the employer harbored animus, and the employer took action because of this animus.

Under *Wright Line*, if the General Counsel establishes a prima facie case of discriminatory conduct, it meets its initial burden to persuade, by a preponderance of the evidence, that protected activity was a motivating factor in the employer’s action. The burden of persuasion then shifts to the employer to show that it would have taken the same adverse action even in absence of such activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983); *Kamtech, Inc. v. NLRB*, 314 F.3d 800, 811 (6th Cir. 2002); *Serrano Painting*, 332 NLRB 1363, 1366 (2000); *Best Plumbing Supply*, 310 NLRB 143 (1993). To meet this burden, “an employer cannot simply

⁴³ GC Exh. 39.

⁴⁴ See GC Exhs. 31 and 32. Respondent has not contended that these stickers caused any damage to the uniform shirts, which are of a Dacron-type of material.

⁴⁵ GC Exhs. 40–43.

⁴⁶ GC Exh. 39.

present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct.” *Serrano Painting*, supra at 1366, citing *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984).

Here, animus has been conceded, the employees in question wore union stickers, management was aware of such activity, and management issued warnings to the employees. Accordingly, the General Counsel has made out a prima facie case under *Wright Line*.

Respondent contends that its actions were based on valid application of its dress code policy, designed to foster the image of the Company as a provider of uniforms services to customers and potential customers who visit the facility.

Had Respondent’s conduct been consistent with established practice, this argument might pass muster. On the contrary, Respondent, then and now, has allowed female employees to wear jewelry pins on their uniforms, and “colorful scarves.” Moreover, employees who wear non-Cintas hats and other items deemed in violation of the dress code policy are asked to remove them but are not disciplined. Significantly, when Stoy observed employees wearing union stickers on February 9, he did not conclude that such conduct warranted any kind of supervisory action for violation of the dress code, and he did not instruct supervisors to either issue discipline or even direct them to remove the stickers.

An employer may not prohibit the wearing of union insignia, absent special circumstances. *Airport 2000 Concessions, LLC*, 346 NLRB 958, 960 (2006). It cannot rely on a promulgated dress code policy to establish such special circumstances when it has permitted employees to wear other kinds of pins and buttons and disparately applied the policy to target union supporters. *Ibid*; *Waterbury Hotel Management, LLC*, 333 NLRB 482, 545–546 (2001), *enfd.* 314 F.3d 645 (DC Cir. 2003). Selectively applying a policy to discipline employees who engage in protected activity is also prohibited. *Carpenter Technologies Corp.*, 346 NLRB 766 (2006).

Accordingly, I conclude that Respondent violated Section 8(a)(3) and (1) by issuing verbal warnings to Calles, Cruz, Rosa Cruz, and Rivera, and a written warning to Galdamez, on March 1, 2004, because they wore union stickers.

As to the union hat Galdamez wore on February 16, 2004, Respondent acted in conformity with established practice when Coleridge asked her to remove it. However, Respondent has never issued any other employee a warning for wearing a non-Cintas hat, even though the record reflects that they have been worn on occasion. Therefore, I conclude that her verbal warning also violated 8(a)(3) and (1).

Related 8(a)(1) Violations

For reasons stated above, I conclude that Respondent violated Section 8(a)(1) by telling Cruz on February 9 and March 1, 2004, to remove her union sticker, and telling the same to Callas and Galdamez on March 1, 2004.

As to Galdamez, Coleridge acted in accordance with the Company’s dress code policy on February 16, when he told her to remove the non-Cintas union hat. Here, Respondent can rely on the “special circumstance” exception described above.

However, Coleridge went beyond telling her to take off the hat; he told her to put it away so that it was not in public view. This was contrary to the practice of allowing employees to keep all kinds of personal items out at their work areas, as long as there was no safety issue. Therefore, the hat was targeted for disparate treatment because it reflected Galdamez’ support for the Union. I thus conclude that Respondent violated Section 8(a)(1) on February 16, 2004, when Coleridge told Galdamez that she could not display a union hat in her work area. In view of this conclusion, I need not address whether Coleridge also violated Section 8(a)(1) by articulating an overly broad no-solicitation rule.

Stoy told Galdamez on March 1, that she could be discharged if she received “another warning.” The first two warnings were based on her having worn a union hat on February 16 and a union sticker on March 1. I have found both warnings unlawful. But for them, Stoy would not have had occasion to warn her of the consequences of a third warning under the progressive discipline system.

Accordingly, I conclude that Respondent violated Section 8(a)(1) on March 1, 2004, when Stoy implicitly threatened Galdamez with discharge if she again displayed a union sticker or wore a union hat.

B. Solicitation/Distribution

The actual language contained in Respondent’s no-solicitation/distribution rule is not at issue. Rather, the alleged violations go toward conduct alleged to violate employees’ rights to distribute under the Act.

February 10, 2004

Cruz testified that she brought a union flyer to work. Coleridge observed her with it in her work area, and he asked her to put it inside her wallet (or pocketbook), take it home, and not show it to anybody. Coleridge testified that he did tell Cruz to put a flyer in her wallet but that this occurred in the breakroom (see below).

As with the February 9, 2004 incident involving Cruz and Coleridge, I credit Cruz’ account because I do not believe she manufactured it, and I think that what occurred would stand out more in her memory. I again note that Coleridge’s testimony on many 2004 events was quite circumscribed.

February 20, 2004

Callas testified without controversion that prior to February 20, 2004, employees were free to read books, magazines, and newspapers in the breakroom, testimony corroborated by Martinez, and I so find. Moreover, Stoy conceded that employees have shown Avon catalogues and sold Avon products in the breakroom.

On the morning of February 20, Callas went into the breakroom, where she set out about 20 each of two different union flyers, which were English on one side and Spanish on the other.⁴⁷ One flyer spoke about how Cintas was spending against the Union, and the other about some plants (including Cintas Detroit) that already had a union and were providing free medical insurance and better salaries.

⁴⁷ GC Exhs. 50 and 51.

When first-shift production employees went into the breakroom on their morning (9 a.m.) break, the flyers were there. Coleridge and Andy Coffaro, a supervisor, reported to Poole that flyers were being handed out in the breakroom, and he directed them to confiscate them because they violated the no-solicitation policy. It undisputed that Coleridge, with Coffaro, returned to the breakroom, and did so.

Based on the credited, similar testimony of Callas and Cruz, which Coleridge did not specifically rebut, I find the following. When Coleridge tried to take the flyer Cruz had, she resisted and said she wanted to read it. He then told Cruz to put it in her purse and to read it at home because no one could read it in the plant. Martinez was in the room but did not hear Coleridge say anything. There was no testimony that Coffaro took any flyers from employees or spoke to them.

Poole testified that he later *sua sponte* reviewed the no-solicitation/distribution policy and concluded he had made an error. He offered no explanation of what prompted him to decide to review the policy after the fact, and I suspect he sought guidance from corporate headquarters or the Company's attorneys. In any event, Respondent has admitted that confiscating the flyers from employees who were on nonworktime in a nonwork area was a mistake.

Respondent contends, though, that after realizing a mistake had been made, it "cured" any violation of the Act by retraction. Any such retraction was verbal since Respondent did not post anything in writing.

Coleridge was not involved in any such activity. According to Poole, he raised the matter at three or four general production meetings on the same day, within 2 weeks of February 20. He stated that the leaflets had been improperly gathered and that the Union was allowed to leaflet in nonwork areas. He also apologized, and said it would not happen again. Respondent provided no documentation corroborating his testimony.

Callas recalled that the same week of the incident, Stoy met with small groups of 8–10 employees in the conference room. He apologized for what had occurred and said it would not happen again. Stoy, however, did not testify about holding any such meetings.

On the other hand, Callas, Galdamez, and Martinez did not recall attending any meetings in which the February 20 breakroom incident was mentioned.

Conclusions

In the February 10, 2004 incident, Respondent, through Coleridge, treated Cruz' flyer differently than it has treated employees' other personal items, which they are allowed to keep in the vicinity of their work areas. By telling her to put it away, not show it to anyone, and take it home, he coerced her in the exercise of her Section 7 rights, both because of this disparate treatment and also because she had the right to distribute it to other employees on nonworktime in nonwork areas. See *Biggs Foods*, 347 NLRB 425 (2006); *Gayfers Department Store*, 324 NLRB 1246 (1997). Therefore, Respondent violated Section 8(a)(1).

Respondent admittedly violated the Act through Coleridge's conduct on February 20, in taking union flyers from employees during nonwork time in a nonwork area. I also conclude that his

statements that employees could not read the flyers there or in the plant were overly restrictive of their rights to distribute or possess such flyers in nonwork areas during nonwork time. See *Biggs Foods*, above; *MTD Products, Inc.*, 310 NLRB 733 (1993); *Our Way, Inc.*, 268 NLRB 204 (1983).

I do not, however, agree with the General Counsel that his statements amounted to announcing a "policy." In this regard, they were made specifically to Cruz, when she resisted his effort to take away her flyer, and not addressed to the employees there as a group. Significantly, Martinez did not hear Coleridge say anything. Having concluded that he did not announce a "policy," it follows that his actions did not constitute enforcement of that policy.

The remaining issue here is whether Respondent "cured" the above violation by subsequent conduct, more precisely, by valid retraction.

By meeting certain requirements, an employer can avoid liability for commission of a ULP by a retraction. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), remains the lead case in this area, although recent decisions reflect that some Board Members do not necessarily agree with all of its precepts. See, e.g., *Chinese Daily News*, 346 NLRB 906 fn. 4. Under *Passavant*, the repudiation must be timely, unambiguous, and specific in nature to the illegal conduct; it must contain assurances to employees that, in the future, the employer will not interfere with their Section 7 rights; there must be adequate publication to the employees involved; and the employer cannot engage in other proscribed conduct.

Here, at least two employees who were present in the breakroom when the flyers were confiscated—Cruz and Martinez—never heard any kind of retraction. Thus, the scope of the repudiation was not coextensive with the scope of the violation. See *Chinese Daily News*, *ibid.* Moreover, even crediting Poole, he did not include a statement that in the future, Respondent would not interfere with employees' Section 7 rights. Most significantly, I have determined that during this period of time, Respondent committed other ULPs, including issuance of warnings in violation of 8(a)(3) to Callas and Cruz, who were present when Coleridge unlawfully took the flyers. Any assurances Poole might have made to employees concerning their Section 7 rights to distribute union literature were vitiated by Respondent's other unlawful conduct.

Accordingly, whether *Passavant* is strictly applied or a totality-of-circumstances approach is used, I conclude that Respondent did not effectively repudiate its unlawful conduct on February 20, 2004, and that the violations I have determined remained viable.

C. Other 8(a)(1) Statements

January 30, 2004

The event in question was a meeting between Callas, Poole, Stoy, and Colon, who served as the interpreter. Callas gave its date as February 4, 2004, but Stoy's notes show a January 30, 2004 date, and Stoy, Poole, and Colon all provided documents establishing that they were not at the facility on February 4.⁴⁸ Callas was unable to produce the notes she took at the time or

⁴⁸ GC Exh. 48; R. Exhs. 28–30, 32, 45 and 46.

to provide any other documents. Accordingly, I find that the meeting occurred on January 30, 2004, as averred by Respondent's witnesses.

This meeting concerned Callas' conduct in December 2003, when, on 2 or 3 days, she solicited addresses and phone numbers from coworkers, saying that she wanted to send them Christmas cards. Callas testified that she did this at breaks and lunch times and that she later provided to the Union such information only from coworkers who authorized her to do so.

However, as described below, on at least one occasion she did it on worktime and provided the Union with the address of a coworker who did not authorize her to disclose it.

Crediting employee Rosa Franco, I find the following. In late 2003, Franco (a second-shift employee) had punched in and was at her workstation when Callas (a first-shift employee) approached her. Franco could not recall whether it was before or after 2:30 p.m., because she normally punched in 1–7 minutes before the start of her shift at 2:30 p.m. Either way, however, one of them was on worktime because there was no gap between shifts (if before 2:30 p.m., Callas was still on her shift; if after 2:30 p.m., Franco had started hers). Callas said she wanted Franco's address to send her a Christmas card, and Franco furnished it.

Later, a union representative came to Franco's home. On a date uncertain thereafter, Franco went to Stoy's office. Through an interpreter, she told him that a union representative had arrived at her home; she did not know why but suspected that Callas had provided the Union with her address because Callas had asked for her address to send her a Christmas card. Franco also told him that she did not want the Union bothering her.

In addition to Franco's complaint, Stoy heard from a supervisor that another employee, Wendy Aguilar (who is no longer employed at the facility) had similarly complained. He reported these complaints to Poole, who initiated the January 30 meeting.

There is no dispute over certain statements that were made at the meeting. Poole started off by referencing Callas' status as a long-term employee and her good performance. He then told her that some of her coworkers had complained that after collecting their addresses, presumably for Christmas cards, she had shared that information with the Union, and this violated the confidentiality of employees. She responded that she had gathered the information to send Christmas cards and not to disclose to the Union. I note that Callas testified that she told him that she had known her coworkers "for a while,"⁴⁹ and it was just natural that they exchanged Christmas cards. Were this so, I would expect she already would have had their addresses. Both Callas and Franco had worked there for approximately 5 years at the time.

It is further undisputed that Poole talked about Callas soliciting the addresses. Callas testified that Poole stated she could not engage in such activity "in the plant" but could not recall if he said anything about worktime or work hours. On the other hand, Poole and Colon, as well as Stoy's memorandum of the meeting, state that he did so. This comported with Franco's description of when Callas solicited her address. Accordingly, I

find that Poole, as he testified, referenced the Company's no-solicitation policy and said she could not solicit on worktime. This diminishes the reliability of Callas' testimony about what was said at the meeting and affects my evaluation of the following.

Callas also testified that Poole asked her if she had gathered the signatures to give to the Union, and she said no. She went on to testify that he then said that "he just wanted to make sure."⁵⁰ Poole denied asking her that. I credit Poole, both because of the above and because I find his testimony more plausible. From the start of the meeting, he told her that employees had complained that she had provided their addresses to the Union, so he had no logical reason to question her on the subject. Nor would he have had any reason to want to "make sure" she had not given signatures to the Union. Accordingly, as a factual matter, I find that Poole did not interrogate Callas concerning her union activities.

Management Speeches to Employees in February 2004

Of all facets of this case, testimony on the subject of management speeches to employees in February 2004, even as how many meetings there were and what was said at particular meetings, was subject to the most variation and confusion.

General Counsel's witnesses (Callas, Cruz, and Martinez) each testified about attending one meeting management held with all first-shift production employees in February 2004. However, Respondent provided documentation supporting its witness' testimony that management held two separate meetings with all first-shift production employees that month, the first on February 9 (the "union spies" speech); the second on about February 19 (the "Pillowtex" speech). Callas and Cruz did not have their contemporaneous notes of meetings in February 2004. Accordingly, I credit Respondent's witnesses and find that management held two separate large-group meetings. The allegations of the complaint relate only to statements made at the second of these.

The date of the first meeting is based on the consistent testimony of witnesses, as well as Stoy's credited testimony that management sent a fax to corporate headquarters that day, after union leaflets had been distributed outside the facility.⁵¹ As to the date of the second meeting, I credit Poole that the meeting took place about a week after February 12, when he received "talking points" for it from corporate headquarters.

Management later that month also held several smaller-group meetings on the same day, concerning Respondent's unionized Detroit facility. Cruz attended one of them. She gave the date as February 23. Respondent's witnesses did not provide a specific date for such meeting, and I credit Cruz.

For the February 9 union spy's speech, Poole used talking points that corporate headquarters had provided to him as reference points. He testified that he followed them and so instructed translator Roberts, who testified similarly. Stoy was also present. This was after management became aware that a petition for a \$1-an-hour raise was being circulated among the employees. At this meeting, neither he nor any other member of

⁴⁹ Tr. 253.

⁵⁰ Tr. 254.

⁵¹ R. Exh. 42.

management mentioned Pillowtex. The talking points, entitled “Beware of Union Spies,” accused “a few people at some Cintas locations” of being union spies, secreting collecting information and giving it to the Union.⁵² The talking points went on to propagandize against unionization.

Poole conducted the second meeting after Calles and Cruz presented management with the first petition for a \$1-an-hour raise. Stoy and Roberts, again translating, were also present. Poole once more used speaking points provided by headquarters⁵³ and instructed Roberts to do the same.

Stoy could not recall Poole’s exact words but testified that Poole mentioned unprofitable companies and bankruptcy; stated that Pillowtex (a large company in the Charlotte area) had filed for bankruptcy in July 2003, resulting in job loss to thousands; and told employees that the Company would continue to give them reviews and pay increases according to performance. Poole testified that he stated that 8000 people had lost their jobs when Pillowtex went bankrupt.

Their testimony was consistent with the speaking points, which started off referring to the letter from employees requesting a pay raise of \$1 an hour and then went on to talk about what happens to companies like Pillowtex and the 8000 employees who lost their jobs when the company went bankrupt, to discuss what Cintas offered in the way of profit sharing, and to assure employees that its wages were competitive in the marketplace. Nothing was said about unions or unionization, other than at one point, “Did you know, for instance, that our starting wages are 65 cents an hour higher than a competitor’s unionized facility right here in town?” [Emphasis in original.] The speaking points concluded with, “If you have any questions, you can ask them now? Or, of course, my door is always open and you can ask me anything in private, if you have a particular question.”

The General Counsel’s witnesses provided differing accounts of one large-group meeting they recalled attending that month, and some of what they said was not reconcilable even between themselves.

Martinez testified about a meeting, on February 9, where Stoy spoke and Roberts translated, but she apparently mixed the union spies and Pillowtex meetings. Stoy stated that someone had called the Union, and he wanted to know who that person was. He did not want the Union to get in because he did not want to fall into bankruptcy; if the Company went into bankruptcy, the employees would be without jobs and later on would not be able to get a job, and it would be a bad record for them. Martinez did not remember anyone asking questions.

On cross-examination, Martinez testified that Stoy said he could not give the \$1-an-hour increase the Union was seeking because the Company wanted to be profitable; if it were not profitable, it could go bankrupt like Pillowtex (this was the only time she heard Pillowtex mentioned in management meetings). He explained employee profit sharing. On cross-examination, she reiterated that Stoy said that if the Union came, the Com-

pany was going to go bankrupt and that he said she was going find out who called the Union, and he was not going to allow the Union to get in because it was telling employees lies. However, she then testified that Stoy said Respondent *could* go bankrupt and we would not be able to get jobs elsewhere. Afterward, though, she again testified that Stoy said Respondent *would* go bankrupt. Callas was at this meeting.

Cruz also testified about a February 9, 2004 meeting. As with Martinez, she testified that Stoy made certain statements. One of them was that he was figuring out that someone had called the Union and someone was collecting signatures. He said that employees did not need the Union, that the Union was going to offer false promises, and that the Company was going into bankruptcy, that the plant was going to be closed, and that employees were going to lose their jobs. According to Cruz, Callas stated that her brother had left because of an emergency but that the Company did not take him back. Cruz did not recall Callas saying anything else. On cross-examination, she also testified that Stoy and Poole, through Roberts, stated that employees were giving personal information to the Union and they understood that the Union had been making promises to people to turn over such information. In contradiction to Martinez, Cruz said there was no mention of Pillowtex or the \$1-an-hour raise petition at this meeting.

Callas gave February 9 as the date of the meeting she attended, but it apparently was the second (Pillowtex meeting) rather than the first, based on what she related was said. After Coleridge spoke about work-related matters, Stoy stated that Cintas did not want the Union, it wanted all its employees to be completely satisfied, and that’s why it was not going to allow the Union to get in. Because of the Union, other companies had gone through bankruptcy and a lot of workers had been without work. The Union was looking for employees’ money and giving false promises, offering checks and trips if employees signed cards. He specifically mentioned Pillowtex was going bankrupt and over 7000 employees were going to be without a job because of the Union. Poole stated he would have an “open door” communications policy. Nothing was said about “Union spies” (consistent with the conclusion that there were two separate large-group meetings). Callas further testified that she raised certain questions, none having to do with her brother.

Stoy denied making any of the statements attributed to him alleged to have violated Section 8(a)(1). I note that none of the General Counsel’s witnesses testified that Stoy (or Poole) said it would be futile for employees to select the Union as their collective-bargaining representative.

From the above, it is evident that the testimony of General Counsel’s witnesses was not fully consistent and, on important certain points, contradictory. It is not entirely clear whether they were even referring to the same meeting. Their credibility on the meetings is therefore questionable, even taking into account the lapse of time and the fact that rarely, if ever, are any two versions of a meeting exactly the same. I take note that all three of these witnesses had given affidavits to the NLRB close in time to the events and that all three prepared for trial with the General Counsel, thereby affording them the opportunity to refresh their recollections by reviewing those statements.

In the absence of uniform testimony from General Counsel’s

⁵² There is no allegation that this speech created the impression of surveillance. I note that it followed very closely in time Poole’s meeting with Callas on January 30.

⁵³ R. Exh. 31.

witnesses, I credit the testimony of Respondent's witnesses that Poole stuck to the speaking points provided by corporate headquarters when he spoke at both large-group meetings.⁵⁴ If the corporate headquarters considered the presentations important enough that it provided directives of what should be said, I doubt that he (even less so, Stoy or Roberts) would have deviated far from, or elaborated much, on the "script." Because of language and translation issues, the employees who testified might have read certain meanings into management's statements. I note in this regard Martinez' interchange of the words "would go" and "could go" into bankruptcy.

On February 23, Poole conducted several meetings with smaller groups of employees because an employee had said there was a Cintas location (Detroit) where employees were getting free medical benefits. Poole used no speaking points and kept no notes of these meetings.

The General Counsel does not allege that anything Poole said at these meetings contravened the Act. Rather, it contends that statements Stoy allegedly made to Cruz after the conclusion of the formal meeting violated Section 8(a)(1). Although Coleridge is also named in the relevant paragraph of the complaint, Cruz' testimony attributed no statements to him.

Poole, Stoy, and Santiago Nelson, who served as a translator, were present at the small-group meeting that Cruz attended, along with about 15 to 20 other employees. Cruz testified that she stated at this meeting that she had a friend at National Linen, a unionized company, and employees there were getting free medical insurance, and it was good to have a union. At or shortly after the conclusion of the meeting, Stoy asked her where her friend worked (inconsistent with her testimony that she had already spoken the name of the company during the meeting, I credit Stoy and Nelson that she did not name National Linen during the meeting itself). He wrote it down and said he would find out if it were true and would call her. He told her not to tell anybody and that his office was always open and she could talk to him privately. On direct examination, Cruz said nothing about Stoy mentioning the Union in any way.

Only on redirect examination, after being refreshed by her affidavit, did Cruz testify that he told her that if she found out new information about the Union, not to talk to him in the meetings but to tell him privately in his office. Then, on re-cross-examination, she averred that he said that if she had any questions about the Union, to go to him directly and not go and talk to anyone else. Thus, Cruz' version of what he said about the Union, if anything, varied throughout the course of her testimony.

Stoy testified that Cruz voluntarily stayed after the meeting, and he then asked her for the name of the company, saying he would investigate and get back to her. He denied telling her if she had any questions about the Union to go directly to him, not to talk to anyone else about the Union, or to report privately to

⁵⁴ I find it more plausible that Poole, not Stoy, conducted the meetings. I consider it unlikely that Stoy would have directed them when Poole, his superior, was present and had called them. Since the employees who testified were much more familiar with Stoy than Poole (who had arrived at the plant only the previous month), they may have naturally assumed that Roberts was translating for Stoy rather than Poole.

him.

Because Cruz was inconsistent in relating what Stoy said about the Union, I cannot find that he tied any remarks he made to the Union or her union activity.

Conclusions

Poole's meeting with Callas on January 30 was based on a bona fide complaint from at least one of her coworkers that she had solicited addresses to provide to the Union, and this occurred on work time. Poole did not tell Callas that there was a company rule prohibiting union activity and that she could not violate it. Rather, aside from any issue of "confidentiality," he referenced company policy that she could solicit only on non-work time. His doing so was not a violation of the Act. See *Lutheran Heritage Village—Livonia*, 343 NLRB 646, 650 at fn. 5 (2004); *Stodard-Quirk Mfg. Co.*, 138 NLRB 615 (1962).

As to meeting on about February 19, I have found management's account of what was said more credible than the inconsistent testimony of General Counsel's witnesses. I therefore conclude that the General Counsel has not sustained its burden of showing that Respondent committed any violations of Section 8(a)(1) at that meeting. Respondent was engaging in legitimate antiunion propaganda. At most, management hinted or implied that if the Union were selected, company profits might be affected, and this could impact employees' job security. In the absence of other coercive circumstances, mere statements of possible consequences of unionization do not constitute threats in violation of Section 8(a)(1). See *Benjamin Coal Co.*, 294 NLRB 572, 573 fn. 1 (1989); *Uarco, Inc.*, 286 NLRB 55, 58 (1987).

Similarly, since I have found that Cruz was not a credible witness in relating what Stoy said to her after the February 23 meeting, the conclusion follows that the General Counsel has failed to establish the violations Stoy allegedly committed.

3. Setting aside of the 2004 settlement agreement

Documents pertaining to this settlement agreement (SA) are contained in the formal papers. At times relevant, Region 4 served as the coordinating Region for the General Counsel in handling charges the Union filed against Respondent for alleged misconduct at various locations, including Charlotte.

The Regional Director for Region 4 (RD) reached agreement with Respondent on a global SA. As to Charlotte, it encompassed management's conduct toward nonemployees who handbilled for the Union on January 13, 2003. A representative of Cintas signed the SA on January 7, 2004, and the RD approved it on January 20, 2004. The Union later declined to exercise its right to appeal from the RD's decision to approve the SA, and the RD, by letter dated April 5, 2004, advised Respondent to "now take the necessary steps to affect compliance with the settlement agreement." It is undisputed that Respondent subsequently fully complied with the terms of the SA, including notice posting.

Respondent seeks dismissal of paragraphs 9–11 (and derivative 23) of the complaint, relating to the alleged violations that were the subject of the SA. Respondent does not, however, contend that the remaining portions of the complaint concerning the Charlotte facility (pars. 12–22) should be dismissed because of the SA.

During the pendency of the settlement process, the Union filed charges with Region 11, concerning the Charlotte facility on March 2, 2004. These charges were amended to include additional allegations, on April 16 and August 31, 2004, and February 9, 2005.

Based on those charges, I have found that Respondent committed the following violations in 2004:

1. On February 9, Coleridge told Cruz she could not wear a union sticker on her uniform.
2. On February 10, Coleridge told Cruz she could not have a union flyer in her work area and had to take it home.
3. On February 16, Coleridge told Galdamez she could not display a union hat in her work area.
4. On February 16, Respondent issued Galdamez a verbal warning for wearing that hat.
5. On February 20, Coleridge confiscated union flyers from employees on nonworktime in a nonwork area and told them they could not read such flyers there.
6. On March 1, Coleridge and/or Stoy told Callas, Cruz, and Galdamez that they had to remove union stickers from their uniforms.
7. On March 1, Respondent issued verbal warnings to Callas, Cruz, Rosa Cruz, and Emelinda Rivera for wearing union stickers on their uniforms.
8. On March 1, Respondent issued a written warning to Galdamez for wearing a union sticker on her uniform.
9. On March 1, Stoy implied to Galdamez that she would be discharged if she again wore a union hat or a union sticker.

Conclusions

A SA may be set aside and ULPs found on presettlement conduct if there has been a failure to comply with the provisions of the SA or if postsettlement ULPs are committed. *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 53 (2006); *Nations Rents, Inc.*, 339 NLRB 830, 831 (2003); *Twin City Concrete, Inc.*, 317 NLRB 1313 (1995). The General Counsel relies on the latter ground.

Some of the violations I have found are based on allegations in the amended charges filed on and after April 16, 2004, following the RD's April 5, 2004 letter to Respondent regarding commencement of compliance. Pigeonholing violations as "presettlement" or "postsettlement" is an illusive task in light of the hiatus between when Respondent signed the SA and when it was directed to begin compliance, and the on-going nature of the Union's filing of charges in 2004 and 2005.

These violations were not isolated or minor. They were intensive considering that they all occurred within less than a month's time (February 9–March 1), they affected a number of employees, and they resulted in the imposition of discipline on five of them, including a written warning to one. See *Foodarama*, 260 NLRB 298, 299 fn. 2 (1982); *Porto Mills, Inc.*, 149 NLRB 1454, 1470 (1964). Moreover, the first were committed just over a month after Respondent signed the SA and even before Respondent commenced compliance with the terms of the SA.

Whether to give effect to, or to revoke, a SA, must be determined by an evaluation of all of the circumstances presented in a case, and not by the application of rigid rules. *Nations Rents*,

id.; *Deister Concentrator Co.*, 253 NLRB 358, 359 (1980). Considering all of the above circumstances, I conclude that the RD properly set aside the terms of the SA and that such result best effectuates the purposes of the Act.

CONCLUSIONS OF LAW

1. The 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 the following conduct at its Branford, Connecticut facility, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act.

(a) Interrogated an employee concerning whether her signature appearing on a union-initiated letter relating to employees' health and safety was genuine.

4. By the following conduct at its Charlotte, North Carolina facility, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act:

(a) Summoned the police to interfere with nonemployees engaged in handbilling for the Union.

(b) Told employees to remove union stickers from the shirts of their uniforms.

(c) Told an employee she could not have a union flyer in her work area and must take it home.

(d) Told an employee she could not display a union hat in her work area.

(e) Confiscated union flyers from employees on nonworktime in a nonwork area and told them they could not read such flyers there.

(f) Implied to an employee that she would be discharged if she again wore a union hat or a union sticker.

5. By the following conduct at its Charlotte, North Carolina facility, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act:

(a) Issued to Candy Galdamez a verbal warning for wearing a union hat, and a written warning for wearing a union sticker on the shirt of her uniform.

(b) Issued to Ana Callas, Raquel Cruz, Rosa Cruz, and Emelinda Rivera verbal warnings for wearing union stickers on the shirts of their uniforms.

REMEDY

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

Both the General Counsel and the Union seek extraordinary remedies. The General Counsel urges that Respondent at Charlotte be required to read the notice to all employees and to grant the Union and its representative's access to bulletin boards and other posting areas in Respondent's facilities. The Union requests, at both Charlotte and Branford, not only these extraordinary remedies but also that Respondent be ordered to provide to the Union a list of the names and addresses of employees, to

be updated periodically, as well as imposition of a broad cease-and-desist order. I stated earlier my reasons for rejecting Respondent's effort to expand the scope of the trial to union activity occurring at facilities other than Branford and Charlotte. For those same reasons, I deem it inappropriate, in evaluating the Union's request for extraordinary remedies, to consider conduct of Respondent not specifically litigated before me.

Extraordinary remedies may be appropriate when a respondent's ULP's are "so numerous, pervasive, and outrageous" that such remedies are necessary to "dissipate fully the coercive effects of the unfair labor practices found." *Federated Logistics & Operations*, 340 NLRB 255, 256 (2003), quoting *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995). This may include a public reading of the notice or supplying updated names and addresses of employees to a union. *Federated Logistics*, *ibid.* A broad cease-and-desist order may be appropriate where a respondent has shown a proclivity to violate the Act. *Hickman Foods*, 242 NLRB 1357 (1979).

As to Branford, I have found only one violation of Section 8(a)(1), and the prior SA at that facility was never revoked. I therefore see no justification for special remedies at Branford.

Turning to Charlotte, I have found but a single violation in 2003—Coleridge's summoning the police to interfere with nonemployee handbillers. In contrast, the 2004 ULPs were substantial. Nevertheless, they all occurred in a narrow time-frame, a 3-week period from February 9–March 1—hardly demonstrating an ongoing pattern of interfering with employ-

ees' organizational rights under the Act. Contrast, *Florida Steel Corp.*, 244 NLRB 395 (1979). Moreover, most involved only supervisor Coleridge, rather than higher-level management, a factor militating against extraordinary remedies. Contrast, *Federated Logistics*, above at 257. Although Poole directed the confiscation of union flyers from the breakroom, he did make efforts to undo that unlawful conduct, albeit they did not amount to retraction as a matter of law. As to Stoy, any role he played in the unlawful disciplinary actions issued to employees who demonstrated union support, and his one 8(a)(1) violation, were based on actions initiated by Coleridge. Finally, aside from the incident involving confiscation of union flyers in the breakroom, only 5 production employees out of approximately 90 were subjected to ULPs. Therefore, the ULPs did not "pervade" the unit. Contrast *Federated Logistics*, *id.*

In these circumstances, I conclude that the ULPs at Charlotte were not "so numerous, pervasive, and outrageous" as to require the imposition of extraordinary remedies, and I therefore deny the General Counsel's and Union's requests for such.

The General Counsel also seeks expungement from Respondent's records of any references to the verbal warning issued to Candy Galdamez on February 16, 2004; to the written warning issued to her on March 1, 2004; and to the verbal warnings issued to Ana Callas, Maria Raquel Cruz, Rosa Cruz, and Emelinda Rivera on March 1, 2004. This is a standard remedy. Finding it appropriate, I will so order.

[Recommended Order omitted from publication.]