CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers *and* Carlos Rivera *and* Carlos Rivera-Sandoval *and* Edwin Cotto-Roque *and* Hector Sanchez-Torres *and* Jose Rivera-Ortiz *and* Vidal Arguinzoni *and* Jan Rivera-Mulero *and* Luis Bermudez *and* Hector Rodriguez *and* Juan Rivera-Diaz *and* Jose Collazo-Flores *and* Gabriel Rojas-Cruz *and* Jose Rivera-Barreto *and* Jose Suarez *and* Jorge Oyola *and* Pedro Colon-Figueroa *and* Luis Rivera-Morales *and* Jose Rivera-Martinez *and* Virginio Correa *and* Carlos Rivera-Rodriguez *and* Luis Melendez *and* Rafael Oyola-Melendez *and* Miguel Colon

Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters *and* Migdalia Magriz and Silvia Rivera and Maritza Quiara. Cases 24–CA–011018, 24–CA–011032, 24–CA–011034, 24–CA–011035, 24–CA–011041, 24–CA–011042, 24–CA–011044, 24–CA–011045, 24–CA–011046, 24–CA–011047, 24–CA–011048, 24–CA–011050, 24–CA–011057, 24–CA–011058, 24–CA–011059, 24–CA–011065, 24–CA–011072, 24–CA–011081, 24–CA–011088, 24–CA–011095, 24–CA–011116, 24–CA–011189, 24–CA–011193, 24–CA–011194, 24–CB–002706, and 24–CB–002707

September 18, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On April 16, 2010, Administrative Law Judge Bruce D. Rosenstein issued the attached decision.[1] The Acting General Counsel, the Respondent Employer, and the Respondent Union each filed exceptions and a supporting brief. The Acting General Counsel filed an answering brief to the Respondent Employer's and the Respondent Union's exceptions. The Respondent Employer filed an answering brief to the Acting General Counsel's exceptions and a reply brief to the Acting General Counsel's answering brief. The Charging Parties filed an answering brief to the Acting General Counsel's and the Respondent Union's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,[3] and conclusions in part, to reverse them in part, and to adopt the recommended Order as modified and set forth in full below.[4]

I. INTRODUCTION

The Respondent Employer, CC-1 Limited Partnership d/b/a Coca-Cola Puerto Rico Bottlers (Employer), operates a bottling plant in Cayey, Puerto Rico. The Respondent Union, Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters (Union), is the employees' collective-bargaining representative. The parties' most recent collective-bargaining agreement, which expires on January 31, 2014, was executed on February 2, 2009. The parties' predecessor agreement expired on July 31, 2008. Thus, from July 31, 2008 until February 2, 2009, there was no collective-bargaining agreement in place.

[1] Prior to the opening of the hearing, the Regional Director for Region 24 approved an informal Board settlement agreement in Cases 24–CB–002725, 24–CB–002726, 24–CB–002728, and 24–CB–002729 and severed these cases from the CB complaint. Also, after the opening of the hearing, the judge approved an informal Board settlement agreement that fully remedied the allegations in Cases 24—CB–002648, 24–CB–002673, 24–CB–002682, and 24–CB–002686. There were no exceptions to the judge's failure to make formal findings on these cases. Finally, by motion dated January 27, 2011, the Acting General Counsel requested that Cases 24–CA–011033, 24–CA–011038, 24–CA–011039, 24–CA–011040, 24–CA–011043, 24–CA–011056, 24–CA–11060, 24–CA–011064, 24–CA–011089, 24–CA–011105, 24–CA–011115, and 24-CA–011141 be severed from the other above-captioned cases and remanded to the Regional Director for Region 24 for processing pursuant to a non-Board settlement agreement between the Respondent Employer and the individual Charging Parties. On May 10, 2011, the Board issued an Order granting the Acting General Counsel's request. The case caption has been amended to reflect the severance of the above CB and CA cases.

The allegations settled in 2011 include the discharge of employee Dennes Figueroa. Accordingly, we need not pass on the Acting General Counsel's exception to the judge's finding that Figueroa was lawfully discharged.

[2] Member Hayes is recused and did not participate in the consideration of this case.

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

[4] In accordance with our decision in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), we modify the judge's remedy by requiring that backpay shall be paid with interest compounded on a daily basis. We have modified the judge's recommended Order to reflect the amended remedy, to conform to the violations found, and to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). We have substituted a new notice to conform to the Order as modified.

The allegations at issue here center on two work stoppages that occurred during the contractual hiatus period: a 2-hour walkout in September 2008, which resulted in the Employer's suspension and termination of five shop stewards, and a 3-day strike in October 2008, which resulted in the Employer's suspension and termination of numerous employees and the Union's discipline of three members. Following the strike, the Employer and the Union reached an agreement to reinstate the suspended employees under last-chance agreements. Subsequently, the Employer terminated four employees for violating the terms of those last-chance agreements.

We agree with the judge, for the reasons stated in his decision, that the Employer violated Section 8(a)(3) and (1) by terminating shop steward Miguel Colon for his participation in the September work stoppage.[5] As explained below, we also find, contrary to the judge, that the Employer violated Section 8(a)(3) and (1) of the Act by terminating shop stewards Carlos Rivera, Francisco Marrero, Romian Serrano, and Felix Rivera.

We agree with the judge, for the reasons stated below, that the October strike was a protected unfair labor practice strike and that the Employer therefore violated Section 8(a)(3) and (1) by suspending and terminating the strikers. We also agree that the Employer violated Section 8(a)(1) by requiring employees to sign overbroad last-chance agreements as a condition of their reinstatement and violated Section 8(a)(3) and (1) by terminating four employees for violating those agreements.[6] Finally, we adopt the judge's conclusion that the Union violated Section 8(b)(1)(A) by disciplining three members for participating in the October strike, but we do so only for the reasons stated below.

II. DISCUSSION

A. September Work Stoppage

The judge found that the employees were engaged in protected concerted activity when they stopped working on the evening of September 9, 2008.[7] The judge also found, however, that four of the five shop stewards violated articles 12 and 13 of the parties' expired contract and the Employer's code of conduct by encouraging other employees to stop working and, therefore, that the Employer lawfully terminated these shop stewards. We disagree.

To begin, neither article 12 nor article 13 provides a lawful basis for suspending and discharging the stewards. Article 13 is a nonemployee access provision.[8] On its face, it applies only to nonemployee union representatives, not to shop stewards. Article 12, in turn, does concern stewards but was not operative during the hiatus between the collective-bargaining agreements.[9] The Board has long held, with Supreme Court approval, that a no-strike clause typically does not survive the expiration of a collective-bargaining agreement. See *Litton Financial Printing Division v. NLRB,* 501 U.S. 190, 199 (1991). Article 12, although not a traditional no-strike clause that applies to all employees, contains a waiver of the statutory rights of employees serving as shop stewards to engage in otherwise protected work stoppages. Absent clear evidence that the parties intended the waiver to outlive the contract, we find that it expired with the contract. See *Ironton Publications*, 321 NLRB 1048, 1048 (1996). Accordingly, the Employer could not rely on article 12 in disciplining the stewards for encouraging employees to engage in a protected work stoppage.[10]

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[5] The Employer's sole exception to this finding is that the judge erred in crediting testimony that Colon did not encourage employees to stop working. As stated in fn. 2, we adopt the judge's credibility resolutions. In doing so, however, we find it unnecessary to rely on the judge's finding that Supervisor Armando Troche's affidavit failed to mention Colon. Furthermore, even if Colon had encouraged employees to join the work stoppage, we would nonetheless find that the Employer violated Sec. 8(a)(3) and (1) of the Act by suspending and terminating him, for the same reasons that we find that the other four shop stewards were unlawfully suspended and terminated.

[6] Because we agree with the judge that par. 7 of the last-chance agreements is unlawfully overbroad, we find it unnecessary to pass on whether par. 4 is also overbroad. We further find that the last-chance agreements were unlawful because they were part of the discipline imposed on employees who engaged in a protected strike. We find it unnecessary to pass on whether the last-chance agreements violated Sec. 8(a)(4), because the additional violation would not materially affect the remedy. See, e.g., *D. R. Horton*, *Inc.*, 357 NLRB No. 184, slip op. at 18 (2012).

Pursuant to a request by the Acting General Counsel, the judge found the Union and the Employer jointly and severally liable for the violations related to the last-chance agreements. The judge, however, did not specifically find that the Union violated the Act with respect to these agreements, and there are no exceptions to his failure to do so. Accordingly, we hold the Employer solely liable for the violation. Having found the last-chance agreements unlawfully overbroad, we will order that they be removed from the personnel files of all 52 employees who signed them. We therefore find it unnecessary to grant the Acting General Counsel's additional request to amend the complaint to include the additional 48 employees who signed the agreements.

[7] All dates are 2008 unless otherwise stated.

[8] "Article 13—Union Representatives" states in relevant part: "[R]epresentatives of Local 901 will notify the Company of their intention to visit the work area and will comply with the rules and procedures established by the Company for visitors. These visits will not interrupt work."

[9] "Article 12—Delegates" states in relevant part that stewards, in carrying out their duties, "will not interrupt the work of the rest of the employees. In fact, the delegate (shop steward) will not have the authority to declare strikes or any other action that paralyzes or obstructs the work of the company or work place."

[10] Any other conclusion would allow rank-and-file employees to encourage or engage in a protected work stoppage, but would permit an employer to terminate a shop steward for the same action. Although

The judge also found that the Employer's suspension and discharge of the stewards was lawful because the stewards' actions violated the Employer's rules of conduct.[11] It is well established, however, that an employer cannot enforce a rule that disciplines an employee for protected conduct. See *NLRB v. Washington Aluminum Co*., 370 U.S. 9, 16–17 (1962); *Kingsbury, Inc.*, 355 NLRB 1195, 1206 (2010), petition for review dismissed 2010 WL 5367794 (D.C. Cir. 2010). Here, the stewards were engaged in protected concerted activity when they encouraged employees to join the strike, and, with the exception of steward Marrero, the Employer presented no evidence that the suspended and terminated stewards engaged in any additional behavior that allegedly violated its rules of conduct.[12]

Accordingly, we reverse the judge and find that the Employer violated the Section 8(a)(3) and (1) of the Act by suspending and discharging shop stewards Carlos Rivera, Fransciso Marrero, Romain Serrano, and Felix Rivera for engaging in and encouraging employees to engage in a protected work stoppage.

B. October Strike

The Union and the Employer except to the judge's finding that the employees were engaged in protected concerted activity when they participated in a 3-day strike to protest the Employer's suspension and termination of the shop stewards. Citing *Emporium Capwell v. Western Addition Community Organization*, 420 U.S. 50, 63 (1975), they argue that the strike was an illegal "wildcat" strike because it was not authorized by the Union and was intended to undermine the Union.[13] We agree that the strike was not authorized, but we do not agree that it was intended to undermine the Union. Therefore, we affirm the judge's finding that the striking employees were engaged in protected concerted activity.

In determining whether employees who engage in an unauthorized strike are engaging in protected conduct, the Board recognizes the potential tension between the statutory concerns of exclusive representation under Section 9(a) of the Act and the employees' right to engage in protected concerted activity. Accordingly, the Board has determined that, in assessing whether employees who act independently from their bargaining representative lose the protection of the Act, two factors are controlling: (1) whether the employees are attempting to bargain directly with the employer and (2) whether the employees' position is inconsistent with the union's position. See *Silver State Disposal Service*, 326 NLRB 84, 85 fn. 8, 103–104 (1998); see also *Sunbeam Lighting* Co., 136 NLRB 1248 (1962), enf. denied 318 F.2d 661 (7th Cir. 1963); *NLRB v. R.C. Can Co.*, 328 F.2d 974, 978–979 (5th Cir. 1964).

The Employer argues that, because the Union chose to file a grievance over the discharges of the stewards and to select a new bargaining committee, the October strike was inconsistent with the Union's position on how to respond to the discharges. The evidence does not support the Employer's argument. Prior to the strike, the Union conducted a strike vote and requested strike funds from the International Brotherhood of Teamsters. The Union also met with the Employer to discuss the suspension of the shop stewards and made the following demands, which the Employer rejected: (i) all five shop stewards

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the Board has found that an employer may impose harsher discipline on union officials for instigating or actively leading employees in *illegal* (and thus unprotected) strikes during the term of a collective-bargaining agreement, an employer may not rely on the employees' shop-steward status to impose harsher discipline for protected activity. *Midwest Precision Casting*, 244 NLRB 597, 599 (1979); see also *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 703 (1983).

[11] The judge does not list the specific rules, but the Employer argues that the stewards violated rules prohibiting, among other things, "being on company property without authorization," "disturbing the peace," "obscene and/or dirty language . . . and/or abusive behavior," "[i]nciting fellow workers to violate the standards of disciplinary behavior or orders given by management," and "[d]eliberately interfering with or restricting production."

[12] With regard to steward Marrero, the Employer argues that his discharge was lawful because he was abusive and threatening to Supervisor Victor Colon and used abusive language toward Supervisor Troche. When an employee is discharged for conduct that is part of the res gestae of protected concerted activities, the relevant question is whether the conduct is sufficiently egregious so that the employee loses the protection of the Act. See *Stanford Hotel,* 344 NLRB 558, 558 (2005). In making that determination, the Board examines the following factors: (1) the place of the discussion; (2) the subject of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by the employer's unfair labor practice. *Atlantic Steel Co.,* 245 NLRB 814, 816 (1979). On balance, we find that steward Marrero did not lose the protection of the Act. Although the exchange between Marrero and Colon took place in the facility, there is no evidence that any employees other than the shop stewards heard their conversation. Further, the allegedly offensive remark—"It's a good thing that this is happening to you; that's why they shot at you, bastard"—referred only to a past event, was not made in the context of any ongoing violence, and did not threaten future violence. Finally, the comment was directly responsive to Supervisor Colon's attempt to remove the union representative and the shop stewards from the property, which the stewards viewed as an unfair labor practice. Similarly, Marrero's allegedly offensive statement to Troche—"shut up, you asshole, this has nothing to do with you"—which did not contain a threat and was not heard by other employees, did not cause him to lose the protection of the Act. Although we do not condone Marrero's behavior, we find that his actions were not sufficiently egregious to remove him from the protection of the Act.

[13] In *Emporium Capwell*, a minority group of employees, dissatisfied with the contractual grievance procedure, refused to participate in it. Contrary to the union's advice, the employees picketed their employer's store in an attempt to circumvent the union and bargain separately with the employer. 420 U.S. at 50. The Court found such conduct unprotected because it undercut the principle of exclusive representation set forth in Sec. 9(a).

must immediately be reinstated; (ii) the Employer must agree not to file any unfair labor practice charges against the Union for engaging in the work stoppage; and (iii) the Employer must agree to immediately return to the negotiating table. The same demands were made by the employees during the strike. Although the Union filed a grievance over the stewards' suspension, there is no evidence that the Union took any action to process the grievance or informed the employees that it was working on a settlement. Indeed, the strike vote conducted by the Union was taken after the grievance was filed. In addition, the evidence does not establish that the Union had selected a new bargaining committee. Finally, a few days before the strike began the employees informed the Union that they had taken a second strike vote. Upon learning of the second strike vote, the Union did not communicate to the employees that a strike would be inconsistent with the position of the Union or that a strike was not authorized at that time. Even after the strike began, the Union did not inform the employees that they were engaging in an unauthorized strike.[14]

The Employer also argues that the strike was illegal because the employees demanded that the Employer negotiate with the shop stewards rather than the Union, and because the stewards were acting as a labor organization. But the record shows only that the strikers demanded that the Employer recognize the stewards as the Union's representatives on the bargaining committee. Thus, the evidence does not establish that the employees demanded that the Employer bypass the Union and deal directly with the shop stewards. Moreover, there is no evidence that the shop stewards were acting as a "labor organization" whose purpose was the representation of employees.[15]

In sum, although the strike was not authorized by the Union, the Employer has not established that the employees were attempting to bargain directly with the Employer or that the employees' position was inconsistent with the position of the Union. Thus, the strike was not illegal. We therefore adopt the judge's finding that the employees were engaged in a protected unfair labor practice strike and that the Employer violated Section 8(a)(3) and (1) of the Act by suspending and/or terminating employees for their participation in the strike.[16]

C. Union Discipline

The judge found that the Union violated Section 8(b)(1)(A) by fining and expelling union members Migdalia Magriz, Maritza Quiara, and Silvia Rivera for participating in the October strike.[17] The Union excepts to the judge's finding and argues that, under *Office Employees Local 251 (Sandia National Laboratories),* 331 NLRB 1417 (2001), a union does not violate Section 8(b)(1)(A) of the Act by imposing fines or other discipline on members, so long as the sanctions do not affect the members' relationship with their employer. We adopt the judge's conclusion that the Union violated the Act, but we do so only for the reasons stated below.

In *Sandia*, the Board clarified the scope of Section 8(b)(1)(A) by finding that internal union discipline may give rise to a violation only if the union's conduct: (1) affects the employment relationship, (2) impairs access to the Board's processes, (3) pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impairs policies imbedded in the Act. 331 NLRB at 1418, 1424. Applying that standard, the Board found that the union's discipline of dissident members for opposing the policies

[14] The Union sent a letter to the Employer stating that the strike was not authorized, but it was the Employer—not the Union—that photocopied the letter and asked security guards to give it to the strikers.

The facts here are distinguishable from those in the cases cited by the Employer. In *Energy Coal Partnership*, 269 NLRB 770 (1984), the union and the employer were engaged in contract negotiations, and, despite an interim agreement on many issues, employees became frustrated with the slow-moving process. Against the recommendation of the union, the employees voted to strike. Picketing continued for 2 days, despite the union's refusal to sanction the strike and its efforts to persuade the strikers to cease. Only after the employer secured a temporary restraining order did the strikers cease their activities. Similarly, in *NLRB v. Shop Rite Foods, Inc.*, 430 F.2d 786 (5th Cir. 1970), the court found that the protesting employees waited until after the walkout to notify the union and seek approval. Thus, the union did not have an opportunity even to consider whether to protest the discharge or whether a strike should be employed as a weapon. Id. at 791. Here, by contrast, the Union affirmatively decided that redressing the suspension and termination of the shop stewards should be a union objective, it discussed its objectives with regard to the suspensions and terminations (including the reinstatement of the stewards) with the unit employees, and it took a vote to authorize a strike if those objectives were not met.

[15] Sec. 2(5) of the Act defines a "labor organization" as follows:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Here, there is no evidence that the shop stewards were acting as an organization or committee with the purpose of dealing with the Employer concerning conditions of employment.

[16] In the absence of exceptions, we adopt the judge's finding that no employees engaged in sabotage or violence during the October strike sufficient to remove them from the protection of the Act.

[17] Magriz, Quiara, and Rivera were union members and shop stewards, but were not employed by the Employer; they worked for other Cayey-area employers whose employees the Union also represented. In addition, in October 2008, Magriz, Quiara, and Rivera had run for office in an internal Local 901 election as part of a slate of candidates that opposed Local 901's current leadership. Their slate lost the election.

of the local president was a purely internal matter and was outside the scope of Section 8(b)(1)(A), because it had no impact on the employment relationship of the disciplined members. Id. at 1424.

In the present case, the critical issue is whether the Union's discipline has "some nexus with the employer-employee relationship." *Electrical Workers Local 2321 (Verizon)*, 350 NLRB 258, 262 (2007). If discipline is found to be within the scope of Section 8(b)(1)(A), the Board weighs the Section 7 rights of the employees against the legitimate interests of the union to determine whether the discipline violates the Act. *Steelworkers Local 9292* (*Allied Signal Technical Services Corp.*), 336 NLRB 52, 54 (2001).

To begin, we find that the discipline here had an impact on the employment relationship. *Electrical Workers Local 2321 (Verizon)*, supra. The Union stipulated that the "seniority" of the three members was the only "term and condition of employment" affected by the sanctions. The Union argues in its exceptions brief that only the members' "super seniority"—a benefit provided to members who serve as shop stewards—was affected, but there is no record evidence to support this argument.[18] Accordingly, based on the language of the stipulation, we find that the sanctions affected the members' seniority and therefore the employment relationship.[19] See *Scofield v. NLRB*, 394 U.S. 423, 428–429 (1969) (a union may fine an employee for failing to participate in a strike, but may not enforce a union rule by affecting the seniority rights of the member).

Next, consistent with *Sandia,* we must balance the employees' Section 7 right to engage in protected strike activity against the legitimacy of the Union's interests at stake. The Union argues that it was subject to a "broad order" imposed in the settlement of striker-misconduct allegations arising from a 1990 strike, and that the Union had an interest in protecting itself from fines that could have been imposed if the strikers had violated the broad order.[20] The Union also argues that the three disciplined members violated various sections of the Union's constitution and bylaws. We agree with the judge's findings that the sanctioned members did not violate the broad order. Moreover, even if their participation in the strike violated the terms of the Union's constitution and bylaws, the three employees were treated disparately from other stewards who also participated in the strike but were not disciplined, even though those stewards' conduct also would have violated the constitution and bylaws. In these circumstances, we find that the employees' Section 7 rights outweighed the Union's right to discipline its members. Therefore, the Union violated Section 8(b)(1)(A) of the Act by imposing sanctions on Magriz, Quiara, and Rivera.

AMENDED REMEDY

We amend the remedy as stated in footnotes 4 and 6 above. Further, having found that the Employer unlawfully discharged employees Carlos Rivera, Fransciso Marrero, Romain Serrano, and Felix Rivera, we shall order the Employer to reinstate them to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole from September 10, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Having found that the Union violated Section 8(b)(1)(A), we order it to reinstate the seniority rights of Migdalia Magriz, Maritza Quiara, and Silvia Rivera. We also order the Union to make them whole for any loss of earnings and other benefits suffered as a result of their lost seniority. We leave the specifics of the seniority-reinstatement remedy to compliance. Contrary to the judge, we do not order the Respondent Union to reinstate them to full membership and their shop steward positions or to rescind the fines levied against them, as those remedies are beyond the scope of Section 8(b)(1)(A).

ORDER

A. CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers, Cayey, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, suspending, or otherwise discriminating against employees because they engaged in union or protected concerted activities and/or encouraged other employees to do so.

(b) Coercing employees into signing overbroad "last chance" agreements as a condition of their reinstatement.

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[18] Superseniority is a contractual grant of seniority that is unrelated to years of service, but is given to shop stewards or other union officials to ensure that employees receive on-the-job representation. See, e.g., *Gulton Electro-Voice, Inc*., 266 NLRB 406, 409 (1983), enfd. 727 F.2d 1184 (D.C. Cir. 1984); *Dairylea Cooperative, Inc*., 219 NLRB 656, 657 (1975), enfd. 531 F.2d 1162 (2d Cir. 1976).

[19] We do not adopt the judge's finding that the Union's sanction also "impairs policies imbedded in the Act." The Act does not prohibit a union from disciplining employees for their protected activity. See *Verizon*, 350 NLRB at 262; *Service Employees Local 399 (City of Hope),* 333 NLRB 1399, 1401–1402 (2001); *Sandia*, 331 NLRB at 145.

[20] The order requires the Union to refrain from authorizing or permitting unlawful striker conduct. The order instructs the Union to inform pickets of obligations under the order and to assign a union officer or agent to the picket line to ensure that any strike activity is carried out lawfully. Here, the Union did not authorize the strike, so the language of the order does not apply to the employees' conduct.

(c) Discharging, suspending, or otherwise discriminating against employees because they participated in a protected strike.

(d) 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 date of this Order, offer unfair labor practice strikers Carlos Rivera-Sandoval, Edwin Cotto-Roque, Hector Sanchez-Torres, Jose Rivera-Ortiz, Vidal Arguinzoni, Jose Diaz, Alexis Hernandez, Ada Flores, Jan Rivera-Mulero, Juan Resto, Nilsa Navarro, Henry Cotto, Hector Rodriguez, Juan Rivera-Diaz, Jose Collazo-Flores, Gabriel Rojas-Cruz, Jose Suarez, Jorge Oyola, Pedro Colon-Figueroa, Luis Rivera-Morales, Jose Rivera-Martinez, Carlos Rivera-Rodriguez, Eddie Rivera-Garcia, Giovanni Jimenez, Rafael Oyola-Melendez, Carlos Ortiz-Ortiz, Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez; and employees Miguel Colon, Carlos Rivera, Francisco Marrero, Romian Serrano, and Felix Rivera reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Miguel Colon, Carlos Rivera, Francisco Marrero, Romian Serrano, and Felix Rivera from September 10, 2008, and the unfair labor practice strikers listed above in paragraph 2(a) from October 20, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Make whole Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez for any losses sustained by reason of their suspensions and discharges plus interest in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions and/or discharges of Miguel Colon, Carlos Rivera, Francisco Marrero, Romian Serrano, Felix Rivera, and the unfair labor practice strikers listed above in paragraph 2(a) and, within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

(e) Within 14 days of the date of this Order, remove any reference of the last chance agreement from the files of all 52 employees who signed the agreement as part of their reinstatement, and, within 3 days thereafter, notify them in writing that this has been done, and that the last chance agreement will not be used against them in any way.

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

(g) Within 14 days after service by the Region, post at its facility in Cayey, Puerto Rico, copies of the attached notice marked "Appendix A."[21] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent Employer's authorized representative, shall be posted by the Employer in English and Spanish and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps shall be taken by the Employer 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 Employer has gone out of business or closed the facility involved in these proceedings, the Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since September 9, 2008.

(h) 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 Employer has taken to comply.

B. Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters, is officers, agents, and representatives, shall

1. Cease and desist from

(a) Imposing unlawful sanctions on members that affect their terms and conditions of employment.

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

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

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

(a) Restore the seniority rights of Migdalia Magriz, Maritza Quiara, and Silvia Rivera.

(b) Make whole Migdalia Magriz, Maritza Quiara, and Silvia Rivera for any loss of earnings and other benefits suffered as a result of their lost seniority plus interest in the manner set forth in the amended remedy of this decision.

(c) Within 14 days after service by the Region, post at the Respondent Union's office copies of the attached notice marked "Appendix B."[22] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Union's authorized representatives, shall be posted in English and Spanish and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by the Respondent Employer, if willing, at all places where notices to employees are customarily posted.

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

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

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

Dated, Washington, D.C. September 18, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge, suspend, or otherwise discriminate against you for engaging in union or protected concerted activities and/or encouraging other employees to do so.

WE WILL NOT coerce you into signing overbroad "last chance" agreements as a condition of your reinstatement.

WE WILL NOT discharge, suspend, or otherwise discriminate against you for participating in a protected strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer unfair labor practice strikers Carlos Rivera-Sandoval, Edwin Cotto-Roque, Hector Sanchez-Torres, Jose Rivera-Ortiz, Vidal Arguinzoni, Jose Diaz, Alexis Hernandez, Ada Flores, Jan Rivera-Mulero, Juan Resto, Nilsa Navarro, Henry Cotto, Hector Rodriguez, Juan Rivera-Diaz, Jose Collazo-Flores, Gabriel Rojas-Cruz, Jose Suarez, Jorge Oyola, Pedro Colon-Figueroa, Luis Rivera-Morales, Jose Rivera-Martinez, Carlos Rivera-Rodriguez, Eddie Rivera-Garcia, Giovanni Jimenez, Rafael Oyola-Melendez, Carlos Ortiz-Ortiz, Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez; and employees Miguel Colon, Carlos Rivera, Francisco Marrero, Romian Serrano, and Felix Rivera full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed

WE WILL make the above-named individuals whole for any loss of earnings and other benefits resulting from their suspension or discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspensions and discharges of employees, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the last chance agreement from the files of all employees who signed the agreement as part of their reinstatement, and WE WILL, within 3 days thereafter, notify each employee in writing that this has been done and that the last chance agreement will not be used against them in any way.

CC 1 LIMITED PARTNERSHIP D/B/A COCA COLA PUERTO RICO BOTTLERS

APPENDIX B

NOTICE TO MEMBERS
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 the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with on your behalf with your employer to

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT impose unlawful sanctions on you that affect your terms and conditions of employment.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights listed above.

WE WILL restore the seniority rights of Migdalia Magriz, Maritza Quiara, and Silvia Rivera.

WE WILL make the above members whole, with interest, for any loss of earnings and other benefits suffered as a result of their loss of seniority.

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Ana B. Ramos-Fernandez, Esq., Efrain Rivera-Vega, Esq., Isis Ramos-Melendez, Esq., and *Jose L. Ortiz, Esq.,* for the General Counsel.

Miguel A. Maza, Esq., Yolanda M. Da Silveira-Neves, Esq., Vanessa Marzan-Henandez, Esq., and *Agustin Collazo, Esq.,* of San Juan, Puerto Rico, for the Respondent-Employer.

Antonio F. Santos-Bayron, Esq., and *Jose E. Carreras-Rovira, Esq*., of San Juan, Puerto Rico, for the Respondent-Union.

Linda A.Backiel, Esq., of San Juan, Puerto Rico*, Barbara Harvey, Esq.,* of Detroit Michigan*,* and *Julien Gonzalez, Esq.,* of Brooklyn, New York, for six individual Charging Parties in the CB complaint.[1]

Jose Budet, of Canovanas, Puerto Rico, for all of the Charging Parties in the CA complaint and four individual Charging Parties in the CB complaint.[2]

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[1] Attorneys Backiel and Harvey represent individual charging parties in Cases 24–CB–02706 (Magriz), 24–CB–02707 (Rivera), 24–CB–02725 (Baez), 24–CB–02726 (Miranda), 24–CB–02728 (Hernandez), and 24–CB0–2729 (Reyes).

[2] Budet is the principal representative for all of the individual charging parties in the CA cases and for the individual charging parties in Cases 24–CB–002648 (Rivera), 24–CB–002673 (Figueroa), 24–CB–002682 (Colon), and 24–CB–002686 (Bermudez).

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on December 7 through 17, 2009, and January 11, 2010, in San Juan, Puerto Rico, pursuant to a third consolidated amended complaint and notice of hearing in the CA cases and a second consolidated amended complaint and notice of hearing in the CB cases (the complaint) issued on November 16 and 17, 2009, respectively, by the Regional Director for Region 24 of the National Labor Relations Board (the Board). The complaint in the CA cases, based upon original and amended charges filed on various dates in 2008[3] and 2009, by the 37 captioned individual Charging Parties (the Charging Parties or referred to by their name), alleges that CC1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers (the Respondent Employer or Employer), has engaged in certain violations of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act).[4] The complaint in the CB cases, based upon original and amended charges filed on various dates in 2008 and 2009, by the 10 captioned individual Charging Parties (the Charging Parties or referred to by their name) alleges that Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters (Respondent Union or Local 901), has engaged in certain violations of Section 8(b)(1)(A) of the Act.[5] The Respondent Employer and the Respondent Union filed timely answers to the complaint denying that they had committed any violations of the Act.

Issues

The CA complaint alleges, before the approved settlement agreements resolved certain issues, that the Respondent Employer violated Section 8(a)(1), (3), (4), and (5) of the Act by threatening its employees with discharge or other unspecified reprisals if they protested the discharge of five bargaining unit employees, the denial of an employee's request to be represented by the Respondent Union in a disciplinary interview that the employee had reasonable cause to believe would result in disciplinary action being taken against him, the distribution of gift certificates to employees who did not engage in and/or abandoned their participation in an unfair labor practice strike that occurred on October 20–22, the suspension and discharge of five employees on September 10 and October 10, respectively, because the employees engaged in protected concerted activities, the discharge of 35 employees and the suspension of four employees for engaging in the October 20–22 unfair labor practice strike to protest the five employees who were discharged on October 10, the reinstatement on November 3 of the four employees who were suspended on October 23, pursuant to a "last chance" agreement that conditioned their reinstatement on the relinquishment of terms and conditions of employment that were prohibited or unlawful under the Act. Additionally, the complaint alleges that the Respondent Employer unilaterally changed its past practice regarding the duration of disciplinary warnings for purposes of progressive discipline. The CB complaint, before the approved settlement agreements resolved certain issues, alleges that the Respondent Union violated Section 8(b)(1)(A) of the Act when it refused to process individual grievances filed by four of the Charging Parties or processed the grievances in a perfunctory and/or careless manner because they did not support candidates favored by Local 901 in an internal union election. Additionally, the CB complaint alleges that seven members of the Respondent Union were brought up on internal union charges because they were present at and/or participated in a meeting held on October 12 by employees of the Employer, and/or because of the union members' support or participation in the October 20–22 unfair labor practice strike. Lastly, on March 10, 2009, three of the seven employees were expelled from union membership, removed from their shop steward positions, and each of them was fined the sum of $10,000.

On the entire record,[6] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent Employer,[7] Respondent Union and the Charging Parties[8] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer, a Florida limited partnership, has been engaged in the bottling of carbonated and noncarbonated beverages at its principal office and place of business located in Cayey, Puerto Rico. The Employer, in conducting its business operations, purchased and received at its facility goods and materials valued in excess of $50,000 from points located outside the Commonwealth of Puerto Rico. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

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[3] All dates are in 2008, unless otherwise indicated.

[4] After the opening of the hearing, I approved an all-party informal Board settlement agreement with a notice to employees fully remedying the allegations in pars. 9, 16, 23, and 24 of the CA complaint (ALJ Exh. 2). Accordingly, in my decision, I will not make any formal findings regarding those allegations.

[5] Prior to the opening of the hearing, the Regional Director for Region 24 approved an all-party informal Board settlement agreement with a notice to members in Cases 24–CB–2725, 24–CB–2726, 24–CB–2728, and 24–CA–2729 and severed these cases from the CB complaint (GC Exh. 1 (ccccccc) and (ddddddd). Thus, no formal findings will be made concerning these allegations. Additionally, after the opening of the hearing, I approved an informal Board settlement agreement with a notice to members between the General Counsel and Local 901 over the objections of the Charging Parties that fully remedied the allegations in the CB complaint regarding Cases 24–CB–2648, 24–CB–2673, 24–CB–2682, and 24–CB–2686 (ALJ Exh. 1). Thus, I will not make any findings concerning these allegations in my decision.

[6] The joint motion of the parties to correct the transcript, dated March 25, 2010, is granted and received in evidence as Jt. Exh. 25.

[7] The Respondent Employer motions to correct the transcript and objection to the General Counsel's translation of GC Exh. 17, dated March 25, 2010, are granted and admitted into evidence as R Exh. 6–7.

[8] The Charging Parties motion to correct the transcript, dated March 25, 2010, is granted and admitted into evidence as CP 24–CB–2706 Exh. 5.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

At all material times since at least 2003, the Respondent Union has been the designated exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements between the Employer and Local 901, the most recent of which was executed on February 2, 2009, through January 31, 2014.[9]

German Vazquez holds the position of secretary-treasurer and is the principal officer of Local 901. Jose Adrian Lopez was a Local 901 business representative and principal representative of the bargaining unit employees at the Employer from 2003 to October 6. He also served as the chief negotiator, until September 9, during collective-bargaining negotiations with the Employer for a successor agreement. Carlos Rivera (Charlie–2d shift), Miguel Colon (1st shift), Francisco Marrero (Frankie–1st shift), Romian Serrano (3d shift), and Felix Rivera (3d shift) served as Local 901 shop stewards until their suspensions on September 10.

During all material times, Carlos Trigueros held the position of operations director and Lourdes Ayala served as senior human resources director for the Employer. William Acosta, Armando Troche, Alejandro Barreto, and Wilson de Jesus held the positions of maintenance manager, control dispatch manager, mechanical supervisor, and production supervisor, respectively. Victor Colon serves as the operations process leader while Maribel Aponte held the position of inbound and outbound lead.

B. The 8(a)(1) and (3) Allegations

1. The concerted work stoppage

The General Counsel alleges in paragraphs 8 and 10 of the CA complaint that on or about September 9, certain employees ceased work concertedly to protest the Employer's refusal to allow Local 901 representative Lopez to speak to employees in the Employer's cafeteria during their nonwork time about the ongoing negotiations between the Respondent Employer and Respondent Union and other matters related to the employees terms and conditions of employment. Thereafter, the Respondent Employer suspended the five shop stewards on September 10, and terminated their employment on October 10, because they assisted the Respondent Union and engaged in concerted activities.

Facts

On September 9, the Employer and Local 901 representatives participated in a collective-bargaining session that commenced around 2 p.m. Representing the Employer were attorney Miguel Maza and Ayala. The Respondent Union's principal spokespersons were Lopez and Shop Steward Colon. All of the shop stewards were excused from work in order to participate in the collective-bargaining session. During the course of the meeting, Maza provided Lopez a letter regarding the extension of the parties' collective-bargaining agreement. Lopez informed Maza that the contents of the letter were inaccurate (Jt. Exh. 11(b)).

Around 5 p.m., when the negotiation session was nearing its completion, Lopez asked Ayala whether he could visit the facility around 8:30 p.m. that evening to meet with the third shift warehouse employees to discuss the status of on-going collective-bargaining negotiations and several issues pertinent to those employees.[10]

Lopez and Shop Steward Colon testified that Ayala stated that there was no problem in visiting the facility later that evening around 8:30 p.m. to meet with the warehouse employees.

Ayala testified that she did not give Lopez a definitive answer during the bargaining session regarding whether he could visit the facility later that evening. The bargaining session concluded around 5:30 p.m., and while Ayala was driving home, she telephoned Lopez to discuss two issues with him. First, Ayala discussed the status of on-going negotiations and her concern that the parties appeared deadlocked on a number of significant issues including temporary employees. Second, Ayala informed Lopez that she was unable to return to the plant that evening and therefore, he was not authorized to enter the facility. According to Ayala, Lopez agreed to come to the facility the following day around 12 noon to discuss on-going labor-management issues with her and address when he could meet with the bargaining unit employees.

Shortly after Ayala arrived home, she telephoned Trigueros between 7 and 8 p.m. to give him a brief update on the parties' negotiation session held earlier that day. Additionally, Ayala informed Trigueros that Lopez would be visiting the facility the next day because Ayala was unable to return to the plant that evening, and therefore, she had informed Lopez that he was not permitted to enter the facility on the evening of September 9 to meet with bargaining unit employees.

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[9] The predecessor collective-bargaining agreement was in effect from July 1, 2003, through July 1 (Year) (Jt. Exh. 1). Thereafter the parties, by joint stipulation, agreed to extend the collective-bargaining agreement until July 31 (Jt. Exh. 2). Contrary to the position of the Employer, as set forth in a September 9 letter to Lopez (Jt. Exh. 11(b)), that the collective-bargaining agreement was extended in writing to August 31, and thereafter to midnight on September 9, I find no such agreement existed. In this regard, the Employer did not introduce any written agreement to this effect and Lopez credibly testified that Local 901 did not agree orally or in writing to extend the collective-bargaining agreement beyond July 31. Moreover, Lopez stated his disagreement with the Employer's position during the parties' September 9 collective-bargaining session, and thereafter memorialized Respondent Union's position with an e-mail to the Employer (ALJ Exh. 3). Lastly, one of the Employer's attorneys conceded during the hearing that no written agreement existed that extended the parties' collective-bargaining agreement beyond July 31. Accordingly, I find that the parties' collective-bargaining agreement expired by its terms on July 31. The Respondent Employer and Local 901 then operated under and adhered to the terms and conditions of the expired agreement, until they executed the present collective-bargaining agreement on February 2, 2009. *NLRB v. Katz,* 369 U.S. 736, 743 (1962).

[10] The bargaining unit employees work 24/7 in three shifts designated as 1st shift from 5 a.m.–1:30 p.m., 2d shift from 1 p.m.–9:30 p.m. and 3d shift from 9 p.m.–5:30 a.m.

Ayala also placed a telephone call to the security guard on duty at the main gate named Eric, and informed him that Lopez was not authorized to enter the facility later on the evening of September 9.

Trigueros, who had just left the plant, testified that he received a telephone call from Ayala around 7 p.m. in which Ayala informed him about the negotiation session held earlier that day and told him that she had denied Lopez' request to enter the facility later that evening to meet with bargaining unit employees on the third shift. Trigueros then telephoned Victor Colon, who was working in the plant, and directed him to alert security that Lopez was not authorized to enter the facility later that evening.[11]

Around 8:30 p.m. on September 9, Lopez arrived at the facility along with Shop Stewards Marrero and Felix Rivera, and attempted to enter through the main gate. Lopez identified himself to the security guard on duty who informed him that he was not authorized to enter the facility. Lopez requested the guard to check with Ayala who he asserted had authorized his entry into the plant that evening to meet with bargaining unit employees. Since the guard ignored his request, Lopez drove his vehicle past the main gate and entered the facility. He then proceeded to the cafeteria where he intended to meet with the 3d shift warehouse employees who were not scheduled to commence work until 9 p.m.

Ayala testified that she received a number of telephone calls from the plant shortly after 8:30 p.m., while she was still at home, that Lopez had entered the facility and things were getting out of hand. Accordingly, Ayala left her residence around 9 p.m. and drove to the facility arriving around 10 p.m.

Trigueros testified that Ayala telephoned him sometime before 9 p.m. to inform him that Lopez had entered the facility. He also received a telephone call from one of the security guards that Lopez had entered the facility. Trigueros then telephoned Victor Colon to inform him that Lopez had entered the facility and for Colon to find out where he was located.

Colon, accompanied by two supervisors, first went to the cafeteria in an effort to locate Lopez. Upon arriving at the cafeteria, he saw Lopez talking to approximately 15–20 employees that he recognized worked in the warehouse. Colon informed Lopez in front of the employees that he could not stay in the plant and must leave. Lopez replied that he had the approval of Ayala to meet with the warehouse employees. Colon informed Lopez that he would have the police remove Lopez from the plant. Lopez uttered a number of profanities at Colon who replied, "Do not speak to me in that way." Colon further stated, for the second time, you must leave the plant. Both Lopez and Colon continued their interchange that was laced with profanities in front of the employees.[12]

Colon left the cafeteria and telephoned security. He instructed security to call the police to come immediately to the plant and to let him know when they arrived.

Lopez informed the employees in the cafeteria, who had witnessed the interchange between himself and Colon, to accompany him to the warehouse area in order to discuss the matter.

The group of employees exited the cafeteria and proceeded towards the warehouse area passing through the production area of the plant. As the group made its way past the production area, a number of the production employees left their work stations and joined the group of employees.

Production Supervisor Mercado testified that Shop Steward Serrano approached the production area where he worked and shouted to employees who were working to come out and join the group of employees who were making their way toward the warehouse area. Mercado noted that approximately 17 employees abandoned their workstations, pushed the emergency stop buttons on their machines, and joined the group of employees.

By the time that Lopez and the group of employees arrived in the conventional area, an area in front of the warehouse, there were approximately 80–100 employees comprised of production and warehouse workers.[13]

Control Dispatch Manager Troche testified that he observed a large group of employees that arrived in the conventional area accompanied by Shop Stewards Frankie and Charlie. He saw both Shop Stewards order employees in the distribution center to stop working and specifically heard them state, "stop, stop, stop". He also observed Shop Stewards Felix Rivera and Serrano join the group of employees and heard them yell to bargaining unit employees in the adjoining work areas to stop work. He then witnessed 20–30 employees leave their work stations and join the large group of employees in the conventional area. According to Troche, Shop Steward Colon engaged in the same conduct.

Victor Colon returned to the cafeteria after calling security but found that Lopez and the employees had already left. After talking to Trigueros on the telephone, Colon sought the assistance of a supervisor and together they began searching the plant in an effort to locate Lopez and the employees.

Victor Colon ultimately arrived in the conventional area, and went directly to the location where Lopez was standing. He again directed Lopez to leave the facility. According to Colon, Lopez along with Shop Stewards Rivera and Marrero got very close to him and Marrero raised an incident that occurred in 2001. Marrero stated, "It's good that this is happening to you; that's why they shot at you, bastard."[14] Colon panicked upon hearing those words and left the conventional area to return to his office until the police arrived.

Shop Steward Colon having participated in negotiations earlier in the day returned to the facility between 8:40 and 8:45

[11] Colon confirmed in his testimony that Trigueros telephoned him around 7 p.m. on September 9, and instructed him to alert security that Lopez was not authorized to enter the facility that evening.

[12] Colon testified that he saw Shop Stewards Marrero and Felix Rivera in the group of employees but neither of them made any statements to him.

[13] Lopez, upon arriving in the conventional area, placed a telephone call around 9 p.m. to Ayala's office number. Since she did not answer the telephone, Lopez left a voice mail message that was punctuated with profanity concerning the actions of Victor Colon in ordering him from the facility.

[14] In 1991, when Colon worked for another employer, he was shot in their parking area when entering his vehicle. He required extensive surgery and was hospitalized for a lengthy period while recuperating from his injuries.

p.m. to attend the employee meeting in the cafeteria. He entered the facility, after showing his ID card to the guard on duty, and upon arriving in the parking area observed a police vehicle. He then proceeded to the cafeteria, the site of the scheduled meeting, but upon arriving observed that neither Lopez nor the employees were there. He telephoned one of his fellow Shop Stewards and learned that the employees were now in the conventional area. Accordingly, he proceeded to that area, arriving sometime after 9 p.m. and found a large number of employees holding a meeting with Lopez. He was informed by coworkers that Victor Colon had ordered Lopez to leave the facility and that Trigueros was expected shortly. Shop Steward Colon then observed Victor Colon arrive in the conventional area accompanied by several police officers. Around that same time, Trigueros entered the conventional area and Steward Colon informed him that Lopez wanted to talk with him. Shop Steward Colon observed a discussion that occurred between Lopez and Trigueros and at the end of their meeting heard Lopez inform the bargaining unit employees that a meeting would occur the next day and that the employees should return to work. Shop Steward Colon then left the facility around 9:20 p.m. that evening.

Lopez, in his testimony, confirmed that he met with Trigueros in the conventional area and informed him that Victor Colon threatened to have the police remove him from the facility. According to Lopez, Trigueros stated that the policy with Respondent Union had not changed and what happened was a misunderstanding. He, therefore, agreed to meet with Lopez the next day to clarify the situation but no meeting occurred. Since Lopez agreed to this arrangement, he directed the employees to return to their workstations. Trigueros denied, in his testimony, that he made the statements attributed to him by Lopez and did not agree to a meeting on the following day.

Ayala arrived at the plant around 10 p.m. and was parking her car when she observed Lopez walking in the direction of his vehicle. Ayala asked Lopez why he came to the plant that evening since they agreed to meet tomorrow. Lopez told Ayala that she had given him permission to meet with the bargaining unit employees. Ayala told Lopez that no such agreement had been reached. Lopez continued to tell Ayala that Victor Colon had called the police to have him removed from the facility.

The next day, September 10, when the five Shop Stewards reported to work on their respective shifts they were not permitted to enter the plant and were suspended without pay. By letter dated September 22, the Employer provided the Shop Stewards the reasons for their suspensions (Jt. Exh. 3 (b)).[15] Thereafter, all of the Shop Stewards were terminated on October 10 (Jt. Exh. 4).[16]

While the five Shop Stewards were terminated, none of the bargaining unit employees who left their work stations without permission were disciplined by the Employer.

Discussion

The Board has held that Section 7 protects "concerted activities for the purpose of collective bargaining or other mutual aid or protection." No union need be involved, any activity by a single employee may be protected if it seeks to initiate, induce or prepare for group action. *Prill v. NLRB (Meyers Industries),* 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). This protection specifically includes the discharge of employees engaged in a work stoppage to secure an explanation for the termination of their immediate supervisor and equally applies to a Supervisor ordering the Respondent Union's Business Representative to leave the Employer's facility during a meeting with bargaining unit employees concerning on-going collective-bargaining negotiations between the parties. *Puerto Rico Food Products Corp.,* 242 NLRB 899 (1979), *Bob Evans Farms, Inc.,* 325 NLRB 138 (1997). See also *Los Angeles Airport Hilton Hotel & Towers,* 354 NLRB 202 (2009).

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

The Employer principally argues that Lopez did not have authority to enter the facility on September 9, and even if he had such authority, Lopez did not follow the procedures found in Article 13 of the parties' collective-bargaining agreement that requires Local 901 representatives to comply with the rules and procedures established by the Company for visitors.[17] Addi-

[15] The letters state in pertinent part that during the course of the negotiations the practice has been that once negotiations are concluded you do not have any obligation to return to work. We were surprised that after the negotiations were finished, without permission of the Company, you returned to the facility and encouraged employees to abandon their workstations. Such actions violate the parties' collective-bargaining agreement and are clear violations of the Employers rules of conduct. Your actions paralyzed the production line during working hours and caused substantial economic loss to the company.

[16] By letter dated October 6, Local 901 notified the Employer that Lopez is no longer a representative of the Respondent Union and should no longer be allowed to enter your facilities (Jt. Exh. 13(b)). Based on Lopez's actions at the Employer's facility on September 9, Local 901 terminated his employment.

[17] Art. 12 provides in pertinent part that the authority of the delegates (the five Shop Stewards were the Respondent Union's delegates) and substitutes that the Union designates will have the following responsibilities and duties: Sec. 3 "The transmission of messages and information that is originated and/or is authorized by the Local Union or its officials and when said messages and information are:" (b) If they are

tionally, it asserts that Lopez ignored instructions of Ayala and security personnel not to enter the facility on the evening of September 9. The Employer also argues that Local 901 representatives including the five Shop Stewards violated the No Strike Clause/Work Stoppage provisions found in Article 5 of the parties' Agreement.[18] The fallacy of this argument is that those provisions only remain in effect during the duration of the Agreement. As I found above, the parties' collective-bargaining agreement expired by its terms on July 31, and accordingly the provisions of Article 5 were not in effect on September 9. *Hacienda Resort,* 351 NLRB 504 (2007).

The issue herein, is not to determine whether the activities of Lopez violated Section 8 (a)(1) and (3) of the Act, but rather to evaluate the actions of the five Shop Stewards who the General Counsel alleges were suspended and thereafter terminated for engaging in union and other protected concerted activities.

The evidence establishes that the warehouse employees, who had gathered in the cafeteria to meet with Lopez for the purpose of discussing the status of on-going collective-bargaining negotiations in addition to issues significant to the warehouse, ceased work concertedly when Victor Colon ordered Lopez to leave the facility. The actions of Colon in directing Lopez to leave the facility followed by Lopez's instructions for the employees to follow him to the warehouse area to discuss the matter falls within the Acts protections.[19] Although other bargaining unit employees left their workstations and joined the group of employees heading toward the warehouse area, the Employer took no disciplinary action against them.[20] Rather, the Employer suspended and thereafter terminated the five Shop Stewards for their actions on the evening of September 9.

I have carefully considered the arguments advanced by the Employer as it concerns the reasons the five Shop Stewards were suspended on September 9, and thereafter terminated on October 10. I find that the Employer has sustained the disciplinary actions taken against Shop Stewards Carlos Rivera (Charlie), Francisco Marrero (Frankie), Romain Serrano, and Felix Rivera but not as to Miguel Colon.

The evidence establishes, and was not rebutted by the General Counsel, that Carlos Rivera, Marrero, Serrano, and Felix Rivera encouraged other bargaining unit employees to abandon their work stations and join the group of employees heading towards the warehouse area in addition to other employees that worked proximate to the conventional area. Moreover, these four Shop Stewards did not instruct bargaining unit employees not to leave their work stations nor did they urge them to return. Additionally, the evidence establishes that Marrero raised an incident with Victor Colon that was abusive and is a clear violation of the Employer's Rules of Conduct that carry the imposition of disciplinary action including termination. Troche also testified, without contradiction, that Shop Steward Marrero used abusive language when Troche requested that he keep his voice down. The actions of the four Shop Stewards, as discussed above, are in clear violation of Articles 12[21] and 13 of the parties' expired collective-bargaining agreement whose terms and conditions of employment continued in full force and effect until the parties executed their successor agreement on February 2, 2009. Moreover, their activities on September 9 also violated the Employer's Rules of Conduct.

On the other hand, I reject a number of the reasons set forth in the suspension letters of the Shop Stewards that the Employer relies upon to suspend and thereafter terminate them (Jt. Exh. 3(b)). In this regard, Ayala contradicted the statement contained in the letter that states, "For this reason, we were surprised when on the night of Tuesday, September 9, after the negotiation meeting finished, you entered without permission to the company". Rather, she testified that an employee can come back to the facility after finishing his or her shift if they go through the main gate. This is consistent with the contents of the September 22 letter that does not prohibit the Shop Stewards from returning to work after the completion of negotiations. Additionally, Shop Steward Colon credibly testified that while performing Local 901 duties there were no restrictions placed on his entrance into the facility outside of working hours. Thus, there was no reason that the five Shop Stewards could not return to the facility the evening of September 9, and attend the meeting conducted by Lopez to discuss terms and conditions of employment with bargaining unit employees. Moreover, I note that Shop Stewards Carlos Rivera, Serrano and Felix Rivera worked on the 2d and 3d shifts respectively, that overlapped the approximate 8:30 p.m. starttime of the scheduled cafeteria meeting with the employees. Additionally, the record does not confirm the Respondent Employers assertion that the five Shop Stewards were asked on more than one occasion to abandon the facility and refused those instructions. Rather, the only evidence presented by the Employer was that Lopez refused to follow the instructions of Ayala, the security guards, and Victor Colon that he was either not authorized to enter the facility or that he should leave the plant immediately.

With respect to Shop Steward Miguel Colon, the evidence establishes that he did not arrive at the facility on September 9 until sometime between 8:30 and 8:45 p.m., and upon arriving at the cafeteria discovered that the meeting had already ended. He then telephoned a fellow Shop Steward and learned that the

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not presented in writing, are of a normal routine and do not involve strikes, slowdowns, or any other interference in the company business. Art. 13 provides in pertinent part that representatives of Local 901 will notify the Company of their intention to visit the work area and will comply with the rules and procedures established by the Company for visitors. These visits will not interrupt work.

[18] Art. 5 states in pertinent part that during the duration of the Agreement there will be no strike or stoppage by Local 901, its members, or any of the employees covered by the Agreement. Any employee or group of employees that participate in any activity that violates this article will be subject to disciplinary actions by the Company that may include discharge.

[19] If any of the bargaining unit employees had been disciplined because of their actions, I would have found that the Employer violated Sec. 8(a)(1) and (3) of the Act.

[20] The record establishes that approximately two hours of production time was lost on the evening of September 9.

[21] Sec. 1(d) states in pertinent part: Upon carrying out his duties as such, the delegate (Shop Steward) will not interrupt the work of the rest of the employees. In fact, the delegate will not have the authority to declare strikes or any other action that paralyzes or obstructs the work of the company or workplace (Jt. Exh. 1, pp. 21–22).

employees were now located in the conventional area. Colon proceeded to the conventional area and arrived around 9 p.m. just before Trigueros appeared and spoke with Lopez. Thus, contrary to the Employer's suspension letter, Shop Steward Colon did not enter the facility unlawfully on the evening of September 9, did not encourage any bargaining unit employees to abandon their workstations nor was he requested to leave the facility by any Employer representative. Therefore, I reject the testimony proffered by Supervisor Troche that Shop Steward Colon stated to employees to stop work and note that Troche did not make that statement in his pretrial affidavit (GC Exh. 14 (b)). I find the Respondent's attempt to link Shop Steward Colon with the conduct of the other four Shop Stewards in instructing employees to stop work is not supported by the record. Indeed, it is apparent to me that Shop Steward Colon did not arrive at the conventional area until after the bargaining unit employees were assembled, and therefore, could not have instructed them to cease work. Additionally, no evidence was presented that Shop Steward Colon verbally abused supervisors or that he ever refused to follow supervisory instructions. I conclude that the Employer conducted a superficial investigation as it concerned Shop Steward Colon, and manufactured evidence in its desire to lump together the actions of the four other Shop Stewards with those of Colon. Indeed, the evidence establishes that none of the Shop Stewards including Colon were ever provided the opportunity to state their position concerning the events of September 9, but rather were summarily suspended on September 10. An employer's failure to permit an employee to defend himself before imposing discipline supports an inference that the employer's motive was unlawful. *Johnson Freightlines,* 323 NLRB 1213, 1222 (1997).

For all of these reasons, I find in agreement with the General Counsel, that Section 8(a)(1) and (3) of the Act was violated when the Employer suspended Shop Steward Colon on September 10, and thereafter terminated him on October 10. In this regard, Shop Steward Colon should have been treated similarly to all other bargaining unit employees who concertedly ceased work on September 9, but were not disciplined by the Employer. Therefore, the actions of the Employer were pretextual, since he also engaged in protected concerted activities.

I further find, for the reasons set forth above, that the Employer did not violate the Act when on September 10 it suspended Shop Stewards Carlos Rivera (Charlie), Francisco Marrero (Frankie), Romain Serrano, and Felix Rivera, and thereafter terminated them on October 10. In this regard, the Employer lawfully suspended and then terminated them due to their actions that contravened the parties' collective-bargaining agreement and the Employer's Rules of Conduct. Under those circumstances, the Employer would have taken the same actions even in the absence of their protected activities.

2. The October 20–22 Strike

The General Counsel alleges in paragraphs 11 through 13 of the CA complaint that certain employees of the Employer ceased work concertedly and engaged in an unfair labor practice strike on October 20–22 to protest the Employer's suspension and subsequent termination of the five Shop Stewards on September 10, and October 10, respectively. On October 23, the Employer discharged 34 and suspended 52 employees (four of whom are alleged in the CA complaint) because they assisted the Respondent Union and engaged in protected strike activities. The General Counsel also alleged in paragraph 21 of the complaint that the Employer discharged its employee Dennes Figueroa because of his participation in the October 20–22 strike.

Facts

On Septemer 10, the day that the four Shop Stewards were suspended, Lopez received a telephone call around 6 a.m. from another Local 901 Business Representative that he had been denied access to the Employer's facility.

On that same day around 7:15 a.m., Lopez had a breakfast meeting with Local 901 Attorney Jose Carreras and Secretary-Treasurer Vazquez concerning the events of September 9. A second meeting occurred later that morning at Local 901 headquarters with the same representatives in addition to the five suspended Shop Stewards. The events of September 9 were thoroughly reviewed and decisions were made on how to handle the matter going forward. It was proposed that three points would be discussed with the bargaining unit employees to resolve the issues of September 9. They included that the Shop Stewards must immediately be reinstated, that the Employer would not file any unfair labor practice charges against Local 901 for engaging in the work stoppage, and that the Employer must immediately return to the negotiation table. The Local 901 representatives decided to convene an assembly of bargaining unit employees for September 15, to discuss the three points and the impact of events that occurred on September 9.

On or about September 12, a meeting took place between Attorney Maza and Lopez. Maza inquired whether the parties could solve the issue of September 9, and proposed that the Employer would be prepared to permit three Shop Stewards to return to work but not the other two. Lopez informed Maza that all five Shop Stewards must be reinstated as a condition of resolving the events of September 9. Maza then suggested that the matter could be resolved if Local 901 would accept a five cent per hour increase in the 3d, 4th, and 5th year of the next collective-bargaining agreement. Lopez informed Maza that such a proposal was insulting and to inform the Employer's higher level officials located in Florida that it was rejected. Lopez then presented Maza with the three points discussed above to resolve the events of September 9.

On September 15, approximately 130–160 bargaining unit employees attended an assembly at a location off-site that was also attended by Attorney Carreras, Vazquez, and Lopez. A Motion was made to reconvene the parties collective-bargaining negotiations, that Lopez would continue to have the Respondent Union's support, that the Employer would not file any charges or actions against Local 901 or any of its members, and to authorize a strike to protest the suspension of the five Shop Stewards. The Motion to strike was approved unanimously and it was agreed to present the three points to the Employer for their consideration.

By memorandum dated September 16, Vazquez sent a document to Teamsters headquarters in Washington, D.C., requesting approval for strike benefits assistance (CP 24–CA–

2706 Exh. 1). This request was subsequently approved on October 14.

On October 3, Local 901 held an internal union election to fill the positions of President, Vice President, and three trustee positions. Three of the employees that were brought up on internal union charges and expelled from membership alleged in Cases 24–CB–2706 and 24–CB–2707 were candidates for several of the open positions.

On October 6, Local 901 sent a letter to Ayala that Lopez is no longer a representative of its organization and he should no longer be allowed to enter the Employers facilities (Jt. Exh. 13). By a letter of the same date, Local 901 terminated Lopez from his position as a Business Representative.

On October 9, pursuant to requests by a number of bargaining unit employees to have another assembly, a flyer was prepared by the suspended Shop Stewards and distributed to bargaining unit employees announcing a meeting for October 12, to further discuss the three points to be presented to the Employer. On that same date, an officer of Local 901 asked Shop Steward Colon not to divide the membership by voting to authorize a strike at the Employer. However, in an earlier conversation with one of Local 901's attorneys, Colon was informed that the only way to have the Shop Stewards reinstated was to engage in a strike.

On October 10, the five Shop Stewards were terminated by the Employer (Jt. Exh. 4).

On October 12, the five terminated Shop Stewards held an assembly at a location near the Cayey facility, and all bargaining unit employees in attendance signed a petition to authorize a strike at the Employer unless they immediately reinstated the five Shop Stewards, agreed not to file unfair labor practice charges against Local 901, and reconvened negotiations for a successor collective-bargaining agreement. A number of employees from other employers attended the October 12 meeting to support the authorization of a strike due to the termination of the Shop Stewards.

On October 13, Hector Sanchez testified that he attended a meeting along with other 1st shift employees in which Trigueros informed the employees in attendance that those who followed the discharged Shop Stewards would also be terminated.

On October 14, Shop Steward Colon sent Vazquez the list of bargaining unit employees who signed the petition on October 12, to authorize a strike at the Employer.

On October 19, the five Shop Stewards met at Colon's home to make final preparations for the strike that was to commence at the Employer's facility on October 20. Picket signs were prepared and the "Broad Order" issued against Local 901 by the United States Court of Appeals for the First Circuit was discussed at the meeting (Jt. Exhs. 10 (a) and (b)).

Before the strike commenced at the Employer's facility on the morning of October 20, the terminated Shop Stewards read the "Broad Order" to the bargaining unit employees on the picket line to inform them what actions could be taken or not taken during the strike. The strike continued for three days before ending on October 22. A number of bargaining unit employees carried picket signs protesting the actions of Victor Colon in ordering Lopez from the facility, and Steward Colon and others used loud speakers when senior management officials arrived at the facility to protest the termination of the five Shop Stewards in addition to seeking their immediate reinstatement, and to reconvene collective-bargaining negotiations between the parties.

By letter dated October 20 to Local 901, the Employer informed Vazquez that an illegal strike was on-going at the Cayey facility, and it expected Local 901 within two hours to cease and desist in the interruption of ingress and egress of its premises and the stoppage of operations (Jt. Exh. 18).

By letter of the same date, and in response to the Employer's communication, Vazquez made it abundantly clear that the Respondent Union did not send or authorize the presence of Officers or Union members to take part in the strike (Jt. Exh. 19).[22] The Employer made Xerox copies of the Respondent Union's letter and had copies distributed by security personnel to the bargaining unit members who were engaged in the strike on October 20. After reading the letter, and noting that Local 901 did not authorize the strike, a few employees abandoned the picket line and returned to work.

Trigueros testified that the Employer's initial decision was to terminate all of the bargaining unit employees that participated in the strike. It was ultimately decided, however, that certain business operational needs dictated which employees who participated in the strike should be terminated or suspended. Trigueros noted that the Employer had a list of the strikers based on Human Resources checking who was at work or on approved leave for October 20–22, and comparing those lists with the employees who did not report for work. Thus, those employees who were scheduled to work on October 20–22 but did not report were presumed to be on the picket line and engaged in the strike.

Figueroa was on disability leave from September 24 through November 24 and was reinstated on November 24. Figueroa testified that he participated in the strike on October 20–22, at a time that he was not scheduled to work due to his being on approved disability leave. The General Counsel argues that he was terminated on December 18, due to his participation in the strike.

Figueroa testified that he was called into Marlyn Cruz's office, an admitted Employer agent, along with Victor Colon and his immediate supervisor Wilson de Jesus on December 18, and was informed by Cruz that he was being terminated based on a December 5 incident that occurred between himself and another employee and/or because he participated in the October 20–22 strike.

Cruz admitted in her testimony that after a thorough investigation of the December 5 incident between Figueroa and another employee that established he had left his work station without authorization and had made threatening remarks to a co-worker, she orally terminated Figueroa on December 18. She admitted that no formal letter was provided to Figueroa that summarized the reasons for his termination. Cruz testified that she was not aware that Figueroa had participated in the strike, since he was on approved disability leave, and that is the reason why the Employer never sent Figueroa a letter dated

[22] See also Jt. Exh. 21(b), that reiterates that Local 901 did not authorize or participate in the strike.

October 23 similar to those provided to other employees that were either suspended or terminated for their participation in the strike. Accordingly, Cruz testified that Figueroa was terminated on December 18 solely based on the events that took place on December 5. Supervisor de Jesus testified that he summarized the events of December 5 in a statement that he provided to Human Resources to support what occurred between Figueroa and the other employee, both of whom were under his direct supervision (R Exh. 3). He also noted that he attended the December 18 termination meeting in Cruz's office, and credibly testified that neither Figueroa nor Cruz mentioned the word "strike" during their discussion. Moreover, he is positive that Cruz did not inform Figueroa during the meeting that one of the reasons that he was terminated was due to his participation in the October 20–22 strike.

Discussion

A strike which is motivated or prolonged, even in part, by an Employer's unfair labor practices is an unfair labor practice strike. *C-Line Express,* 292 NLRB 638 (1989); *Tall Pines Inn,* 268 NLRB 1392, 1411 (1984). As long as an unfair labor practice has "anything to do with" causing a strike, it will be considered an unfair labor practice strike. *NLRB v. East Optics Corp.,* 458 F. 2d 398, 407 (3d Cir. 1972), cert. denied 419 U.S. 850 (1972). In *Golden Stevedoring Co.,* 335 NLRB 410 (2001), the Board held that a work stoppage is considered an unfair labor practice strike if it is motivated at least in part, by the employer's unfair labor practices. In sum, the unfair labor practices must have "contributed to the employees' decision to strike." *RGC (USA) Mineral Sands,* 332 NLRB 1633 (2001).

In *Clear Pine Mouldings,* 268 NLRB 1044 (1984), enfd. 765 F.2d 148 (9th Cir. 1985), cert. denied 474 U.S. 1105 (1986), the Board held that strike misconduct is disqualifying if, under all the circumstances, it reasonably tends to coerce or intimidate other employees. The Employer argues that 13 employees either engaged in acts of sabotage or violence during the course of the strike and such misconduct precludes there reinstatement even if the strike is found to be protected.[23]

The Employer disputes the General Counsel's position that the strike was caused by its unfair labor practices and argues that the strike was at all times called for economic reasons. It further argues that the strike was called to seek the recognition of another labor organization known as "Movimiento Solidario Sindical,"[24] and therefore it was a "minority strike" undertaken by a minority group of employees. Additionally, it asserts that the strike was in direct violation of the "Broad Order" issued against Local 901 for previously having violated the Act. Lastly, it asserts that several of the minority strikers including Shop Steward Colon, requested the Employer during the course of the strike to sit and bargain with them, rather than the Respondent Union who was the employees' exclusive collective-bargaining representative.

Contrary to the Employer's arguments set forth above, I find that the October 20–22 strike was called to protest the suspension and discharge of the five Shop Stewards, and to reconvene the parties' successor collective-bargaining negotiations that had ceased on September 9.[25] Therefore, since October 20, the employees protest was an unfair labor practice strike.

On September 15, shortly after the Shop Stewards suspensions on September 10, Senior officials of Local 901 and the five Shop Stewards attended and participated in an assembly where a majority of the bargaining unit employees unanimously voted to authorize a strike at the Employer's facility unless they immediately reinstated the five suspended Shop Stewards, reconvened collective-bargaining negotiations and agreed not to file unfair labor practice charges against Local 901 for engaging in the concerted work stoppage on September 9. Indeed, on September 16, Vazquez submitted a request for approval of strike benefit assistance to Teamster headquarters in Washington DC that was subsequently approved on October 14. On October 12, at the request of a majority of the bargaining unit employees, the now terminated Shop Stewards conducted a second assembly where the vote was once again unanimous to authorize a strike to immediately reinstate the Shop Stewards and to reconvene the stalled collective-bargaining negotiations between the parties. The evidence establishes that Senior Local 901 Officers including Vazquez were not in attendance at this second assembly. However, Shop Steward Colon credibly testified that on October 14, he sent a copy of the strike petition signed by a majority of the bargaining unit employees to Vazquez. Thus the Respondent Union was fully aware, prior to the commencement of the strike on October 20, of the names of the employees who attended the October 12 assembly and signed the strike petition.

I also note that on October 13, in a meeting with bargaining unit employees on the 1st shift, Trigueros told those in attendance that employees who followed the discharged Shop Stewards would also be terminated.[26]

On the first day of the strike, a number of bargaining unit employees displayed picket signs directed at Victor Colon who had ordered Lopez to leave the facility during a meeting in the Employer's cafeteria that was called to discuss on-going collective bargaining negotiations between the parties and issues particular to the 3rd shift warehouse employees. Additionally, the evidence discloses that Shop Steward Colon and other employees used loud speakers while on the picket line to inform senior officials of the Employer when they arrived for work that they were seeking the immediate reinstatement of the five terminated Shop Stewards and the reconvening of stalled col-

[23] The Employer argues, as part of its affirmative defense, that bargaining unit employees Benjamin Rodriquez Ramos, Henry Cotto, Vidal Arquinzoni, Jose Luis Sanchez, Gabriel Rojas, Luis Rivera Morales, Rafael Oyola, and Hector Rodriguez engaged in violence while bargaining unit employees Jose Rivera Ortiz, Hector Sanchez, Jan Rivera, Juan Resto, and Pedro Colon engaged in acts of sabotage.

[24] That labor organization filed a representation petition with the Board on October 22 that was later withdrawn on November 6 (Jt. Exh. 23 and 24).

[25] On October 20–22, approximately 109 bargaining unit employees participated and supported the strike on each of those days.

[26] Because of the settlement concerning this allegation found in par. 9 of the CA complaint, no formal finding will be made. However, pursuant to the terms of the settlement agreement, I am permitted to consider such evidence when litigating this matter and may make findings of fact and/or conclusions of law.

lective-bargaining negotiations between the parties.[27]

For all of these reasons, and in agreement with the General Counsel, I find that at all times since October 20 the bargaining unit employees were engaged in an unfair labor practice strike. Therefore, the Employer's actions in suspending four and terminating 34 employees for their participation in the October 20–22 strike, violated Section 8(a)(1) and (3) of the Act. I find, however, that Figueroa was terminated for legitimate business reasons unrelated to his participation in the October 20-22 strike. Indeed, the testimony of Supervisor de Jesus and that of Cruz was detailed and precise in comparison to the vague testimony presented by Figueroa. Moreover, I fully credit Supervisor's de Jesus testimony that the word strike was not mentioned during the discharge meeting nor did Cruz state that one of the reasons for Figueroa's termination was based on his participation in the strike.[28]

With respect to the Employer's arguments that the strike was for economic reasons, was in violation of the "Broad Order," was called by another labor organization for recognition purposes and/or that Shop Steward Colon sought to bargain with the Employer at a time the other labor organization was not the exclusive collective-bargaining representative of the unit, I reject those arguments for the following reasons.

First, the Employer did not submit any evidence that Shop Steward Colon or any other bargaining unit employee requested the Employer to negotiate with them as the exclusive collective-bargaining representative. Second, while Lopez admitted in his testimony that he observed representatives of the other labor organization in attendance at the October 20 strike, and that a number of bargaining unit employees signed authorization cards on October 21, the Employer did not introduce any evidence that established recognition activity occurred prior to the commencement of the strike or that any authorization cards were distributed or executed by bargaining unit employees in advance of the strike. Third, the evidence establishes that a majority of the bargaining unit employees' authorized the strike in advance of October 20, for the sole purpose of protesting the suspensions and terminations of the five Shop Stewards and to reconvene stalled collective-bargaining negotiations between the parties. Fourth, the Employer did not substantiate by the introduction of any evidence that the October 20 strike was a "minority strike" called by a minority group of employees. Lastly, the Employer did not conclusively establish that Local 901 violated the "Broad Order" as the weight of the evidence confirms that the Respondent Union did not authorize or call the October 20–22 strike.[29]

[27] Negotiations were suspended after the September 9 work stoppage and were not reconvened until in or around November/December 2008.

[28] I note that Figueroa admitted in his pre-trial affidavit that after his return to work on November 24 and before his discharge on December 18, no one in management ever made any comments to him regarding his participation in the strike.

[29] The Respondent Union's Board of Directors must authorize a strike vote that is taken and recommended by the membership. In this case, no such authorization was approved by the Board of Directors.

3. Alleged strike sabotage and violence[30]

While the Employer asserts as part of its affirmative defense that five employees engaged in sabotage and eight in violence, evidence was only presented that four employees engaged in acts of sabotage,[31] and three engaged in violence.[32] Accordingly, those other employees who were alleged to have engaged in acts of violence or sabotage and participated in the October 20–22 unfair labor practice strike must be reinstated with full back pay and allowances.

Facts

Jari Navarro, a control and instrumentation engineer testified that he was working on October 20 and observed Pedro Colon pushing some buttons on the screen of the 2L labeling machine he was working on.[33] The machine stopped and Colon left his work station to participate in the strike. Navarro noted that Colon was not the last person to leave the production area before joining the strike but he was the last person he observed to leave the area where the labeling machine is located. After a large number of employees in the production area joined the strike, the Employer gave instructions that some of the supervisors should check the machines in their work areas to see if they were ready for the resumption of production. Navarro, and another supervisor, checked a number of machines including the 2L labeling machine that Colon had been working on before he left to join the strike. Navarro testified that while the labeling machine was not broken, he could not restart it due to the parameters having been altered. In order to restart the machine, which took approximately 45 minutes, he had to input the parameters from a list of another working machine. According to Navarro, the only way to change the parameters on the labeling machine was with the assigned password that he testified was in the possession of the machine operator. Navarro noted that if the machine is stopped, it does not change the parameters. Rather, the parameters can be changed only if they are altered, and you have to push more than one button on the machine to do so.

Supervisor Barreto testified that the password for the 2 L labeling machines is "1379" and has not changed since 1993. He asserts that once the password is entered, anyone can change the parameters of the machine or make adjustments. Barreto is certain that the password for the 2L labeling machine is possessed by the specific operators of the machine, the mechanics,

[30] The Respondent Employer's Motion, filed on March 25, 2010, to amend its affirmative defenses included in its answer by withdrawing numbers 58 and 59, and to withdraw the names of Jose Rivera Ortiz and Hector Sanchez from affirmative defenses number 60–62 is denied. In this regard, such a post-hearing Motion is discretionary with the judge pursuant to the Board's Rules and Regulations, Sec. 102.23. Since the undersigned made no provisions for such an amendment, and particularly noting that the allegations concerning sabotage regarding these named employees were fully litigated during the hearing, I find that the Motion must be denied.

[31] The employees are Hector Sanchez, Pedro Colon, Juan Resto, and Jan Rivera.

[32] The employees are Edwin (no last name), Vidal Arguinzoni, and Jose Rivera Ortiz.

[33] Navarro prepared a report of the events that occurred on October 20 (R Exh. 1).

and the maintenance supervisors. However, he admitted that no records are kept by the Employer who has passwords for the labeling machines.

Pedro Colon acknowledged that he left his workstation to participate in the October 20 strike, but asserts that the only button he pushed on the operators screen was to lower the speed of the 2L labeling machine. Colon testified that he has been operating similar machines for the last 16 years and the 2L labeling machine for the last 5 years. While Colon admitted that you need a password to change or alter the parameters, he testified that he has never been provided a password for the 2L labeling machine during the 5 years he has operated it. He opined that while the technicians and mechanics have assigned passwords he is not sure whether the supervisors also have passwords for the 2L labeling machines. He asserts that at no time, before he left his workstation, did he ever alter or change the parameters on the labeling machine.

Bargaining Unit Employee Luis Melendez has operated the 2L labeling machine on the 2d shift for the last 6 years. He testified that without an assigned password, which the 2L labeling machine operator is not provided, the parameters on the machine cannot be altered or changed. Melendez noted that the numbers "1379" starts and operates the 2L labeling machine but the parameters can't be changed using that password. He further asserts that there is a button on the screen which permits the machine operator to increase or decrease the speed of the machine but without the password, the parameters cannot be changed.

Discussion

The weight of the testimony convinces me that the parameters of the 2L labeling machine cannot be changed unless someone has the specific password. Although Navarro and Barreto testified that Pedro Colon, as the operator of the 2L labeling machine must have had the password, the testimony of Colon and Melendez who have each operated the machine for at least 5 years convinces me otherwise. Therefore, since the Employer does not keep records of who has assigned passwords for the 2L labeling machine, it has not conclusively established that Pedro Colon had the password. Since the Employer did not establish that Colon had the password or was the person who changed or altered the parameters of the 2L labeling machine, the allegations that he engaged in acts of sabotage cannot be sustained. Additionally, I find Melendez's testimony that the numbers "1379" are solely used to start and operate the machine but can't be used to alter or change the parameters more plausible then testimony from the Respondent's witnesses concerning this issue. Thus, Pedro Colon must be treated similarly to the other bargaining unit employees who participated in the October 20–22 unfair labor practice strike and were discharged for their actions.

Facts

The Employer further asserts that bargaining unit employees Hector Sanchez, Juan Resto, and Jan Rivera engaged in acts of sabotage on their assigned machines when they left their work stations unattended and joined the strike.

Sanchez admitted in his testimony that he stopped his assigned mixing machine before he left the work area to participate in the October 20–22 strike. He asserts that if the mixing machine is stopped no damage can occur to it, however, acknowledged that if the product remains in the machine for long periods of time while shut down it can spoil. Sanchez testified that other shift operators have access to the password for the mixing machine he works on in addition maintenance personnel and his supervisor.

Supervisor Barreto testified that after observing the strike for a short period, he was asked along with other supervisors to get the machines in operational order so that production could resume. In undertaking his troubleshooting responsibilities, he observed that the machine Juan Resto operated before he left to participate in the strike had the plastic removed so that the product could not be packaged properly. He noted that while the machine was not broken, the plastic needed to be reinserted and it took approximately 25 minutes to get the machine in operational order.

Barreto also performed maintenance on a conveyor machine that was not working properly because the photo cell was out of place. He noted that Jan Rivera operated the conveyor machine before he left his work area to participate in the strike. The conveyor machine took about 20–25 minutes to repair before it returned to full operational capability.[34]

Discussion

Although the Employer has established that Sanchez, Resto, and Rivera were the operators of the three machines that had been taken out of production before they left to participate in the strike, no evidence was presented that these employees caused the problems that shut down those machines. In the absence of conclusive proof that these three employees were responsible for the problems to the machines in question, I am unable to find that they engaged in acts of sabotage on October 20. The Employer's burden, herein, of establishing an "honest belief" that an employee engaged in misconduct requires more than the mere assertion that it had such a belief. There must be some specificity, linking particular employees to particular allegations of misconduct which I find is missing in the subject case. *Beaird Industries, Inc.,* 311 NLRB 768, 769–770 (1993). Therefore, these three individuals must be treated to similarly situated employees who participated in the unfair labor practice strike and were terminated for their actions.[35]

Facts

As it concerns allegations of violence during the strike that were engaged in by bargaining unit employees, the Employer proffered several witnesses to support these assertions.

Miribel Aponte, an inbound and outbound lead, testified that on the evening of October 20 she went to Wal-mart accompanied by security personnel to purchase a number of personal articles in the event it was necessary to spend a number of nights at the facility during the strike. Upon leaving the facil-

[34] Barreto prepared a report of the events that occurred on October 20 (R Exh. 2).

[35] My review of the Employer's official Production Line Control records for October 20, the first day of the strike, does not show any of the alleged sabotage incidents having occurred including the problems described with the Filler, Labeling, or Kister machines (GC Exh. 17).

ity, Aponte observed a white Nissan Altima that followed the van she was riding in. Once the van reached Wal-mart, the white Nissan Altima stopped. Aponte, accompanied by the security personnel, entered Wal-Mart to make her purchases and upon exiting the store observed that the white Nissan Altima was no longer parked adjacent to the store. It was later determined that the white Nissan Altima belonged to employee Vidal Arguinzoni.

Leonardo Rivera, a handyman and member of the bargaining unit, testified that he did not participate in the strike but requested on October 20 to leave work after his shift ended in order to pick up his children. Rivera testified, as he was riding his bicycle in the street just past the Consolidated Cigar factory in Cayey, that he observed a white Nissan Altima following him. As the vehicle got closer to him, he observed that the driver of the automobile was Arguinzoni and sitting in the passenger seat was Jose Rivera Ortiz. When the vehicle came about two feet from Rivera, both Arguinzoni and Ortiz yelled at him in an aggressive manner and Rivera responded in kind. Rivera admitted that no damage occurred to his bicycle and he was not physically harmed by the occupants in the vehicle. Rivera filed a police report regarding the incident but was informed by the officers that it would not be processed as all parties responded to each other in an aggressive manner.

Discussion

Based on the above recitation, I cannot conclude that either Arguinzoni or Ortiz engaged in acts of violence as alleged by the Employer. In this regard, Aponte was unable to observe who was driving the white Nissan Altima and could not confirm if Arguinzoni was in the vehicle that followed the van to Wal-mart. Likewise, Rivera did not establish that any violence occurred during the confrontation between himself and Arguinzoni/Ortiz. Rather, the Police refused to process the incident report due to all parties engaging in aggressive behavior, and no evidence of physical harm or damage was reported.

Under these circumstances, I find that Arguinzoni and Ortiz did not engage in acts of violence during the strike. Therefore, they must be treated similarly to all bargaining unit employees that were discharged for their participation in the unfair labor practice strike.

Facts

Supervisor Troche testified that on October 21, when four trucks were loaded with product and were leaving the facility, he observed a number of employees throwing bottles at the vehicles and sitting in front of the trucks. He also observed an individual that he knows as "Edwin" hitting the trucks with his hands as they exited the plant.

Discussion

Based on the above evidence, it is not possible to subscribe such conduct to any specific bargaining unit employee alleged by the Employer to have committed violence during the strike particularly which employees threw bottles at vehicles or sat in front of the trucks. Indeed, none of the employees alleged by the Employer as part of its affirmative defense No. 58 to have engaged in acts of violence is named "Edwin," and the Employer has not presented any conclusive evidence as to who specifically was involved in throwing objects or bottles at the trucks as they exited the facility on October 21. In this regard, Troche did not address the incident of "Edwin" hitting the trucks with his hands as they exited the plant in his pre-trial affidavit (GC Exh.14(b)), and in his testimony he could not conclusively establish the employee's full and complete name. Moreover, no evidence was presented that slapping the trucks caused any specific damage or impeded the exit of the trucks from the facility.

Under these circumstances, I find that the Employer has not carried its burden in establishing that acts of violence were committed by named employees in the bargaining unit when trucks exited the facility on October 21. *MP Industries, Inc.* 227 NLRB 1709 (1977) (threats and name calling, unaccompanied by any physical acts or gestures that would provide added emphasis or meaning to the words are not sufficient to deny reinstatement after a strike).

C. The 8(a)(1) and (4) Allegations

The General Counsel alleges in paragraphs 10, 11, 14, and 15 of the CA complaint that on or about October 30, the Respondent Employer coerced four employees that were suspended on October 23 for participating in the October 20–22 strike, into signing "last chance" agreements conditioning their reinstatement from their suspensions on the relinquishment of their right to file unfair labor practice charges or give testimony to the Board. The General Counsel asserts that such conduct is prohibited and the discharge of the four employees' is unlawful under the Act.[36]

Facts

The evidence establishes that 86 bargaining unit employees who participated in the October 20–22 strike were either terminated or suspended on October 23 for their conduct.[37]

After the strike ended on October 22, and suspension or termination letters were sent to the impacted employees, the Re-

[36] During the course of the hearing, the General Counsel sought to amend the CA complaint to include 48 additional employees who executed the "last chance" agreement on October 30. I denied the General Counsel's Motion for two reasons. First, the CA complaint allegations regarding the "last chance" agreement only alleged violations concerning four employees who after executing their respective agreement were subsequently terminated allegedly because they violated the terms and conditions of the agreement. Notably absent from the complaint was any reference to the 48 additional employees who also executed the "last chance" agreement. Second, unlike the four employees alleged in the complaint that executed the "last chance" agreement and were subsequently terminated, the 48 employees were reinstated on November 3, and no further disciplinary action was taken against them. Thus, any violation found regarding the Employer's coercion of the 48 employees in executing the "last chance" agreement would be cumulative.

[37] Suspension or discharge letters were sent to 86 employees for their participation in the strike including Luis Ocasio who was serving a 15-day suspension from October 16 until October 30 (Jt. Exhs. 5 and 6). The one remaining employee, Dennes Figueroa, is alleged in paragraph 21 of the CA complaint to have been terminated on December 18 for his participation in the October 20–22 strike. As it concerns Figueroa, the Employer did not send him a letter detailing the reasons for his termination.

spondent Union sought reconsideration on behalf of those employees who were suspended, and after extensive discussions with the Employer "last chance" agreements were negotiated (Jt. Exh. 7). On October 30, a total of 52 employees including the four employees alleged in the CA complaint, executed a "last chance" agreement that provided for their reinstatement on November 3, subject to immediate termination for any violation of its terms.

The comprehensive agreement contains standard release language based on the acts committed but according to the General Counsel contains a number of provisions that infringe on Section 7 rights under the Act. For example, the "last chance" agreement provides for employees to relinquish rights for reasons other then what the original suspension was based upon,[38] and waiving rights to testify or give evidence in state/federal courts and administrative agencies.[39]

Discussion

Generally, the Board has held that an employer violates the Act when it insists that Employees' waive a statutory right to file charges with the Board. *Athey Products Corp.,* 303 NLRB 92, 96 (1991). On the other hand, an employer does not violate the Act when, in exchange for sufficient consideration the employer insists that a discriminatee sign a release waiving claims arising prior to the date of the execution of the release. *First National Supermarket,* 302 NLRB 727 (1991). However, there is no legitimate interest in limiting an employee's future rights with respect to matters arising after the execution of the release.

The terms of the "last chance" agreement, specifically included in Paragraphs 4(b) and 7 are overly broad and are unlawful under the Act. For example, the Board is an administrative agency of the United States Government (federal forum) and Paragraph 7 precludes the suspended employees' from filing future actions in that forum that would include unfair labor practice charges or giving testimony to the Board. Additionally, the General Counsel shortly after the CA and CB complaints were issued apprised both the Respondent Employer and the Respondent Union that there was a strong probability that it would seek Section 10(j) relief in a United States District Court. Based on the language contained in Paragraph 7 of the "last chance" agreement, the suspended employees would be prohibited from providing evidence or giving testimony in support of that action. I further find that the language in the "last chance" agreement found in paragraph 4(b) likewise restricts employees in the exercise of Section 7 rights. For example, the four employees would be prohibited from engaging in lawful strike action against the Employer or filing actions against the Employer under the parties' collective-bargaining agreement. *Ishikawa Gasket America, Inc.,* 337 NLRB 175 (2001) (separation agreement found overly broad and unlawful because it forced employee to prospectively waive her Sec. 7 rights).

Based on the forgoing, and in agreement with the General Counsel, I find that on October 30 the Respondent Employer coerced employees Luis Bermudez, Jose Rivera-Barreto, Virgino Correa, and Luis Melendez into signing a "last chance" agreement in violation of Section 8(a)(1) of the Act that conditioned their reinstatement from their suspension on the relinquishment of their right to file unfair labor practice charges or give testimony to the Board.[40] Accordingly, all four employees must be reinstated with full back pay and allowances based on the Employers actions in violating Section 8(a)(1) and (4) of the Act, since the execution of the "last chance" agreement on October 30 preceded the employee's subsequent terminations for allegedly violating the terms of the agreement.[41]

D. The 8(b)(1)(A) Allegations in the CB Complaint

The General Counsel alleges in paragraph 15 of the complaint that the Respondent Union threatened a number of members with discipline by issuing internal union charges against them because they were present at and/or participated in a meeting held on October 12, with employees of the Employer, and/or because of the union members' support or participation in the October 20–22 strike. Thereafter, on March 10, 2009, the Respondent Union expelled three of these individuals from union membership and imposed upon each of them a fine of $10,000.

Facts

At all material times Migdalia Magriz and Maritza Quiara were employed by Crowley Liner Services de Puerto Rico and were Local 901 Shop Stewards in that facility. Likewise, Silvia Rivera was a Local 901 Shop Steward at her employer, Pepsi Cola, Mfg.

On October 3, an internal union election was held to fill a number of Local 901 positions including President, Vice President and Trustee. Magriz, Quiara, and Rivera were members of a partial slate of candidates for the "Teamsters Making a Difference" in the internal union election. In the Respondent Employer's bargaining unit, the "Teamsters Making a Difference"

[38] Par. 4(b) states in pertinent part that: "The employee will agree not to file any action and/or grievance against the Company or the Union due to the facts upon which his suspension was based, *including but not limited to any violation to the right to strike, to organize, to associate, or any other disposition related with Section 301 of the Labor Management Relations Act or any local laws and/or for lack of adequate representation by the union, back pay and/or noncompliance with the collective bargaining agreement."*

[39] Par. 7 states that: "The employee agrees not to testify, to provide evidence against the Company or the Union in any Court of law, administrative agency or hearing, or in any local or Federal forum, except when the employee is subpoenaed or ordered to do so by a Court of law or competent authority."

[40] The Employer terminated the four employees on November 6, November 13, December 10, and January 9, 2009, respectively, allegedly because they violated the terms and conditions of the "last chance" agreement. Victor Colon testified that Bermudez abandoned his work area and was terminated for violating the terms of the "last chance" agreement and the Employer's Rules of Conduct. The Employer did not introduce any evidence as to the specific reasons Barreto, Correa, or Melendez violated the terms of the "last chance" agreement and were subsequently terminated.

[41] I further find that the Respondent Employer violated Section 8(a)(1) and (3) of the Act because the discharges were directly related to the four employees participation in the unfair labor practice strike, and but for that action, the employees would not have executed the "last chance" agreement. *Five Cap, Inc.,* 331 NLRB 1165, 1169 (2000).

slate obtained 108 votes in comparison to Local 901's supported slate receiving 6 votes.

The results of the internal union election, based on a total vote of all employers in which Local 901 is the exclusive collective-bargaining representative, showed that the slate of candidates supported by Local 901 was victorious. Objections to the conduct of the election were filed by Magriz, Quiara, and Rivera with the United States Department of Labor and a Complaint is presently pending in the United States District Court of Puerto Rico contesting the internal union election (GC Exh. 28).

On October 12, Magriz and Rivera along with employees from other employers attended an assembly of Local 901 members in which a second strike vote against the Respondent Employer was unanimously approved. Quiara was hospitalized on October 12, and did not attend the assembly.

On October 14, Shop Steward Colon sent Vazquez the list of bargaining unit employees who signed the petition on October 12, to authorize a strike at the Employer (GC Exh. 29).

By letter dated October 14, IBT General President James P. Hoffa approved strike funds to members employed by the Respondent Employer (GC Exh. 18).

On October 20–22, Magriz, Quiara, and Rivera, along with other Local 901 Shop Stewards and employees of other employers, attended and participated in the strike at the Respondent Employer's facility.

On October 27, Attorney Maza sent a letter to Local 901 with photographs requesting to identify those who attended the October 20-22 strike (Jt. Exh. 20).

By letters dated January 12, 2009, Local 901 Secretary-Treasurer Vazquez notified Magriz, Quiara, and Rivera that internal union charges have been brought against them because of their attendance at the October 12 assembly and participation in the October 20–22 strike (U Exh. 1).

By letter dated January 26, 2009, Vazquez notified Magriz, that a hearing on the internal union charges had been set for February 14, 2009. Hearing dates for the charges against Quiara and Rivera were scheduled for February 12 and 13, 2009, respectively (GC Exh. 23). The three employees sought postponements due to scheduling conflicts but Local 901 denied the requests.

By letters dated March 10, 2009, Local 901 notified the three Shop Stewards that they were being expelled from membership and each fined the sum of $10,000 (GC Exh. 27). The actions imposed on Magriz, Quiara, and Rivera were the only discipline Local 901 has applied to any of its members in the past three years.

By letters dated March 23, 2009, Magriz, Quiara, and Rivera appealed the disciplinary actions imposed on them to IBT headquarters in Washington, D.C. (GC Exh. 30).

By letter dated April 27, 2009, General Teamsters President Hoffa denied the appeal and a request for a stay of the imposed sanctions (U Exh. 7).

In September 2009, Local 901 filed internal union charges against Raymond Reyes, Humberto Miranda, Jesus Baez, and Orlando Hernandez for attending the October 12 assembly and participating in the October 20–22 strike. Both Reyes and Hernandez hold the position of Local 901 Shop Stewards at employers other then the Respondent Employer. Local 901 did not impose any disciplinary sanctions against these members.

The factual Stipulation of the parties (General Counsel, Local 901, and the Charging Parties) indicates that Edgardo Rivera, a Local 901 Shop Steward at UPS, attended the October 20–22 strike but no charges or disciplinary sanctions were brought against him (GC Exh. 34).

To date, Local 901 has made no attempts to collect the fines it imposed on Magriz, Quiara, and Rivera, nor has it attempted to enforce the union security clause of the collective-bargaining agreements it has with their employers.

The Stipulation further provides that no officials of Local 901 communicated directly with union members about its position regarding the strike nor did Local 901 inform Magriz, Quiara, or Rivera that the October 20–22 strike was not authorized by it or that they could be subject to internal union sanctions if they supported or participated in the strike. Additionally, none of the Local 901 members who were employees of the Respondent Employer were disciplined for attending the October 12 assembly or participating in the October 20–22 strike.

Lastly, the Stipulation notes that Vazquez and other Local 901 officials have stated to its members that the reasons why Magriz, Quiara, and Rivera were disciplined was because they participated in an illegal strike in violation of the "Broad Order", and the Respondent Union's By-Laws, and International Constitution.

Discussion

Section 7 of the Act, guarantees employees the right to engage or refrain from engaging in concerted activities for the purpose of collective bargaining. Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of their rights guaranteed by Section 7, provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. The Supreme Court has held that the federal labor laws impose on a union, in acting as an exclusive bargaining representative, a statutory duty to fairly represent all workers in the bargaining unit, which includes the duty to treat all such workers without hostility or discrimination, to exercise its discretion with good faith and honesty, and to avoid arbitrary conduct. *Vaca v. Sipes,* 386 U.S. 171 (1967). A breach of this duty of fair representation constitutes a violation of Section 8(b)(1)(A). *NLRB v. General Truckdrivers,* 778 F.2d 207, 212–213 (5th Cir. 1985). However, the Supreme Court has determined that the proviso to Section 8(b)(1) "leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Scofield v. NLRB,* 394 U.S. 423 (1969). Indeed, the Court held in *Scofield* that the imposition of reasonable union fines on members for violating a union rule relating to production ceilings was not subject to challenge based on Section 8(b)(1)(A). Because the rule was aimed at a legitimate union interest and did not contravene any policy of the Board, and because it was enforced solely through

internal union mechanisms not affecting employment, the Court found that its enforcement by reasonable fines did not constitute the restraint or coercion prohibited by Section 8(b)(1)(A). In *Office Employees Local 251 (Sandia National Laboratories),* 331 NLRB 1417, 1418–1419 (2000), the Board held that Section 8(b)(1)(A)'s proper scope, in union discipline cases, is to proscribe union conduct against union members that (1) impacts on the employment relationship, (2) impairs access to the Board's processes, (3) pertain to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impairs policies imbedded in the Act.

Contrary to the position taken by Local 901, and consistent with my finding above, I conclude that the October 20–22 strike was caused by the unfair labor practices of the Respondent Employer. Therefore, the attendance at the October 12 assembly and the participation in the October 20–22 strike by Magriz, Quiara, and Rivera, is protected conduct under the Act. Here, imposing discipline and fines against union members who engage in protected concerted activities by their attendance at the October 12 assembly, and participating in an unfair labor practice strike, is conduct within the Act's protection since it impairs policies imbedded in the Act. *Triangle Electric Co.,* 335 NLRB 1037 (2001); *Operating Engineers Local 400 (Hilde Construction Co.)* 225 NLRB 596 (1976).

I further find that the disciplinary sanctions imposed on Magriz, Quiara, and Rivera, are disparate when compared to the treatment received by other Stewards and members who engaged in the same conduct. The record confirms that while Local 901 sent a letter to the Respondent Employer on October 20, stating that it did not authorize or condone the strike, it never took any affirmative action to independently notify its members that it had withdrawn support for the strike at any time before or after the commencement of the strike. Thus, Local 901 never informed Magriz, Quiara, and Rivers that the strike was not supported by it, despite strike funds having been requested and approved. In this regard, Local 901 knew on October 14 who had attended the October 12 assembly and later in October 2008 who had participated in the October 20–22 strike, yet it did not impose sanctions on any other Shop Stewards or union members for their attendance or participation at the assembly or the strike. I also note that none of the other Shop Stewards were candidates in the internal union election held on October 3. Accordingly, I conclude that the actions of Local 901 in filing internal union charges and imposing sanctions against Magriz, Quiara, and Rivera was not only disparate but occurred in part because they comprised a slate of candidates that opposed the slate favored by Local 901.

Likewise, I reject the argument advanced by Local 901 that the actions of Magriz, Quiara, and Rivera violated the Court imposed "Broad Order." Rather, I find that the terminated Employer Shop Stewards discussed and explained the "Broad Order" at the October 19 pre-strike meeting at Shop Steward Colon's home and also on the morning of October 20 prior to the commencement of the strike. Additionally, as found above, the Respondent Union made it abundantly clear to the Employer that it did not authorize or call the October 20–22 strike. Thus, I am hard pressed to find that Magriz, Quiara, and Rivera violated the "Broad Order" in any way, particularly when the Order is directed at the leadership of Local 901 who engage in strike misconduct. Indeed, I particularly note the Respondent Union's By-Laws that specifically state, "The shop stewards are not officers, nor agents of this Union" (U Exh. 9–Sec. 18.08). Moreover, it is undisputed that when the Respondent Union disciplined Magriz, Quiara, and Rivera on March 10, 2009, it knew that no violence or conduct in violation of the "Broad Order" had occurred. In fact, no entity filed any legal actions against the Respondent Union for the activities associated with the three day strike at the Employer's facility nor was any illegal activity reported to the Court that oversees the "Broad Order." Accordingly, as found above, the actions of the Respondent Union were disparate and in part taken against these individuals because of their participation in the internal union election against the slate of candidates supported by Local 901.

Lastly, since I find that the strike was caused by the unfair labor practices of the Employer and therefore was not an illegal strike, the argument that the Charging Parties violated Local 901's By-Laws and its International Constitution is rejected.

In summary, based on the above recitation, I find that Local 901 violated Section 8(b)(1)(A) of the Act. Therefore, it must rescind the fines levied against Magriz, Quiara, and Rivera, and reinstate them to full membership in the Respondent Union including their Shop Steward positions.[42]

CONCLUSIONS OF LAW

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

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

3. The Respondent Employer violated Section 8(a)(1) and (3) of the Act by:

(a) Suspending and then discharging its employee Miguel Colon because he assisted the Respondent Union and engaged in protected concerted activities to protest the Employer's refusal to permit a Business Representative of the Respondent Union to meet with employees during their nonwor time about on-going collective-bargaining negotiations and other matters related to their terms and conditions of employment.

(b) Suspending 4 and discharging 34 bargaining unit employees who ceased work concertedly and engaged in an unfair labor practice strike to protest the Employer's suspension and discharge of five Shop Stewards and to reconvene stalled collective-bargaining negotiations between the Employer and Local 901.

(4) The Respondent Employer violated Section 8(a)(1), (3), and (4) of the Act by coercing its employees Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez into signing a "last chance" agreement conditioning their reinstatement from their suspension on the relinquishment of their right

[42] While I agree with the Respondent Union that the portion of the unfair labor practice charge filed on July 31, 2009, alleging a violation regarding the filing of internal union charges against the Charging Parties is time barred under Sec. 10(b) of the Act, the expulsion from membership, removal from their Shop Steward positions, and the fine allegations are timely having been imposed on March 10, 2009.

to file unfair labor practice charges or give testimony to the Board, and thereafter terminated them for allegedly violating the terms of that agreement.

(5) The Respondent Union violated Section 8(b)(1)(A) of the Act on March 10, 2009, by expelling from membership and removing Migdalia Magriz, Maritza Quiara, and Silva Rivera from their Shop Steward positions, and fining each of them $10,000.

(6) The Respondent Employer did not violate Section 8(a)(1) and (3) of the Act when it suspended and then terminated Shop Stewards Carlos Rivera, Felix Rivera, Romian Serrano, and Francisco Marrero for their participation in a work stoppage at the Employer's facility.

(7) The Respondent Employer did not violate Section 8(a)(1) and (3) of the Act when it terminated its employee Dennes Figueroa.

REMEDY

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

The Respondent Employer unlawfully suspended and subsequently discharged employee Miguel Colon. It must reinstate Colon to his former position or if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole from September 10, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination taken against him.[43] The Respondent Employer also unlawfully suspended and subsequently terminated Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez[44] and unlawfully discharged Carlos Rivera-Sandoval, Benjamin Rodriquez-Ramos, Edwin Cotto-Roque, Hector Sanchez-Torres, Jariel Rivera-Rojas, Hector Vazquez-Rolon, Jorge-Ramos-Arroyo, Jose Rivera-Ortiz, Vidal Arguinzoni, Miguel Cotto-Collazo, Jose Diaz, Alexis Hernandez, Ada Flores, Jan Rivera-Mulero, Juan Resto, Nilsa Navarro, Henry Cotto, Hector Rodriguez, Juan Rivera-Diaz, Jose Collazo-Flores, Gabriel Rojas-Cruz, Josue Rivera-Aponte, Jose Suarez, Jorge Oyola, Pedro Colon-Figueroa, Jose Sanchez, Luis Ocasio, Luis Rivera-Morales, Jose Rivera-Martinez, Carlos Rivera-Rodriguez, Eddie Rivera-Garcia, Giovanni Jimenez, Rafael Oyola-Melendez, and Carlos Ortiz-Ortiz, all of whom engaged in an unfair labor practice strike, and therefore must offer them reinstatement to their former positions or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from October 20, 2008, less any net interim earnings, as prescribed in *F. W. Woolworth Co.* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).[45]

The Respondent Union must expunge Migdalia Magriz, Maritza Quiara, and Silvia Rivera's expulsion of membership from its records, reinstate them to full membership status and their Shop Steward positions, and rescind the fines levied against them.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[46]

ORDER

A. CC 1 Limited Partnership d/b/a Coca Cola Puerto Rico Bottlers. Cayey, Puerto Rico, its officers, agents, and representative shall

1. Cease and desist from

(a) Discharging and suspending employees because they engaged in union or protected concerted activities.

(b) Coercing employees into signing "last chance" agreements conditioning their reinstatement on the relinquishment of their right to file unfair labor practice charges or give testimony to the Board.

(c) Discharging and suspending employees because they participated in a strike caused by our unfair labor practices.

In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed

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[43] Contrary to the Respondent's Employer's argument in its posthearing brief (p. 76) that Colon is not entitled to reinstatement because Lopez refused the Employer's offer to reinstate him, I find that the record does not support such an assertion. In this regard, Lopez credibly testified that Attorney Maza proposed that the work stoppage issue could be resolved if Local 901 would agree to the reinstatement of only three of the five Shop Stewards. At no time did Attorney Maza identify to Lopez which of the three Shop Stewards he was referring to regarding the offer of reinstatement. The record confirms that Lopez rejected the offer and replied that all five Shop Stewards must be reinstated. It is noted that Attorney Maza did not testify during the proceeding and the testimony of Lopez regarding this issue is unrebutted (Tr. 132).

[44] The Employer also coerced these four employees into signing a "last chance" agreement conditioning reinstatement from their suspensions on the relinquishment of their right to file unfair labor practice charges or give testimony to the Board in violation of Sec. 8(a)(1) of the Act, and then subsequently terminated the four employees for allegedly violating the terms of the agreement, in violation of Section 8(a)(1), (3), and (4) of the Act. I find, however, that the remedy for this violation including reinstatement is the same as for their participation in the unfair labor practice strike. However, since the General Counsel seeks that the Employer jointly and severally with the Respondent Union make whole these employees due to their both coercing employees to execute the "last chance" agreement, it is so ordered. Indeed, the Respondent Union agreed to this remedy when it executed the above noted settlement agreement. The back pay period for each employee is Bermudez from November 6 to December 7, 2009, Rivera from November 13 to December 7, 2009, Correa from December 10 to December 7, 2009, and Melendez from January 9, 2009, to December 7, 2009.

[45] Although the General Counsel makes compelling arguments in its posthearing brief that the current practice of awarding only simple interest on backpay and other monetary awards should be replaced with the practice of compounding interest such a remedy is within the province of the Board. Therefore, since the Board has not changed its current practice, the undersigned is not disposed to grant such a remedy.

[46] 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.

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 date of this Order, offer Miguel Colon reinstatement to his former position, discharging the occupant of that position if necessary, or if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed, and remove any reference from the Employer's files of Colon's unlawful suspension and discharge, and within 3 days thereafter notify Colon in writing that this has been done, and that the suspension and discharge will not be used against him in any way.

(b) Within 14 days of the date of this Order, offer the unfair labor practice strikers listed in the remedy section of this decision reinstatement to their former positions, discharging any replacements who occupy those positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. Within 3 days thereafter notify all of the unfair labor practice strikers in writing that this has been done, and that the suspensions or discharges will not be used against them in any way.

(c) Make whole Miguel Colon from September 10, 2008, and the unfair labor practice strikers from October 20, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(d) Make whole Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez jointly and severally with the Respondent Union, for any loss sustained by reason of their suspensions and discharges plus interest in the manner set forth in fn 44 of this decision.

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

(f) Within 14 days after service by the Region, post at its facility in Cayey, Puerto Rico, copies of the attached notice marked "Appendix A."[47] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Employer's authorized representative, shall be posted by the Employer in the English and Spanish language, 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 Employer 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 Employer has gone out of business or closed the facility involved in these proceedings, the Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at any time since September 9, 2008.

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

B. Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters, is officers, agents, and representatives, shall

1. Cease and desist from

(a) Expelling Migdalia Magriz, Maritza Quiara and Silvia Rivera from membership in Local 901, removing them from their Shop Steward positions, and imposing fines against them for engaging in lawful protected activities under the Act.

(b) In any like or related manner 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) Reinstate Migdalia Magriz, Maritza Quiara and Silvia Rivera to full membership including their Shop Steward positions and rescind the $10,000 fines levied against each of them.

(b) Within 14 days from the date of this Order, remove from its files, any reference to the unlawful expulsion of membership for these individuals, and within 3 days thereafter, notify them in writing that we have done so and that we will not use the expulsion against them in any way.

(c) Within 14 days after service by the Region, post at the Respondent Union Office, copies of the attached notice marked "Appendix B."[48] Copies of the notices, on forms provided by the Regional Director for Region 24, after being signed by the Respondent Union's authorized representatives, shall be posted in the English and Spanish language, and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken 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 Union has gone out of business or closed the Union office involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all employees and current members employed by Coca Cola Puerto Rico Bottlers at any time since March 10, 2009.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by the Respondent Union at all places where notices to employees and members are customarily posted.

(e) Within 21 days after service by the Region, file with the

[47] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[48] 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."

Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

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

Dated, Washington, D.C., April 16, 2010

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge and suspend employees because they engage in union or protected concerted activities.

WE WILL NOT coerce employees into signing "last chance" agreements conditioning their reinstatement on the relinquishment of their right to file unfair labor practice charges or give testimony to the Board.

WE WILL NOT discharge or suspend employees because they participated in a strike caused by our unfair labor practices.

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

WE WILL, within 14 days of the date of this Order, offer Miguel Colon reinstatement to

his former position, discharging the occupant of that position if necessary, or if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed, and remove any reference from the Employer's files of Colon's unlawful suspension and discharge, and within 3 days thereafter notify Colon in writing that this has been done, and that the suspension and discharge will not be used against him in any way.

WE WILL, within 14 days of the date of this Order, offer the unfair labor practice strikers listed in the remedy section of this decision reinstatement to their former positions, discharging any replacements who occupy those positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. Within 3 days thereafter notify all of the unfair labor practice strikers in writing that this has been done, and that the suspensions or discharges will not be used against them in any way.

WE WILL, make whole Miguel Colon from September 10, 2008, and the unfair labor practice strikers from October 20, 2008, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

WE WILL, make whole Luis Bermudez, Jose Rivera-Barreto, Virginio Correa, and Luis Melendez jointly and severally with the Respondent Union, for any loss sustained by reason of their suspensions and discharges plus interest in the manner set forth in fn 44 of this decision.

CC 1 LIMITED PARTNERSHIP D/B/A COCA COLA PUERTO RICO BOTTLERS

APPENDIX B

NOTICE TO MEMBERS
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 the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with on your behalf with your employer to

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL reinstate Migdalia Magriz, Maritza Quiara and Silvia Rivera to full membership including their Shop Steward positions and rescind the $10,000 fines levied against each of them.

WE WILL, within 14 days from the date of this Order, remove from our files, any reference to the expulsion from membership of Migdalia Magriz, Maritza Quiara and Silvia Rivera, and WE WILL, within 3 days thereafter, notify them in writing that we have done so and that we will not use the expulsion against him in any way.

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

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, INTERNATIONAL BROTHERHOOD OF TEAMSTERS