

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

DUCCI ELECTRICAL CONTRACTORS

and

Case No. 34-CA-12639

WILLIAM JULIANO, An Individual

*Margaret A. Lareau, Esq., Hartford, CT,
for the General Counsel.*

*Bernard E. Jacques, Esq. (McElroy, Deutsch,
Mulvaney & Carpenter/PH), Hartford, CT,
for the Respondent.*

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge and an amended charge filed by William Juliano, an individual, on March 23 and May 26, 2010, respectively, a complaint was issued against Ducci Electrical Contractors (Respondent or Employer) on June 29, 2010.

The complaint alleges essentially that the Respondent's attorney and agent, Bernard E. Jacques, sent a letter to Juliano which violated the Act in two respects. It is alleged that the letter unlawfully threatened Juliano with a lawsuit to recoup the backpay that the Respondent paid him in settlement of Case No. 34-CA-11097; and it prohibited him from discussing or referencing the non-financial terms of the settlement of that case. The complaint alleges that the Respondent's threatened actions set forth in the letter were undertaken because Juliano filed a grievance against the Respondent related to his termination from employment, and because he filed a charge against it in Case No. 34-CA-12595, and because he gave testimony under the Act.

The Respondent's answer denied the material allegations of the complaint and on November 2, 2010, a hearing was held in Hartford, Connecticut.

Findings of Fact

I. Jurisdiction and Labor Organization Status

The Respondent, a Connecticut corporation having its office and place of business in Torrington, Connecticut and a jobsite at CityPlace, Hartford, Connecticut, has been engaged in the business of electrical contracting.

The Respondent admits that during the 12 month period ending May 31, 2010, the Respondent, in the conduct of its business operations, purchased and received at its CityPlace jobsite, goods and materials valued in excess of \$50,000 directly from points outside the State of Connecticut. I accordingly find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. At the hearing, the Respondent admitted, and I

find that Local 35, International Brotherhood of Electrical Workers, AFL-CIO (Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

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A. The 2005 Charge, Complaint and Settlement

William Juliano is an electrician with about 30 years experience in the electrical industry. He is a long-time member of the Union, having served as a shop steward on a job-by-job basis.

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In February, 2005, Juliano filed a grievance with the Union.¹ Thereafter, on February 18, he filed a charge in Case No. 34-CA-11097, in which he alleged that the Respondent refused to hire him and others because of their membership in and activities in behalf of the Union. A complaint was issued on June 20, 2005 alleging that the Respondent refused to hire him because of his activities in behalf of the Union. It named Thomas Carew, a vice president of the Respondent, as a supervisor and agent of the Respondent.

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On August 5, Respondent's attorney Jacques wrote to Juliano with a copy to NLRB attorney Daryl Hale, offering to settle the matter on specific terms which were ultimately set forth in the settlement agreement. The letter noted that the Respondent made this offer "to avoid the costs of litigating this matter." Juliano spoke with Hale regarding the Respondent's offer.

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On August 19, 2005, Juliano and the Respondent entered into a "Confidential Settlement Agreement" relating to Case No. 34-CA-11097, in material part as follows:

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1. This Settlement Agreement shall not be construed as an admission by Ducci that it has acted wrongfully with respect to the Complainant [Juliano] and Ducci denies acting wrongfully with respect to the Complainant.

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2. Complainant has agreed to withdraw the above action with prejudice and not to file any charge, complaint, suit or action against Ducci or any employee of Ducci in connection with his employment or his termination of employment by Kerr [a subcontractor], or Ducci's decision not to hire him. Complainant agrees that should he initiate any action against Ducci or against any Ducci employee in connection with his employment or termination of employment by Kerr, or Ducci's refusal to hire him, he shall be liable to Ducci for the amount in paragraph 3. Complainant also agrees that should any action be initiated by anyone, including the NLRB, in connection with his employment or termination of employment by Kerr, or Ducci's decision not to hire him, he shall not be entitled to any monetary award that may result from such proceeding and he waives any right to any such reward.

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3. In exchange for a withdrawal of this action, an agreement not to bring any other action, a release of all claims, and an agreement of confidentiality, Ducci will pay complainant

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¹ G.C. Exh. 6, p. 2.

\$1,200 within 5 business days of Complainant's execution of this Agreement and Ducci's receipt of the dismissal of the action with prejudice from the NLRB. The parties understand and agree that this Settlement Agreement is expressly conditioned on the dismissal of the action pending before the NLRB....

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4. Complainant understands that Ducci's payment of this sum is conditioned, in part, by a complete release of all claims in connection with his employment and termination of employment by Kerr and Ducci's decision not to hire him. Ducci is not otherwise required to make this payment.

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5. Complainant and Ducci agree that the terms of this Agreement, including the amount paid, will be confidential. Complainant agrees that revealing the terms of this Agreement to anyone other than his spouse or his attorney is a breach of this Agreement for which Ducci has a right to seek redress. However, nothing in this Agreement shall preclude Complainant from discussing this Agreement with any employee of the NLRB.

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6. Complainant and Ducci agree that neither one will disparage the other.

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7. The parties acknowledge that Ducci ... retains the right to reject applicants referred to it by the Union.

8. Complainant agrees that he understands the obligations of this Agreement, that he has had an opportunity to consult counsel and that he agrees to be bound by this Agreement.

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9. This Agreement is governed by and construed under the laws of the State of Connecticut. It constitutes the entire understanding of the parties.

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Juliano and an official of the Respondent signed the settlement agreement, and on August 23, 2005, the Acting Regional Director of Region 34 issued an Order approving the withdrawal of the charge and complaint in Case No. 34-CA-11097 "conditioned upon Respondent's full execution of, and compliance with, the terms of the non-Board settlement."² A check was issued to Juliano for \$1,200 which he accepted and cashed.

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B. The 2010 Grievance

In early January, 2010, Juliano was referred by the Union for employment with the Respondent. He worked there for about one month, until about February 4, when he was laid off.

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On February 12, Juliano filed a charge against the Employer in Case No. 34-CA-12595,

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² G.C. Exh. 3(b).

alleging that he was laid off because of his membership in and activities in behalf of the Union, and because he filed charges and gave testimony under the Act.

5 On February 24, Juliano filed a five page grievance with the Union against the Employer in which he gives an “historical background” as to his 2005 layoff and settlement. In it, he states that upon the Respondent’s refusal to hire him, he filed a grievance with the Union and also filed a charge. The grievance states, in material part, further, as follows:

10 1. On June 29, 2005, based on the gravity and veracity of my charge, Ducci Electric settled with me regarding my NLRB unfair labor charge against Ducci.

15 2. I consider the latest punitive retribution aimed at me by Ducci to be a much more serious situation because this is clearly a *REPEAT OFFENSE* of the exact same unfair labor practice charge that I had previously settled with Ducci Electric in 2005. (emphasis in original)

20 3. In 25 years as a journeyman wireman, I have never been fired, refused employment ... or disciplined in any way by any contractor, other than Ducci Electric in retribution for my “concerted union activities.”

25 4. I have been specifically and repeatedly victimized and discriminated against by Ducci Electric over many years for my concerted union activities as a steward of IBEW Local 35.

30 5. Ducci’s latest retribution against me (and others) was calculated, intentional and designed to inflict as much pain as possible to me and my family.

35 6. The punitive retribution imposed against me by Ducci Electric violates the National Labor Relations Act (unfair labor practice, *REPEAT VIOLATION*). (emphasis in original).

40 In explaining his reason for including the information concerning the 2005 settlement in the 2010 grievance, Juliano testified that he wanted the reader of the grievance to conclude that the 2005 refusal to hire him was improper, even though that grievance was settled. He also wanted to convey the impression that the Employer knew that it wrongfully refused to hire him and would lose the case if it did not reach a settlement with him.

C. The Respondent’s February 26 Letter

45 Upon receiving a copy of the grievance on February 24, 2010, Respondent’s official Thomas Carew wrote to its attorney Jacques, stating that he believed that Juliano “violated the confidential settlement agreement.” Carew asked Jacques to demand repayment of the \$1,200 settlement amount.

50 On February 26, Jacques sent a letter to Juliano, stating that his grievance misrepresented and violated the terms of the settlement agreement that he entered into in August, 2005. Essentially, the letter made the following points:

1. Juliano's 2010 grievance wrongfully stated that the Employer entered into the settlement agreement in 2005 "based on the gravity and veracity" of the charge he filed. However, the settlement agreement stated that "it shall not be construed as an admission by Ducci that it has acted wrongfully with respect to the Complainant and Ducci denies acting wrongfully with respect to the Complainant."

2. Juliano's 2010 grievance improperly used the 2005 settlement to "bootstrap" his current grievance. Jacques noted that the settlement agreement stated that the payment made by Ducci was conditioned on Juliano's agreement not to bring any charge or claim in connection with his employment or Ducci's decision not to hire him. Jacques' letter concedes that such a provision did not preclude Juliano from bringing any action protesting his 2010 termination, however he could not use the 2005 settlement to "bootstrap" his current claims.

3. Juliano failed to keep the terms of the settlement agreement confidential as required by the agreement.

4. Juliano violated the terms of the settlement agreement by disparaging Ducci in the grievance.

The letter further states that "by filing your grievance, you have materially breached the 'Confidential Settlement Agreement.'"

At hearing, attorney Jacques explained what was meant by "bootstrapping" his current grievance. He stated that Juliano improperly referred to the 2005 unfair labor practice charge in an effort to bolster his argument that his rights were violated in 2010.

The letter noted that the settlement agreement provided that if Juliano initiated any action against Ducci in connection with his employment or its refusal to hire him, he was liable to Ducci for the settlement amount. The letter concluded: "Since you are clearly in breach of the 'Confidential settlement agreement' and the damages for that breach is fixed at \$1,200, you should forward that amount to Ducci on or before March 15 to avoid further litigation in connection with this matter. Ducci is prepared to assert its right, recover its money and protect its reputation and is willing to do so through litigation. You would be well advised to consult with an attorney regarding this matter."

Prior to the issuance of the complaint, on May 4, 2010, Jacques sent a letter to the Regional Office, stating that Juliano breached the confidentiality provision of the settlement agreement by willfully mischaracterizing the agreement as an admission of liability by the Respondent. The letter states that Juliano "sought to use this supposed admission of liability in 2005 as evidence of Ducci's wrongful conduct in 2010. But Ducci made no admission and, in fact, expressly denied wrongfully terminating him." The letter further states that "by even addressing the 2005 settlement agreement, complainant breached the confidentiality provision" which states that he could not reveal its terms to anyone other than his spouse, attorney or an NLRB employee.

III. The Arguments of the Parties

The complaint alleges that the Respondent violated the Act by certain statements in its letter of February 26, 2010. First, it is alleged that the Respondent unlawfully threatened Juliano with a lawsuit to recoup the backpay it provided to him in settling the 2005 unfair labor practice charge. Second, it is alleged that the Respondent unlawfully prohibited Juliano from discussing or referencing the non-financial terms of the settlement in that case. It is finally alleged that the Respondent was motivated in writing the letter because Juliano filed a grievance against it

related to his 2010 termination, and because he filed the instant charge.

The Respondent argues that this is a simple contract case. Juliano breached the settlement agreement he agreed to, and the Respondent is entitled to the return of the money it paid him in consideration of his promise not to breach it.

Analysis and Discussion

I. The Alleged Violations of Section 8(a)(1) of the Act

A. Juliano's Protected, Concerted Activity

The first question which must be answered is whether Juliano was engaged in protected, concerted activity in filing the grievance in February, 2010. The Board has held that the presentation of a grievance is "clearly a protected activity." *Thor Power Tool Co.*, 148 NLRB 1379, 1381 (1964), enf. 351 F.2d 584 (7th Cir. 1965). "No one doubts that the processing of a grievance" under a collective bargaining agreement "is concerted activity within the meaning of Section 7." *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 836 (1984).

I accordingly find and conclude that by filing the January, 2010 grievance, Juliano was engaged in protected, concerted activities.

B. Did Juliano Lose his Protected Status by his Statements in his Grievance or by Filing the Grievance

1. The Alleged Violation of the Terms of the Settlement Agreement

a. The Respondent's Decision to Settle the Unfair Labor Practice Complaint

The Respondent argues that Juliano violated the terms of, and breached the settlement agreement by filing the grievance and by making certain statements therein.

In the 2010 grievance related to his layoff, Juliano set forth the "historical background" to his layoff, referring to his earlier, 2005 charge. He claimed that the Respondent settled the 2005 Board complaint "based on the gravity and veracity of" his charge." The Respondent argues that that statement is a deliberate falsehood in that the settlement agreement stated that it shall not be construed as an admission by the Employer that it acted wrongfully, and the Agreement expressly denied that its actions against Juliano had been wrongful. In addition, attorney Jacques' August 5 letter to him two weeks before the settlement agreement was signed, stated that the Respondent's offer to settle was made in order to "avoid the costs of litigating this matter." Accordingly, it was made clear to Juliano that the Respondent's decision to settle the matter was based on its desire to avoid the costs of litigation and that the settlement should not be construed as an admission by the Respondent.

I cannot find that Juliano's claim that the Respondent settled the matter based on the gravity and veracity of his charge was such a misstatement which would cause him to lose the protection of the Act. It is clear that it was *Juliano's* reasonable belief that, inasmuch as the Regional Office had issued a complaint on his charge, that substantial evidence existed to have caused the Respondent to settle the matter. The fact that the settlement agreement contained the Respondent's express denial that it had committed any wrongdoing and a non-admissions clause did not prevent Juliano from expressing his opinion as to why the Respondent had

entered into the settlement agreement.

Juliano was thus commenting on the Respondent's motivation in settling the charge. Its motivation, as set forth in Jacques' letter, was to avoid the costs of litigation. Juliano could reasonably believe that its motivation was that the charge had merit and complaint had been issued based on the charge. The settlement agreement's provisions that it did not constitute an admission of liability, and that the Respondent had not violated the Act are not inconsistent with Juliano's belief that the motivation behind its decision to settle was the fact that a complaint had been issued and a trial date had been set.

b. The Agreement not to Bring any Action Concerning his Employment

The Respondent argues that in his 2010 grievance, Juliano agreed not to bring any charge or claim in connection with his employment or the Respondent's decision not to hire him. The Respondent states that he was prohibited by the settlement agreement from using the 2005 settlement to "bootstrap" his 2010 grievance.

The settlement agreement's provision that Juliano agrees not to file any charge or action in connection with his employment by the Respondent clearly refers only to the 2005 matter. Indeed, the Respondent concedes that that provision did not prevent Juliano from filing the 2010 grievance and charge regarding his layoff. Accordingly, there is nothing in the settlement agreement which prohibits Juliano from referring to the 2005 grievance, as background, or in an effort to "bootstrap" his current grievance.

c. The Alleged Violation of the Confidentiality Clause of the Settlement Agreement

The Respondent further argues that by disclosing the terms of the settlement agreement, Juliano breached his agreement to keep its terms, including the amount paid, confidential from anyone other than his spouse, his attorney or the Board. The Respondent also contends that the 2010 grievance disparaged the Respondent in violation of the settlement agreement's provision that neither Juliano nor the Respondent "will disparage the other."

I cannot find that Juliano breached the confidentiality of the settlement agreement. A careful reading of his grievance establishes that he revealed none of its terms.

However, he refers to his 2010 layoff as the "latest punitive retribution aimed at" him and that it constituted a "repeat offense" and a "repeat violation" of the one which was the subject of the 2005 settlement. He also said that he had been discriminated against by the Respondent over the years for his activities as a union steward, and that the Respondent's "latest retribution" against him was "calculated, intentional and designed to inflict as much pain as possible to me and my family."

In filing the grievance concerning his layoff, Juliano apparently sought to persuade the Union that this latest action by the Respondent was a continuation of prior allegedly unlawful discrimination against him. Juliano was reasonably attempting to set forth his case in the best possible light. Again, Juliano's statements constituted his belief that he had been the victim of discrimination by the Respondent. His expression of his opinion that he was laid off because of his union activities constitutes permissible free speech, and not disparagement of the Employer. Although his further statement that the Respondent intentionally intended to inflict pain on him and his family may be overstating the case, those comments were his opinion, which he was entitled to make. He did not engage in such malicious, reckless speech as to deprive him of the

protection of the Act. Nor did he disclose any of the terms of the settlement agreement.

5 “The Board has held that an employee may properly engage in communication with a third party in an effort to obtain the third party’s assistance in circumstances where the communication was related to a legitimate, ongoing labor dispute between the employees and their employer, and where the communication did not constitute a disparagement or vilification of the employer’s product or its reputation.” *Allied Aviation Service Co. of New Jersey, Inc.*, 248 NLRB 229, 230 (1980). Regarding disparagement, the Board stated that “absent a malicious motive, [an employee’s] right to appeal to the public is not dependent on the sensitivity of Respondent to his choice of forum,” and found nothing in the employee’s communication which rose to the level of public disparagement necessary to deprive otherwise protected activities of the protection of the Act. *Allied*, above, at 231.

15 “Statements are unprotected if they are maliciously untrue, i.e., if they are made with knowledge of their falsity or with reckless disregard for their truth or falsity. The mere fact that statements are false, misleading or inaccurate is insufficient to demonstrate that they are maliciously untrue.” *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007).

20 Conclusion

Section 8(a)(1) of the Act provides that “[i]t shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [of the Act].” Section 7 of the Act protects employees’ right to engage in “concerted activity” for the purposes of “collective bargaining or other mutual aid or protection.”

25 It is a violation of the Act to interfere, restrain, or coerce employees in their grievance-filing activities. *Yellow Transportation, Inc.*, 343 NLRB 43, 47 (2004); *Prime Time Shuttle International*, 314 NLRB 838, 841 (1994). The test is whether objectively the statements that were made to Juliano would reasonably tend to interfere with, restrain or coerce him in the exercise of his statutory rights. “It is well established that the making of a threat by an employer to resort to civil courts as a tactic calculated to restrain employees in the exercise of rights guaranteed by the Act is unlawful. *Consolidated Edison Co.*, 286 NLRB 1031, 1032 (1987).

35 In *DHL Express, Inc.*, 355 NLRB No. 144 (2010), the Board held that it has long been accepted Board law that a threat to sue for engaging in protected concerted activity, is a violation of the Act. *S.E. Nichols Marcy Corp.*, 229 NLRB 75 (1977). Such a threat reasonably tends to interfere with, restrain, or coerce employees in the exercise of their rights under the Act. See *Postal Service*, 350 NLRB 125, 125 (2007), enfd. 526 F.3d 729 (11th Cir. 2008); *Network Dynamics Cabling*, 351 NLRB 1423, 1427 (2007).

40 In *Rocket Messenger Service*, 167 NLRB 252, 254-256 (1967), an employee filed numerous grievances, stating therein that the employer committed “continued deliberate and malicious unfair labor practices.” The Board found that the employer’s threat to sue him for slander and false misrepresentations violated the Act.

45 In *Pabst Brewing Co.*, 254 NLRB 494, 495 (1081), after an employee filed a grievance, a supervisor contacted employee-witnesses who signed the grievance in an attempt to coerce them into withdrawing their signatures from the grievance. The supervisor told one witness that he could be liable for a libel and slander suit for signing the grievance. The Board held that the threat of a lawsuit to the employee-witnesses to the grievance interfered with their Section 7 rights.

I accordingly find that Juliano's 2010 grievance did not cause him to lose the protection of the Act. I further find that the Respondent's letter of February 26 unlawfully threatened to sue him to recoup the money the Respondent paid him pursuant to the settlement agreement.

5 **C. Did the Threat to Sue to Enforce the Confidentiality Clause
Independently Violate the Act**

10 The complaint alleges that the Respondent's February 26 letter "prohibited ... Juliano from discussing or referencing the non-financial terms of the settlement in Case No. 34-CA-11097." It is thereby alleged that the confidentiality provision in the settlement agreement is overly broad in that it prohibited Juliano from discussing or referencing the non-financial terms of the settlement.

15 In its brief, the General Counsel argues that the February 26 letter unlawfully threatened to sue Juliano because he violated the confidentiality of the Agreement, thereby seeking to unlawfully limit his ability to speak about the settlement's non-financial terms. Specifically, according to the General Counsel, the threat "operates as a bar on employees discussing or referencing prior unfair labor practices."

20 As set forth above, paragraph 5 of the settlement agreement provides that the Respondent and Juliano agree that the terms of the Agreement, including the amount paid, will be confidential, except that Juliano is permitted to discuss it with his spouse, attorney and any NLRB employee.

25 The Agreement's terms that he is prohibited from revealing include that Respondent denies acting wrongfully; Juliano agrees to withdraw the charge with prejudice and not bring any action against the Respondent relating to its decision not to hire him; his agreement to accept \$1,200; a release of all claims in connection with his employment and the Respondent's decision not to hire him; the parties agree not to disparage each other; and the parties
30 acknowledge that the Employer is a party to a contract with Local 35, IBEW, pursuant to which it retains the right to reject applicants referred to it by the Union.

35 The February 26 letter, by its terms, constitutes a threat to sue Juliano for breaching the confidentiality provision of the settlement agreement which prohibits Juliano from speaking about the terms of the settlement. Those terms include statements about Juliano's filing of the charge which alleges that the Employer committed an unfair labor practice in deciding not to hire him, and the application of the Respondent's collective-bargaining agreement with the Union.

40 The Respondent correctly argues that the Regional Office was aware of the confidentiality provision and approved Juliano's request to withdraw his charge based on it.³

45 By its terms, the confidentiality provision prohibits Juliano from revealing the terms of the settlement agreement to anyone, including his Union, which has a material interest in being informed about how employees' grievances and charges are disposed of. Further, the Union, in representing Juliano or another employee may seek to use the facts in the settlement agreement as background for any further grievance which may be filed. In addition, Juliano should be able to speak to co-workers about the non-financial terms of the settlement agreement as part of the exercise of his Section 7 rights to communicate with other employees
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³ R. Exh.1 and 2.

about their terms and conditions of employment.

I accordingly find that the Respondent's February 26 threat to sue Juliano for disclosing the non-financial terms of the settlement agreement constitutes an independent violation of Section 8(a)(1) of the Act.

Conclusion

I find, therefore, that Juliano's 2010 grievance and the statements made therein constitute protected, concerted activity and that the Respondent's threat to bring a lawsuit to recoup the amount it paid him for his alleged breach of the settlement agreement, was coercive and violative of the Act. The threat has the reasonable tendency to chill and interfere with Juliano's Section 7 rights to file a grievance.

I also find that the Respondent violated the Act by threatening to sue Juliano for disclosing the non-financial terms of the settlement agreement.

D. The Alleged Violations of Section 8(a)(3) and (4) of the Act

The complaint alleges that the Respondent violated Section 8(a)(3) of the Act in its February 26, 2010 letter by threatening to sue Juliano to recoup the amount of money it paid to him as a result of the settlement.

In order to establish a violation of Section 8(a)(3) of the Act, the General Counsel must show discrimination against an employee. The General Counsel must "establish that some action by the respondent caused an adverse effect on the terms and conditions of employment of one or more employees." *Newcor Bay City Division*, 351 NLRB 1034, 1036 (2007). General Counsel has the initial burden of proving that the employees' activity in utilizing its processes was a motivating factor in any *action* taken against the employee.

Here, no action has actually been taken against Juliano. Rather, the Respondent threatened to sue him for violating the terms of the settlement agreement. In an analogous situation, where an employer has made a demand for the repayment of a loan in retaliation for the employee's union activities, but where no action has been taken to obtain repayment, the Board has held that such a demand violates Section 8(a)(1) of the Act, but not Section 8(a)(3). *Beverly California Corp.*, 326 NLRB 153, 226 (1998); *Battle Creek Fabricating Co.*, 169 NLRB 884, 889 (1968).

Where, however, a demand for repayment had been made, and where the loans were actually repaid, the Board has found a violation of Section 8(a)(3) of the Act because discriminatory action has actually been taken by the employer against the employee. *Larid Printing, Inc.*, 264 NLRB 369, 376 (1982); *Kermit Super Valu*, 245 NLRB 1077, 1082 (1979).

In the instant case, only a demand for repayment of the settlement amount was made and a threat was issued, but the Respondent took no affirmative action against Juliano to actually obtain the settlement amount it paid to him.

In addition, the complaint alleges that the Respondent's February 26 letter also violated Section 8(a)(4) of the Act. That section provides that it is an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." To establish a violation of Section 8(a)(4), the Board utilizes the analytical framework set forth in *Wright Line*, 251 NLRB 1083 (1980). See *American*

Gardens Mgmt. Co., 338 NLRB 644, 645 (2002).

As set forth above, some discriminatory action against the employee must be shown in order to prove a violation of Section 8(a)(4) of the Act. Here, no discriminatory action was taken against Juliano. Rather, the Respondent only threatened him with a lawsuit and demanded the repayment of the money it paid.

Further, even if it could be found that some discriminatory action was taken against Juliano, the fact that a charge was filed shortly before Jacques sent the February 26 letter is insufficient to prove that the Respondent's discriminatory conduct was motivated by Juliano's use of the Board's processes. Thus, there is no evidence that any statements were made by the Respondent that specific discriminatory conduct was attributable to his filing the charges, giving an affidavit, providing testimony or becoming involved in the Board's proceedings. See *W.E. Carlson Corp.*, 346 NLRB 431, 434 (2006). The evidence is clear that Jacques' threat to sue Juliano referred specifically only to the 2010 grievance filed by Juliano, and not to his filing of the charge.

I accordingly find and conclude that no violations of Section 8(a)(3) or (4) of the Act have been proven.

Conclusions of Law

1. By its letter of February 26, 2010 in which it threatened its employee William Juliano with a lawsuit to recoup the backpay provided to him in settlement of Case No. 34-CA-11097 because he filed a grievance against it related to his termination from the CityPlace jobsite, the Respondent violated Section 8(a)(1) of the Act.

2. By its letter of February 26, 2010 in which it prohibited its employee William Juliano from discussing or referencing the non-financial terms of the settlement in Case No. 34-CA-11097 because he filed a grievance against it related to his termination from the CityPlace jobsite, the Respondent violated Section 8(a)(1) of the Act.

3. The Respondent did not violate Section 8(a)(3) or Section 8(a)(4) of the Act by its letter of February 26 2010.

The Remedy

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

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

The Respondent, Ducci Electrical Contractors, Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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(a) Threatening its employees with a lawsuit for filing grievances against the Respondent relating to their employment.

10 (b) Prohibiting its employees from discussing or referencing the non-financial terms of non-Board settlements.

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

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

(a) Rescind and withdraw the letter it sent to William Juliano on February 26, 2010, and notify him that it will not take the action set forth therein.

20 (b) Within 14 days after service by the Region, post at its facility in Torrington, Connecticut, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60
25 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a
30 copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 2010.

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

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

Dated, Washington, D.C., February 15, 2011.

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Steven Davis
Administrative Law Judge

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50 ⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
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 threaten you with a lawsuit for filing grievances against us relating to your employment.

WE WILL NOT prohibit you from discussing or referencing the non-financial terms of non-Board settlements.

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 from the date of this Order, rescind and withdraw the letter we sent to William Juliano on February 26, 2010, and WE WILL, within 3 days thereafter, notify him in writing that we have done so, and that we will not take the action set forth therein.

DUCCI ELECTRICAL CONTRACTORS

(Employer)

Dated _____ By _____
(Representative) (Title)

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

A.A. Ribicoff Federal Building
450 Main Street – 4th floor
Hartford, Connecticut 06103-3503
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.