Pratt (Corrugated Logistics), LLC *and* Teamsters Local 773. Cases 04–CA–079603, 04–CA–079858, 04–CA–079976, and 04–RC–080108

February 21, 2014

DECISION, ORDER, AND ORDER REMANDING

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On March 12, 2013, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief and the Respondent filed a reply brief.

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

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

The Respondent excepted to the judge's finding that its labor relations consultant, Jason Greer, was its agent and was acting within the scope of his agency when he unlawfully solicited employee grievances and promised to remedy them. Similarly, the Respondent has excepted to the judge's finding that because Francisco Ortiz was the Respondent's stipulated agent, Ortiz acted within the scope of his agency when he interrogated and threatened employee Dennis Cortes and threatened employee Michael Messina. Therefore, the Respondent argues that neither Greer's nor Ortiz' statements should be imputed to the Respondent. Both of these exceptions are without merit.

Under common-law principles of agency, which the Board applies when examining whether an individual was an agent of the employer in the course of making a particular statement or taking a particular action, the Board may find agency based on either actual or apparent authority to act for the employer. "Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Southern Bag Corp.*, 315 NLRB 725, 725 (1994). The test is whether, under all the circumstances, employees "would reasonably believe that the [alleged agent] was reflecting company policy and speaking and acting for management." *Waterbed World*, 286 NLRB 425, 426–427 (1987) (quoting *Einhorn Enterprises*, 279 NLRB 576 (1986)). In addition, an employer may have an employee's statements attributed to it if the employee is "held out as a conduit for transmitting information [from management] to other employees." *Debber Electric*, 313 NLRB 1094, 1095 fn. 6 (1994). "A principal is responsible for its agents' conduct if such action is done in furtherance of the principal's interest and is within the general scope of authority attributed to the agent[;] . . . it is enough if the principal empowered the agent to represent the principal within the general area in which the agent has acted." *Tyson Fresh Meats, Inc.*, 343 NLRB 1335, 1337 (2004) (quoting *Bio-Medical Applications of Puerto Rico, Inc.*, 269 NLRB 827, 828 (1984)).

Here, ample evidence supports the judge's finding that Greer was the Respondent's agent. The Respondent's logistics manager, human resource manager, and dispatcher directed employees on several occasions to meet with Greer, on company time, in the Respondent's conference room. At those meetings, Greer asked employees if they had complaints or would like to see changes, and promised employees that they would see changes "real soon." The Respondent thus held Greer out as a conduit for transmitting information from the employees to management and from management to employees. See *Debber Electric*, supra.

We also find that both Ortiz and Greer acted within the scope of their agency when they engaged in unlawful conduct. As found by the judge, Ortiz regularly directed and assigned work to the Respondent's yard jockeys and drivers. In this capacity, Ortiz served as a "link between employees and upper management" and helped to "implement company policies on the production floor."

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

There were no exceptions to the judge's finding that the Respondent violated Sec. 8(a)(1) by requiring employees to sign severance agreements that included broad confidentiality and nondisparagement provisions that restricted protected activity.

The Respondent has excepted to the judge's finding that employee Christian Salazar's conversations with his coworkers about the Union occurred "mostly in person and in the yard at the Macungie facility." The evidence shows that many of Salazar's conversations occurred over the phone. This error, however, concerned only a tangential matter that does not affect the judge's findings on the essential factual issues. See *Southern Florida Hotel & Motel Assn.*, 245 NLRB 561, 561–562 (1979), enfd. in relevant part 751 F.2d 1571 (11th Cir. 1985).

[2] In his conclusions of law, the judge remanded Case 04–RC–080108 to the Regional Director to open and count challenged ballots. We have included language in the Order reflecting that conclusion. We shall substitute a new notice to conform to the Board's standard remedial language.

Hausner Hard-Chrome of KY, Inc., 326 NLRB 426, 428 (1998). As discussed above, Greer spoke to employees about labor relations matters at meetings that employees were directed to attend by the Respondent's managers. Thus, we find that the Respondent empowered both Ortiz and Greer to deal with its employees on its behalf, and that they were acting within that general area when they made threats to employees, coercively interrogated an employee, implied that employees' union activities were under surveillance, and solicited employee grievances with the promise to remedy them. Therefore, we find that the statements of Ortiz and Greer on which the judge found violations of Section 8(a)(1) are properly attributed to the Respondent.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Pratt (Corrugated Logistics), LLC, Macungie, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following after paragraph 2(e).

> "It is further ordered that Case 04–RC–080108 is severed and remanded to the Regional Director for the purpose of opening and counting the challenged ballots of Michael Messina, William Lengle, Jay Lohrman, Michael Dolan, William Lehuta, Zsolt Harskuti, Brian Fritzinger, Abel Camilo, Luis Hernandez, Guillermo Mejia, Christian Salazar, and Dennis Cortes. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification."

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

Dated, Washington, D.C. February 21, 2014

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you about your union or other protected concerted activities.

WE WILL NOT threaten you with reprisals, including termination, for engaging in union activities.

WE WILL NOT create the impression that your union activities are under surveillance.

WE WILL NOT solicit grievances from you with the promise that they will be resolved without a union.

WE WILL NOT require you to sign a severance agreement or any agreement that contains confidentiality or nondisparagement clauses that restrict you from engaging in protected concerted activities.

WE WILL NOT discharge, lay off, discipline, or otherwise discriminate against you for engaging in union or other protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer employees Christian Salazar, Guillermo Mejia, Abel Camilo, Dennis Cortes, Michael Dolan, Tyler Donnelly, Brian Fritzinger, Zsolt Harskuti, Luis Hernandez, William Lehuta, William Lengle, Jay Lohrman, and Michael Messina 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 and privileges previously enjoyed.

WE WILL make the employees named above whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, 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 references to the unlawful discharges and layoffs of the above employees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges and layoffs will not be used against them in any way.

PRATT (CORRUGATED LOGISTICS), LLC

Donna Brown, Esq. and *David Rodriguez, Esq.,* for the General Counsel.
Eric C. Stuart, Esq. and *Christopher R. Coxson, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.),* of Morristown, New Jersey, for the Respondent.
Jeremy E. Meyers, Esq., of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on January 15, 16, and 17, 2013. The complaint, as amended, alleges that Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees, creating the impression of surveillance, threatening retaliation if employees engaged in union activities, and soliciting employee complaints with the promise to resolve them in order to discourage union activities. The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging and laying off a total of 13 employees because of union activity, and Section 8(a)(1) by requiring employees to agree to unlawfully broad confidentiality and nondisparagement pledges in order to obtain severance pay. The Respondent filed an answer denying the essential allegations in the complaint.[1]

The complaint case was consolidated with a related representation case, Case 04–RC–080108, which was initiated by a petition filed by the Charging Party Union (the Union) on May 2, 2012. In that case, the parties entered into a stipulated election agreement. Pursuant to that agreement, a Board election was conducted on June 8, 2012, in a unit of Respondent's truckdrivers, including the yard jockey, at its Macungie, Pennsylvania location. The Union lost the election by a vote of 4 to 1, but 12 employees voted challenged ballots that were outcome determinative. Those employees were allegedly unlawfully terminated, as indicated above in the unfair labor practice complaint. Thus, the election outcome turns on whether the allegations of discriminatory terminations are sustained.[2]

After the trial, the Acting General Counsel and the Respondent filed briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses, and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware limited liability company with a facility at 7533 Industrial Way, Macungie, Pennsylvania, is engaged in the distribution of corrugated products. During a representative 1-year period, Respondent purchased and received, at its Macungie facility, goods valued in excess of $50,000 from points outside the Commonwealth of Pennsylvania. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Facts

Background

Respondent supplies transportation services at various locations throughout the country for Pratt operating entities that are affiliated with Respondent. It uses its own drivers, but it also contracts to use drivers from external third-party carriers. Tom Olshefski, whose title is national director of logistics, has general supervision over Respondent's trucking operations. He is located in Valparaiso, Indiana, and also spends time at the Pratt parent's corporate offices in Conyers, Georgia. (Tr. 318.) Since November 2011, Respondent operated a trucking facility in Macungie, Pennsylvania, where its affiliate, Pratt Corrugated of Allentown, has a large production and manufacturing plant. Either Pratt Corrugated or another Pratt entity also operates a warehouse at this location. (Tr. 80.) The plant manufactures corrugated boxes and other paper products, which are transported by Respondent from its Macungie facility. The plant employs about 105 people. Corrugated of Allentown and whichever Pratt entity operates the warehouse have offices in the same office complex that houses Phaedra Powell, Respondent's onsite logistics manager, and its dispatch supervisor. Nearby are an office for Erin Cutler, the human resources manager, and a desk for Francisco Ortiz, the second-shift shipping supervisor. (Tr. 382–383, 395–396.) Although other Pratt entities apparently employ Ortiz and Cutler, it is clear that they are agents of Respondent. Cutler participated in disciplinary meetings with Respondent's employees and signed their disciplinary documents. Ortiz, who was present at the facility during hours when Powell was not, directed and assigned work to the yard jockeys and drivers, and, at the hearing, the parties stipulated that Ortiz was an agent of Respondent.[3]

[1] The amended complaint included two other Pratt-affiliated respondents as a single employer with the named respondent, but, at the hearing, the parties entered into a stipulation that removed the other respondents from the case. The present caption reflects that change.

[2] Apparently only 12 of the 13 alleged discriminatees voted in the election.

[3] Not only did Respondent's supervisors and drivers work in close proximity to and have contact with employees and supervisors of related Pratt entities, but it appears that Respondent expected its employees to abide by the policies of all Pratt entities. Thus, Respondent's employees were required to sign a document that called for their compliance with the operational policies of "Corrugated Logistics LLC Pratt Industries and/or its subsidiaries." (R. Exh. 1.) And Respondent's

When the Respondent first opened its Macungie trucking operation, Powell initially used three drivers from National Freight Industries (NFI), an external carrier for whom she previously worked. NFI apparently charged a flat daily rate. (Tr. 328.) In addition, Powell started hiring new drivers, pursuant to directions from Olshefski to build a staff of drivers employed directly by Respondent. Respondent apparently did not use its own trucks, at least in Macungie; it rented tractors from Penske and trailers from Covenant Transport. (Tr. 377.) The record shows that Respondent rented trailers, at a cost of about $22,000 per month, from January through November 2012. (R. Exh. 9.)[4]

At some point in the next few months, Respondent apparently stopped using NFI drivers because it hired those drivers as Respondent's employees. There is no reliable evidence, certainly no documentary evidence, that drivers from external carriers were used again at Macungie until late April when Respondent laid off most of its existing drivers. By mid-April of 2012, Respondent employed some 18 drivers, including 2 yard jockeys. The employees were added in ascending increments. The record shows that one of the first drivers hired was Christian Salazar on November 16, 2011, and the last two, Mike Messina and Tyler Donnelly, were hired on April 12 and 16, 2012, respectively (Exhs. 3 and 4 of GC Exh. 26).

The Initial Union Activity

On April 13 and 19, 2012, Union Business Agent Darren Fry went to the Macungie facility and passed out leaflets to some of Respondent's drivers as they were leaving the premises on their runs. On Thursday, April 19, one of those drivers, Christian Salazar, called Fry and they talked about getting support to organize the employees. On that same day, Salazar talked to a number of employees about supporting the Union and some agreed to meet with Fry. Those conversations were mostly in person and in the yard at the Macungie facility. Among those employees with whom Salazar spoke about the Union on April 19 was Guillermo Mejia, a yard jockey at Macungie. (Tr. 101, 142, 167, 174.) According to Salazar, all but two of the employees with whom he spoke seemed interested; the two who were not were Steve West and Brian Fritzinger. (Tr. 67–68.) Indeed, West seemed to be strongly opposed to forming a union. West told employee Jay Lohrman that Salazar had approached him about "getting a union in here." According to Lohrman's uncontradicted testimony, West was very upset about the matter and said he was going to see Powell about it. (Tr. 191.)

A union meeting was scheduled for Monday, April 23, at a nearby eating place, the Starlight Diner. At the appointed time and place, about 8 to 10 employees attended the meeting. Among those employees were Salazar and Mejia. All the employees in attendance signed union authorization cards and some took blank cards for other employees to sign. Mejia took a blank card to bring to another employee who did not attend the meeting. (Tr. 102.)

The Discharge of Salazar

At the end of his workday, at about 9:30 p.m. on April 20, 2012, Salazar returned to the Macungie facility. When he drove his vehicle on to the parking lot, he saw a lot of cars in the parking lot, which was unusual at that hour of the night. (Tr. 68–69.) As Salazar was performing his posttrip inspection, Powell came up to him and asked him to come to her office. (Tr. 71.) When Salazar got to the office with Powell, Human Resources Manager Cutler and Warehouse Manager Paul Zallas were already there. Shortly thereafter Zallas left and a meeting took place between Powell, Cutler, and Salazar. Powell told Salazar that Respondent was discharging him because of a December 29, 2012 accident in which he was involved. Salazar protested that the accident had taken place almost 4 months before, but either Powell or Cutler said that the decision was made by "corporate." (Tr. 72.) Powell appeared to be reading from something in her laptop and stated that an investigation showed that he had been driving at excessive speed before the accident and his driving caused considerable damage. When Salazar asked to see any report that said that, Powell said she could not show him anything and that he should "call corporate" for anything further. (Tr. 71–73.)[5]

Salazar had indeed been involved in an accident on December 29, 2011. The accident happened on his way back to Macungie after he picked up a load from another Pratt facility. When Salazar's tractor-trailer was making a turn coming off an exit ramp, it became embedded on a railing. The speed limit on the exit ramp was, according to Salazar's uncontradicted testimony, 25 miles per hour. (Tr. 95.) The trailer apparently suffered considerable damage that could not be repaired; it was used for scrap, according to Powell, who was unable to testify whether the damaged trailer was covered by insurance. (Tr. 406–408.) In any event, Salazar received a citation for his accident and he paid the fine and costs, which totaled $113.25, with a credit card issued to him by Respondent. The citation does not indicate whether Salazar was speeding or what rate of speed he was going before the accident. On January 9, 2012, Salazar was issued an "employee corrective action report," signed by Powell, which indicated that it was intended to be a warning. Salazar was permitted to fill out the body of report and he signed it, stating that he was not traveling fast, but that the load had shifted on the trailer. Salazar also stated that he was protesting the warning. (GC Exh. 8.)[6]

employees who were laid off in April 2012 signed a severance agreement that prohibited them not from casting a negative characterization upon "Pratt and/or any Pratt Entity." (GC Exh. 20.)

[4] In the first 2 months of the Macungie operation, the monthly rental cost for the trailers was $13,600.

[5] The above is based on Salazar's credible testimony. Powell did not dispute Salazar's account of the meeting. She admitted telling Salazar that "corporate" had decided on the discharge, which she attributed to Tom Olshefski and Tina Overstreet, who was an official in a Pratt-related entity involved in safety issues. (Tr. 408–409.) Olshefski testified that the decision was his. (Tr. 354.)

[6] Salazar testified on cross-examination that when he was asked to sign the warning, which he did, Powell told him that he was asked to sign it to evidence that he was driving too fast for conditions. In fact the warning does not say that; it says the opposite that he was going at a "low rate of speed." Indeed, Salazar told Powell that he was going under the speed limit, which is what his uncontradicted testimony

Salazar was concerned at the time of the accident that he might lose his job and Powell told him that the Respondent would conduct an investigation of the accident and any decision on that matter would be made by Tom Olshefski. (Tr. 85.) According to Olshefski, he completed his investigation of the accident in the middle of January. (Tr. 355.) And, according to Salazar, no representative from Respondent contacted him about the accident from the date of his warning to the date of his discharge. (Tr. 65–66, 91.)

Salazar suffered minor injuries in the accident and was off work for one day. On December 31, he returned to work on light duty. For the next two or three months, he performed office duties, including some dispatch functions, since the existing dispatcher had recently left Respondent's employ. Salazar also helped install on-board computers on the trucks, for which he was trained and certified. (Tr. 51–53.) He worked outside Powell's office and interacted daily with the shipping supervisors, one of whom was Francisco Ortiz, who had a desk near Salazar's. Ortiz or the other shipping supervisor, who apparently alternated shifts, would hand Salazar driver assignments and tell him the priority order for those assignments that had been set by the scheduler. (Tr. 64–65.) When a new dispatcher was hired, in about mid-March, Salazar returned to his driver position. He continued to drive regularly until his discharge on April 20. (Tr. 59–61, 95–97.)[7]

The Discharge of Mejia

Mejia was hired as a yard jockey at the end of November 2011. His duties included moving trailers within the confines of the Macungie facility, and inspecting them and making sure they were safe to drive. If the trailers did not pass inspection, he or the other yard jockey, who worked nighttime hours, were to tag them as damaged or defective. Although Powell and Dispatcher Christian Westgate were his immediate supervisors, Mejia was told to follow the instructions of the shipping supervisors, including Ortiz, which he did on a daily basis, particularly during the times when Powell and Westgate were not present. (Tr. 132, 135, 423–424.) According to Mejia, Powell told him, in Ortiz's presence, that he had to follow Ortiz's instructions. She also told him, in a separate conversation, that he was to follow the instructions of another shipping supervisor, identified as Gregg, who worked during hours when Powell was not present. (Tr. 100, 135–136.) Powell did not specifically contradict Mejia's testimony about these conversations and Ortiz did not testify in this proceeding.[8]

Before the union campaign began, Mejia received two "employee disciplinary" reports about his work. On March 30, he received a written disciplinary report that was identified as a warning and signed by Powell about damaging a trailer that same day. He had moved a trailer without realizing that the landing gear was not raised off the ground. (GC Exh. 10.) Mejia also received a written disciplinary report on April 4, in which the warning box was not marked, but the counseling box was marked. The document, which was also signed by Powell, contained the notation "verbal" on it, and was described by Powell as a "counseling." The document stated that Powell "had a discussion with [Mejia] regarding reporting information to shipping or any department without the knowledge of his direct supervisor [Powell] and without letting his supervisor know first causing Logistics to be blindsided and questioned without having all the facts." (GC Exh. 11.) Powell testified that she did not give Mejia a written warning or a final warning at this time because "this was the first time I had [written] him up for this particular type of incident, reporting information to my customer." (Tr. 391.)[9]

Mejia had been one of the employees approached by Salazar in support of the Union. He attended the April 23 union meeting and obtained a blank card to solicit support from another employee. Mejia gave the blank card to driver Mike Messina while sitting in his jockey truck at the Macungie yard on April 24. It must have been after noon because that is when Messina reported for work. (Tr. 102, 155, 142, 156.)

Later on April 24, Mejia was discharged. At 6:45 p.m., he was called by Cutler on his cell phone and asked to come to her office. When he got there, Cutler, Powell and the dispatcher, Christian Westgate, were present.[10] According to Mejia, Powell told Mejia that he had not followed her directions, had not properly done so-called yard sheets that had something to do with the inspection of trailers, and had made mistakes in parking "bad trailers." (Tr. 104.) Westgate added that Mejia had not answered his radio calls. (Tr. 106.) Mejia testified that he protested, stating that, just two weeks before, Powell had praised his work, but Powell denied she had done so. (Tr. 106.)

According to Mejia, no one mentioned a specific incident at this meeting (Tr. 106), and nothing was said about unsafe or damaged trailers. (Tr. 107, 111.) Mejia did testify that, on several occasions in the past, the last of which apparently took place on April 19, he did have conversations with Powell about damaged trailers that he was taking out of service, which had no available parking space at the facility. According to Mejia, Powell told him where to put the trailers and nothing further

shows (Tr. 86.) There is apparently a conflict between what he said was his speed on the warning (10 miles per hour) and what he said was his speed in a pre-trial affidavit he gave to a Board agent (between 15 and 25 miles per hour). That conflict does not impair Salazar's credibility because, in either version, Salazar was going under the speed limit.

[7] Powell confirmed that Salazar worked in the office for a period in early 2012 and did some dispatching duties. She also testified that the previous dispatcher, Lisa Schmetzel, left sometime in February and the new dispatcher, Christian Westgate, was hired in mid-March. (Tr. 403–404.)

[8] I find Mejia's uncontradicted testimony on this point plausible. The nighttime yard jockey, Eric Balsavage, worked mostly when Powell was not present, and, if someone had to instruct or supervise him, it would have been Ortiz or whichever other shipping supervisor was on duty during the second shift. (Tr. 440.) Moreover, upon his employment, Mejia signed a document that required him to comply with the policies of Respondent, "Pratt Industries and/or its subsidiaries." (R. Exh. 1.)

[9] It is clear that here, and at other points in her testimony, when Powell refers to her "customer," she means representatives of Corrugated Allentown, which manufactures the product Respondent ships and whose plant and offices are located at the Macungie facility.

[10] Powell identified Westgate as Mejia's "direct supervisor." (Tr. 395.)

was said about his responsibilities in this respect. Either he or the drivers tagged the damaged trailers to keep them out of service. (Tr. 111–114.) He also testified about another damaged trailer that he took out of service earlier on the day he was fired, but that matter was not raised during the meeting at which he was discharged. (Tr. 114–115.) And it is uncontradicted that, at no time before the April 24 meeting, did Powell or any other representative of Respondent tell Mejia that he was in danger of losing his job. (Tr. 110.)

Powell testified that, at the April 24 meeting, she gave Mejia a written document that was not introduced into evidence but reflected an incident that allegedly occurred on April 16, when Mejia allegedly permitted a damaged trailer to go out on the road, contrary to instructions by her to put the trailer out of service. Powell testified that she only discovered that the trailer had gone out on the road a "couple of days" after she told Mejia to "put the trailer out of service." (Tr. 392–393.) On cross examination, Powell testified that she found out from Westgate that the trailer was taken out on the road. (Tr. 428.) Powell provided no further details about the incident or how it was tied to Mejia. Powell also testified that the document about letting the damaged trailer go out on the road was a "final warning." (Tr. 393.)[11]

Powell also testified that she gave Mejia another document at this meeting, which likewise was not introduced in evidence, but which apparently led to Mejia's dismissal. (Tr. 395.) That document, apparently prepared by Westgate, reflected an incident that allegedly occurred the day before, on April 23, where, according to Powell, "Guillermo walked right past Christian [Westgate], his direct supervisor, and he walked past my office, went directly to the customer [presumably a shipping supervisor or other employee of Corrugated Allentown] to give him information without speaking to the dispatch manager or myself." (Tr. 395.) Aside from that bare testimony, Powell never gave a detailed account of that incident or what was said about it at the April 24 meeting.[12]

According to Powell, after she explained the matters she testified about to Mejia and handed him the written documents memorializing those matters, Mejia refused to sign the documents and he was discharged. (Tr. 397.) Mejia denied that he was ever given either of the documents referred to by Powell in her testimony. (Tr. 111.) He also denied being involved in the incident that Powell described as having occurred on April 16. He specifically denied being told by Powell to lock down that trailer. (Tr. 124–125.) In addition, Mejia also offered uncontradicted testimony that he was not the only one who tagged trailers as defective or damaged; the night shift yard jockey also performed the same tagging function as Mejia. Moreover, other drivers who moved trailers at the request of shipping supervisors may also have done some tagging. Tr. 133-134. As to the second incident, Mejia admitted talking to a representative of Pratt Corrugated about moving a trailer, but denied doing anything wrong because he testified that he did not release any private information. (Tr. 126–127.) Neither Westgate nor Cutler testified in this proceeding and there is no evidence that Powell or any other representative of Respondent mentioned either the April 16 or the April 23 incident to Mejia at the time of those incidents or at any time before the meeting at the end of the day on April 24, when Mejia was discharged.

Other Responses to the Union Campaign

Driver Mike Messina began working for Respondent on April 12, 2012. When he began work, he was assigned a mentor, Steve West, another driver whom Salazar had identified as being against the Union. Since Messina worked from about noon to midnight, he also dealt directly with Second Shift Shipping Supervisor Francisco Ortiz, who was the only supervisor on duty when Powell was not present.

Although Ortiz is apparently employed by Pratt Corrugated, identified by Powell as her "customer" and a Respondent-affiliated company at the Macungie facility whose product is shipped by Respondent, Ortiz is an admitted agent of Respondent. But he is much more since he is intimately involved with Respondent's employees, as shown by the testimony of Salazar and Mejia, set forth above in the sections dealing with their

[11] Buried deep as an attachment to one of Respondent's lengthy position statements, submitted to the General Counsel in the investigation of this case and received in evidence as GC Exh. 24, was an "employee disciplinary report" that appears to be the one Powell was referring to in her testimony about the April 16 incident. Because it was not formally introduced in evidence, I am not sure of its authenticity or what weight to give the document. It was signed and apparently prepared by Powell on April 24, the day Mejia was discharged and is labeled a final warning. It states that "[o]n April 16th I asked Guillermo Mejia to lock trailer 530013 down because it needed to have a sensor replaced and the landing gear wouldn't come up. The trailer wasn't locked down as instructed resulting in the trailer being DOT noncompliant putting [undecipherable] at serious risk. He was asked by the dispatcher and myself." Assuming the document is properly in evidence, most of it amounts to unreliable hearsay. Although Powell could report what she told Mejia, and she did testify about that, there is no foundation for the statements in the document about whether the defective trailer was the one that Powell instructed Mejia to put out of service or whether Mejia was responsible for not putting it out of service. The document itself was prepared well after the incident and no other documentary or testimonial evidence casts any light on those matters so I cannot rely on the document itself for their truth.

[12] Also buried deep in GC Exh. 24, was an "employee disciplinary report" that appears to be the one Powell was referring to in her testimony about the April 23 incident. Because it was not formally admitted in evidence, and was apparently signed and prepared by Dispatcher Westgate, who was identified as the supervisor, but did not testify in this proceeding, I am not sure of its authenticity or what weight to give the document. The document shows that the dismissal box was marked and notes 3 previous earnings, including the April 16 incident that was mentioned in Powell's testimony about the April 24 meeting. It states "At approximately 1400 Guillermo came into the office to talk with the shipping supervisor Joseph Hoofnagle. While talking to Joe, I overheard Guillermo tell Joe that he couldn't pull trailer 550017 due to an [undecipherable] leak. Guillermo did not tell Phae or myself. The issue of coming directly to Logistics staff was addressed before." Assuming that the document is properly in evidence, I find it unreliable hearsay as to the truth of its contents because Westgate did not testify. But the document also shows that Powell's testimony about the incident was double hearsay because she only relied on Westgate's account for the truth of the matter.

discharges. Ortiz, who did not testify in this proceeding, has a desk adjacent to Powell's office and near the desk of Respondent's daytime dispatcher in the office complex. (Tr. 218.) Although Ortiz is identified as the second shift shipping supervisor, there is testimony that he and another shipping supervisor sometimes alternated shifts. The shipping supervisors work closely with Respondent's dispatcher and the scheduler of deliveries, who is apparently an employee of Pratt Corrugated. (Tr. 64–65.) Because drivers often began work before Powell arrived at the facility and ended their runs after she left, when he worked the night shift, Ortiz was the only supervisor who dealt with Mejia and the nighttime yard jockey when Powell was not present. He was also the only supervisor present when drivers returned from their runs after Powell left for the day. On those occasions, Ortiz directed drivers to move trailers in the yard and gave them their work orders for the next day, thus providing them notification of when they were to report for work. He also dismissed the drivers when they were no longer needed. (Tr. 70–71, 133–134, 142, 156, 213–215.)

As it was a widely discussed topic of discussion among the employees, Messina discussed the scheduled April 23 union meeting with West and Ortiz. According to Messina's uncontradicted testimony, both West and Ortiz separately advised him not to attend the meeting. (Tr. 143.) On another occasion, after Salazar had been fired, and on the day of the scheduled union meeting, Ortiz told Messina that he was not allowed to say anything about unions, but he advised Messina to stay away from "certain individuals" and "stay clear of this situation." (Tr. 143–144, 157.)

Sometime after Salazar had been fired and before the date of the union meeting, Messina went to see Powell in her office. He was concerned that Respondent knew he had once been a member of the Teamsters Union because that fact was mentioned on his application for employment. He told Powell that he had no interest in attending the union meeting and he was going to remain neutral on the question of union representation. Powell acknowledged Messina's statement, but made no other response. (Tr. 144–146, 164.)[13]

After Messina received the blank union authorization card from Mejia, he spoke to West about it. West told him to "get rid of" the card. The day after Mejia was fired, which would have been April 25, Messina again went to Powell's office, this time to speak to her about the union authorization card he had been given by Mejia. He wanted to emphasize his neutrality so he handed the card to Powell. She refused to accept it and told him to present it to the office of Human Resources. Messina then went to that office, spoke to Cutler and gave her the card. Cutler accepted the card, put it in an envelope, and thanked him for his loyalty. (Tr. 146–147.)[14]

On April 24, Driver Dennis Cortes also had a conversation with Ortiz. Cortes was returning some paperwork in the dispatch office after his run where he encountered Ortiz. Ortiz asked Cortes whether he was involved with the Union. Cortes replied by asking what Ortiz was talking about. Ortiz said that Cortes knew what he was talking about. Then, Ortiz said that, if he were Cortes, he would not get involved with the Union, stating that was why Salazar was fired. (Tr. 241–242.) Cortes then mentioned Mejia, who had been fired earlier that day. (Tr. 253–254.) Ortiz said that Mejia had been trying to reach him all day, but that he, Ortiz, had nothing to do with Mejia's discharge. According to Cortes, Ortiz said Mejia was fired because he wanted to do whatever he wanted in the yard. (Tr. 243, 253–255.) At one point in the conversation, another employee came into the office and Ortiz turned to Spanish, a language that the other employee did not understand, but Cortes did. Ortiz said that the other employee was going to be fired and he again told Cortes to steer clear of the Union. (Tr. 243–244.) In fact, that other employee, Eric Balsavage, the night shift yard jockey, was not fired, and he survived the subsequent layoff of April 27, in which most of the remaining drivers were released. (Tr. 244, 261, 434–435.)[15]

Consultant Jason Greer Conducts Meetings with Employees

During the week of April 23, Respondent's employees were directed in separate groups to meet with Jay Greer, a consultant hired by Respondent or one of the affiliated Pratt entities to meet and speak with employees. The meetings were held in a conference room in the office complex at the Macungie facility. A number of employees testified that, in those meetings, Greer identified himself as "Jay," refusing to give his last name, and said he was hired as a consultant to find out if the employees had any problems with the opening of the Macungie facility and how Respondent could improve their working conditions. On most aspects of what Greer said, the employees' testimony was mutually corroborative. But, in all respects, it was uncontradicted because Greer did not testify.[16]

[13] At some points during his testimony, Messina mentioned that his first meeting with Powell was on April 16, but, on redirect, he clarified the date. The conversation, as it was obvious in its context, took place after Salazar was fired and before he was given an authorization card by Mejia, which would have placed it between April 20 and 24. (Tr. 156.) On cross examination, Messina also confirmed that he had several conversations with Powell in which he raised the topic of unions, but she always said that she did not want to talk about the topic. (Tr. 154.)

[14] The above testimony by Messina was uncontradicted since West, Cutler, and Ortiz did not testify. Powell did testify, but she did not controvert Messina's testimony about his meetings with her. Even apart from his uncontroverted testimony, I found Messina to be an entirely credible witness. He was employed by Respondent when he testified. He was thus testifying against his employer's interest. I also observed, from his demeanor, that he was testifying reluctantly because he did not want to become embroiled in a controversial matter, but, painful as it was for him, I viewed him as a witness committed to telling the truth.

[15] The above testimony by Cortes was uncontradicted because Ortiz did not testify. Even apart from his uncontroverted testimony, I found Cortes to be a reliable witness, who testified candidly and in detail. In addition, his testimony has enhanced credibility because he was a current employee testifying against his employer's interest.

[16] In its answer, Respondent denied that Greer was its agent. In view of all the circumstances surrounding Greer's appearance at the Macungie facility, including that the employees were directed to attend the meetings, and that the meetings were held in Respondent's conference room, I find that Greer was indeed an agent of Respondent. It is clear that Respondent was responsible for Greer's meetings, which

It is also uncontradicted that Greer identifies himself as a "union buster" on one screen of his web page; and another screen states that his specialty is defeating unions who are trying to organize employers. Greer's web page contains his picture, which was identified by employee Jay Lohrman as being the person who made the presentation. (GC Exh. 19.) One statement on Greer's web page reads as follows:

> Discover the secrets behind unions and why union organizers will stop at nothing to cripple businesses from Jason Greer, labor management relations expert and former Board Agent of the National Labor Relations Board. Jason has provided labor relations and employee relations services to multiple companies, which have experienced threats of union organizing.

Two of the meetings were described by the employees who attended them.[17] The first, on April 24, the day after the union meeting, was attended by employees Jay Lohrman, Mike Messina, and Zsolt Harskuti. In that meeting, Greer said that Respondent was a "start-up company," apparently referring to the Macungie facility that had been operating for 5 months. According to Harskuti, Greer asked if the employees had "suggestions or complaints that we would like to see changes and what, if we do." (Tr. 182.) The employees present made suggestions and complaints, including a request for overtime pay. (Tr. 150, 168–170.) One complaint was that an employee was making reports about them to Powell. Although the employee was not identified at the meeting, Harsduti testified that the employee was Steve West. (Tr. 182–183.) There was also a discussion about Powell's ability to manage the operation and whether she was overwhelmed by the job. (Tr. 203–205.) According to Harskuti, after hearing the employee suggestions, Greer said that the employees would have to be patient, but they would "see changes real soon." (Tr. 183.) Lohrman confirmed that, after hearing what the employees had to say, Greer said that "there would be changes." (Tr. 193.) Lohrman also testified that Greer said that he would be at Macungie for the rest of the week and if the employees wanted to add anything to what they had said they could contact him there. (Tr. 194.)[18]

The second meeting was held on April 25. It was attended by employees Michael Dolan, Abel Camilo, Luis Hernandez, and Dennis Cortes, all of whom testified about the meeting. Greer introduced himself, stated the purpose of the meeting, and invited suggestions and complaints in the same manner as in the first meeting described above. According to Camilo, Greer asked whether the employees had complaints or suggestions and said that he would take them to his superiors to make Macungie a "better place to work." (Tr. 231.) According to Cortes, Greer asked how Powell was treating them and what the employees wanted to see in terms of improvement. (Tr. 245–247.) According to Hernandez, Greer asked what the company could do to make the employees "happier," and Greer also said that he would try to get "something better" for the employees. (Tr. 264–265.) On cross-examination, Hernandez resisted an effort to alter his testimony on this point and confirmed that Greer said he would try "to get something for us." (Tr. 272.) Among the suggestions made by employees in this meeting were safety bonuses and overtime for over 40 hours per week. (Tr. 231, 265.) According to Hernandez, Greer was writing while the employees made their suggestions. (Tr. 266.) I credit the mutually corroborative and uncontradicted composite testimony of Cortes, Hernandez and Camilo about Greer's second meeting with employees.[19]

Eleven of Respondent's Remaining 15 Macungie Drivers are Laid Off

At the end of the workday on Friday, April 27, Respondent laid off 11 drivers.[20] The drivers met, in groups or individually, with Powell, Cutler, and Westgate in one of the offices at the Macungie facility. Powell told the drivers that the Respondent had decided to replace them with drivers from external carriers. After the layoffs, the Respondent employed only four drivers and one yard jockey.[21]

Many of the drivers questioned the decision because they had no inkling of it and some were just recently hired. Indeed, it appears that Respondent was still seeking new drivers. On the day of the layoff, a sign advertising for drivers remained posted at the Macungie facility. According to Powell, the sign was taken down only "after we let the drivers go." Tr. 417.

created a reasonable basis for the employees to believe that Respondent authorized Greer's statements to them. Greer thus possessed at least apparent authority to bind Respondent. See *Mastec Direct TV*, 356 NLRB No. 110, slip op. 1–2 (2011), citing *Corner Furniture Discount Center,* 339 NLRB 1122, 1122 (2003); and *Pan-Oston Co.,* 336 NLRB 305, 306 (2001). See also *DHL Express,* 355 NLRB 680, 690 (2010), with respect to the agency status of a labor relations consultant.

[17] There was no testimony about other meetings Greer may have held with employees, except for that of employee Brian Fitzinger, who testified that he met with Greer alone. I make no findings concerning that meeting.

[18] The most detailed and reliable testimony about this meeting was given by Lohrman and Harskuti. Messina, who also testified about the meeting, had less of a clear recollection of the meeting, and did not provide as much detail. Although nothing in Messina's testimony contradicted that of Harskuti and Lohrman, and he added that he himself raised the suggestion of overtime pay in response to Greer's invitation for suggestions, I rely particularly on the more reliable and mutually corroborative testimony of Lohrman and Harskuti in making findings about this first meeting.

[19] Dolan's testimony about the meeting was not as detailed as that of the other three employees who testified about it. He got to the meeting somewhat late, after it had started. Although he testified, consistent with that of the other three employees, that Greer asked about any problems the drivers had, that he wanted to get to the bottom of those problems, and that drivers did make some suggestions, he could not remember what Greer said about what he would do about them (Tr. 169–170). On cross-examination, he admitted that, in his pre-trial affidavit, he stated that Greer did not say what, if anything, Respondent would do about the problems mentioned at the meeting. Tr. 176. To the extent that Dolan's testimony is different than that of the other three employees about how Greer responded to employee suggestions, my findings are based on the credible and mutually corroborative testimony of Hernandez, Cortes, and Camilo.

[20] They were: Abel Camilo, Dennis Cortes, Michael Dolan, Tyler Donnelly, Brian Fritzinger, Zsolt Harskuti, Luis Hernandez, William Lehuta, William Lengle, Jay Lohrman, and Michael Messina.

[21] They were: Steven West, Wayne Webb, Dale Seidel, Dragan Turzic, and Eric Balsavage.

There is also uncontradicted testimony that two potential new drivers had been provided applications for employment about a week before the layoff. Tr. 229–230, 288–289. Later in the day on Friday, April 27, the day of the layoff, Powell called NFI, the company that had initially provided drivers to Respondent, to obtain drivers to report for work the following Monday. Tr. 416. It is unclear how many drivers from external carriers reported to Respondent's Macungie facility for work on Monday, April 30.

The laid-off drivers were given letters of recommendation and offered severance pay. In order to obtain the severance pay, the laid-off drivers were required to sign a form entitled "Severance Agreement and General Release" that included confidentiality and nondisparagement language. The language reads as follows:

> 7. Confidentiality of Agreement. Employee will keep the fact and terms of this Agreement completely confidential and not disclose its contents to anyone except, on a confidential basis, to his/her spouse, tax accountant, financial advisor, or attorney. A violation of this confidentiality provision by any such person is considered a violation by Employee. This section does not prohibit disclosures to the extent legally required pursuant to a court order or subpoena. Employee, however, promises to notify Pratt in advance of such a disclosure obligation or request within two days after Employee learns of it and permit Pratt to take all steps it deems appropriate to prevent or limit the required disclosure.
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> * * * *
>
> 9. Nondisparagement. Employee agrees that he/she will not make any oral or written statement or engage in conduct that either directly or indirectly disparages, criticizes, defames, or otherwise casts a negative characterization upon Pratt and/or any Pratt Entity, nor will he/she encourage or assist anyone else to do so. Nothing in this section is intended to prevent Employee from testifying truthfully in any legal proceeding or complying with any lawful subpoena or court order.

Subsequent Events

As indicated above, the Union filed an election petition on May 2, 2012, and agreed to go to an election on June 8, 2012. The Union lost the election by a vote of 4 to 1, but there were 12 challenged ballots that affected the outcome of the election. Those challenged ballots were cast by employees who were allegedly discriminatorily discharged or laid off. The Union filed charges and amended charges alleging those layoffs and discharges were unlawful, as well as other violations that are the subject of this case, on various dates in late April, May, June, and August of 2012.

In the fall of 2012, the Acting General Counsel filed a petition for a Section 10(j) injunction with a United States district court. In a settlement of that matter, the Respondent agreed to offer reinstatement to a number of the terminated employees. Some of them agreed to accept reinstatement and many of them testified in this proceeding.

Discussion and Analysis

The Section 8(a)(1) Violations by Ortiz and Greer

As shown in the factual statement, on April 24, Ortiz, an admitted agent of Respondent, questioned employee Cortes about whether he was involved with the Union. Because Cortes responded evasively and because the question was followed by a threat, as shown below, it is clear that the circumstances suggested coercion. The questioning was thus unlawful and a violation of Section 8(a)(1) of the Act.[22] Ortiz followed his question by warning Cortes not to get involved with the Union, stating that Salazar had been fired for that reason. This warning threatened Cortes with the same fate that befell Salazar and thus amounted to an unlawful threat of reprisal in violation of Section 8(a)(1).[23] Ortiz's statement that another employee would also be discharged for union activities amounted to a similar threat, whether or not the employee was actually fired for that reason or was even a union activist; the threat is in the statement itself and its effect on the employee hearing it. Because Ortiz's remarks also suggested that Respondent knew who was involved in union activities, his statements also created an impression of surveillance, another violation of Section 8(a)(1).[24]

The day before, on the day of the scheduled union meeting, April 23, after saying he could not talk about the Union, Ortiz similarly warned employee Messina to stay away from "certain individuals" and "stay clear of [the] situation." He had previously warned Messina not to attend the union meeting. In context, the warning to stay away from certain individuals and the "situation" could only have referred to the union campaign, which was a wide topic of discussion at the Macungie facility at the time. I thus find that Ortiz's warning to Messina was an additional unlawful threat of reprisal, in violation of Section 8(a)(1) of the Act.[25]

As also shown in the factual statement, Jason Greer, an agent of Respondent, who advertised himself as a "union buster," spoke to two groups of employees at the Macungie facility on April 24 and 25. In those meetings, Greer solicited complaints and suggestions from the employees and stated in several ways that they would be resolved by Respondent. I find that Greer's appearance and statements were a response to the nascent, but ongoing, union campaign, contrary to Respondent's suggestion that Greer was simply trying to increase efficiency and productivity without regard to the union campaign. The timing of Greer's appearance, his background and his furtive reluctance to reveal his last name support the inference, which I make, that his promise to resolve the grievances he solicited was conditioned on the employees rejecting the Union, notwithstanding that nothing was mentioned about a union in those meetings.

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[22] See *Stations Casinos*, LLC, 358 NLRB No. 153, slip op. 19 (2012).

[23] See *Paramount Farms*, 334 NLRB 810, 817 (2001); *Extreme Building Services, Corp.,* 349 NLRB 914, 928 (2007); and *TPA, Inc*., 337 NLRB 282, 283 (2001).

[24] See *Bridgestone Firestone South Carolina*, 350 NLRB 526, 527 (2007); and *Mercedes-Benz of Orlando*, 358 NLRB No. 163, slip op. 1, fn. 4 (2012).

[25] See *Airborne Freight Corp.,* 343 NLRB 580, 617 (2004).

Thus, Greer's solicitation of grievances with the promise to resolve them amounted to still another violation of Section 8(a)(1) of the Act.[26]

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

In cases such as this one that turn on an alleged discriminatory motive, the analytical framework is based on the Board's *Wright Line* decision.[27] Under that decision, the General Counsel must make an initial showing that the employees' protected or union activity was a motivating factor in the adverse employment action. That burden may be satisfied by a showing that the employees engaged in union activity, that the employer knew about those activities and bore animus toward the union activity. Animus and knowledge need not be shown by direct evidence, but may be inferred from the circumstances such as the timing of the adverse action or the pretextual nature of the proffered justification. *Vision of Elk River, Inc.,* 359 NLRB No. 5, slip op. 3–4 (2012); *Montgomery Ward & Co.,* 316 NLRB 1248, 1253 (1995).

Once the General Counsel makes that showing, the burden of persuasion "shift[s] to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010). At that point, the issue is not simply whether the employer "could have" taken action against the employees in the absence of protected activity, but whether it "would have." *Carpenter Technology Corp.*, 346 NLRB 766, 773 (2006). See also *Bally's Atlantic City*, 355 NLRB at 1322. Put another way, to satisfy its burden, the employer "cannot simply present a legitimate reason for its actions," but must "persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Peter Vitale Co.*, 310 NLRB 865, 871 (1993). However, where the evidence establishes that the reason given for the employer's action was a pretext—that is, that it was false or not in fact relied on—the employer "fails by definition to show that it would have taken the same action for that reason, absent the protected conduct. There is thus no reason to perform the second part of the *Wright Line* analysis." *Vision of Elk River*, 359 NLRB at slip op. 7, citing and quoting authorities.

Applying the above principles, I find that the evidence strongly supports a finding of discrimination. As shown in the factual statement, within 8 days of the first extensive union discussions among employees initiated by employee Christian Salazar, he and 12 other employees were terminated. Salazar was terminated the day after he initiated those discussions; four days later, Guillermo Mejia was discharged—the day after the union meeting he attended and the very day he gave a union authorization card to another employee. That same week, Respondent brought in a consultant who unlawfully solicited grievances with the promise to resolve them without a union. And Francisco Ortiz told an employee that Salazar had been fired because of his union activities and that that employee should avoid getting involved with the Union, implying that the same thing would happen to him. Still another employee was warned to stay away from union supporters and he thereafter turned in the authorization card given to him by Mejia to Respondent's representatives. The above statements and incidents, together with the timing of the discharges during the union campaign, lead to a strong inference of antiunion animus and knowledge. And, in the context of the Respondent's Section 8(a)(1) violations, the evidence makes a compelling case that the terminations of Salazar and Mejia were motivated by their contemporary union activities.[28]

The sudden April 27 layoff of 11 of the remaining 15 drivers without prior notice, shortly after the discharges of Salazar and Mejia, not only decimated the work force, but shows that all the terminations were motivated by the same discriminatory reason. That all of the terminations are to be viewed as a group is confirmed by Olshefski's testimony that he considered Salazar's termination when considering the mass layoff of April 27. This is his testimony about his decision to discharge Salazar: "When I was going through the employee roster for the employee selection when we were going to do the restructuring, and I was looking at the performance levels of each team member or driver, his situation came back so I reviewed his file again. And as I felt then actually, I decided to terminate him at that time." Tr. 356. The April 27 layoffs themselves made no sense on an objective basis. Respondent had hired a driver as recently as 11 days before, had handed out applications to two drivers who were expected to be employed shortly thereafter, and was advertising for drivers up to the very day of the layoffs.[29]

[26] See *Bally's Atlantic City*, 355 NLRB 1319, 1326 (2010). Actually, Greer's statements that he would in effect help resolve the grievances he solicited make this a very strong case for the violation. As *Bally's* makes clear, even without a specific statement that the grievances will be resolved, the bare solicitation of grievances during a union campaign permits a "compelling inference" that they would be resolved without a union.

[27] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[28] I reject Respondent's contention (Br. 25–27) that it had no knowledge of the union activity of Salazar and Mejia before their discharges. As indicated above, I infer knowledge from the timing of their discharges and Respondent's animus expressed by its unlawful contemporaneous threats. As I have indicated, Ortiz, Respondent's agent, admitted that Salazar was fired for union activities. Indeed, the very day of Salazar's talks with employees on behalf of the Union, antiunion employee Steve West told a fellow employee that he was upset at Salazar's organizing activity and he was going to report it to Powell. Salazar was fired the very next day, allegedly for an accident that occurred almost 4 months before. Mejia was fired hours after he presented an authorization card to employee Messina, the very day Ortiz made his unlawful statement about Salazar's discharge, and the day after the union meeting he attended, which was also the day Messina was unlawfully warned to stay away from certain individuals. The inference is also strengthened by reference to the pretextual reasons offered for the discharges discussed below.

[29] Contrary to Respondent's suggestion (Br. 29), it is not necessary in assessing the motive for a mass layoff to make a specific finding that each individual in the mass layoff was a known union adherent. It is settled that knowledge of general union activity is sufficient where, as here, the employer's intent is to send a message, by using a mass layoff, that union activity will not be tolerated. See *Delchamps, Inc.,* 330 NLRB 1310, 1317 (2000); and *Sonicraft, Inc.,* 295 NLRB 766, 783 (1989), enfd. 905 F.2d 146 (7th Cir. 1990).

As shown below, the Respondent's stated reason for the layoffs, a need to use third-party external drivers instead of its own employees, was a pretext. Also pretextual were the reasons given for the discharge of Salazar, who was allegedly fired for an accident he was involved in almost 4 months before, and for the discharge of Mejia, who was allegedly fired for two ambiguous incidents that were not mentioned to him when they happened. Thus, the Acting General Counsel has satisfied his initial burden of establishing a discriminatory motivation for all 13 terminations involved in this case. My findings that the reasons for all the terminations were pretextual not only strengthen the Acting General Counsel's initial showing of discrimination, but they show that the Respondent has failed to rebut the case of discrimination. I discuss Respondent's pretextual reasons in more detail below.[30]

Salazar

According to Respondent, Olshefski made the decision to discharge Salazar and Powell merely transmitted that decision. The reason offered by Respondent for Salazar's discharge—that he was fired for an accident in which he was involved almost 4 months before—is a pretext. Salazar was discharged at the end of his work day at 9:30 p.m. on April 20. Not only was this the day after he held initial discussions with employees about the Union, but the discharge took place under unusual circumstances. The discharge was effectuated in a meeting that was well outside the work hours of both Powell and Human Resources Manager Cutler. It is highly unlikely that this nighttime assemblage would have been necessitated by the discharge of a driver for a 4-month-old accident. Respondent never gave Salazar any indication, certainly after mid-January of 2012, that his job was in jeopardy because of the accident, and he was permitted to go back on the road driving trailers in mid-March of 2012. If the Respondent had only legitimate reasons for the discharge and if it was honestly concerned about damage and safety issues, it would have discharged him sooner or notified him that his job was in jeopardy and would not have permitted Salazar to go back on the road driving trailers.

I do not credit Olshefski's testimony that union reasons did not play a role in Salazar's discharge. According to his testimony, he communicated with the plant that provided the load that Salazar hauled on the day of the accident and determined that the load was properly secured and that Salazar was going too fast for conditions. Tr. 353. But Olshefsky did not consult Salazar during his alleged investigation. Nor did Respondent offer any corroboration from any other source that an investigation was ongoing or what that investigation entailed. Because of the interval between Salazar's accident and his discharge, together with the fact that Salazar was permitted back on the road for over a month before his discharge, I find the lack of corroboration for Olshefski's testimony to be significant. Indeed, Olshefski testified that he completed his investigation in the middle of January, but he never gave a reason for the delay in implementing the discharge decision, which is particularly perplexing since he apparently knew Salazar was back driving. Tr. 354–356. As indicated above, he testified that he only decided to implement the decision when he was considering the April 27 layoff of most of the remaining Macungie drivers and replacing them with drivers from third-party carriers. He testified he reviewed Salazar's file at that time and decided to terminate him at that time. Tr. 356. This story is strange indeed because it suggests that Olshefski did not consider Salazar's December 29 accident to have warranted discharge even after Salazar was permitted back on the road, but only after the union campaign, which was spearheaded by Salazar. I find that the real reason for the discharge was Salazar's union activities.

In addition, Francisco Ortiz admitted that Respondent fired Salazar for union activities. Although I would find Salazar's discharge discriminatory even without this piece of evidence, I reject Respondent's contention that Ortiz had nothing to do with Respondent's operation and thus had no knowledge of why Salazar was fired. I find, instead, that Powell likely knew the real reason for Salazar's discharge and likely shared it with Ortiz.

As I have indicated above, although employed by a different but related Pratt entity, Ortiz was an admitted agent of Respondent, and, as the second-shift shipping supervisor, Ortiz dealt directly with Respondent's drivers and yard jockeys. In these circumstances, and because Ortiz had a desk adjacent to Powell's office, I find it plausible that she shared personnel information with Ortiz, including the real reason for Salazar's discharge. Indeed, when she was asked on cross-examination whether she told Ortiz that certain named employees were fired for union activity, Powell denied she had, but added that she does not "discuss anything with my customer [presumably Ortiz and other supervisors and managers of Corrugated Allentown] regarding Corrugated Logistics." In response to a question about whether Ortiz had a role in the discipline of Respondent's drivers, she answered "no," but added that Ortiz had "nothing to do with my operation." Tr. 419–420. I found Powell's testimony on these matters far too broad and exaggerated, embellishing what should have been a simple answer, and implausible. She protested too much because she obviously spoke to Pratt Allentown people, including Ortiz, who had a desk near her office. She was, after all, responsible for shipping its products, and, at points in her testimony, she spoke about her unhappiness when she received complaints from the manufacturing and shipping departments about the trucking operation. Tr. 389-390. On cross-examination, she also seemed to contradict her own previous answers to the questions about Ortiz on direct by admitting that she did talk to shipping managers and shipping supervisors. Tr. 422–423. Moreover, it is clear that Ortiz did indeed have something to do with Respondent's operation, especially during times when Powell was not present, as shown by the overwhelming evidence discussed above. Powell's answers to the questions about Ortiz cast doubt on her credibility as a witness and I am inclined to believe that she did share the reason for the discharge of Salazar with Ortiz. It is settled that a trier of fact may not only reject a witness's story, but find that the truth is the opposite of that story. See *Mar-Kay Cartage,*

[30] Even apart from my specific findings of pretext, I find that the Respondent's evidence failed to meet its *Wright Line* burden to overcome the Acting General Counsel's strong evidence of discriminatory motive. See *Bally's Atlantic City*, cited above, 355 NLRB at 1321.

277 NLRB 1335, 1340 (1985), citing *NLRB v. Walton Mfg. Co*., 369 U.S. 404, 408 (1962).

There is no doubt in my mind that Powell knew the real reason for the decision to discharge Salazar. After all, she admitted that she spoke with Olshefski "several times" a day, and discussed with him such things as damage reports and the discipline of drivers. Tr. 381–383, 387, 410. This was confirmed by Olshefski. Tr. 355–356. I find it perfectly plausible that Powell shared that reason with Ortiz and that Ortiz's statement to Cortes accurately reflected the real reason for the discharge, particularly in view of Powell's close proximity to Ortiz and the latter's relationship with the drivers in her absence. Based on all the circumstances, including my assessment of Powell's credibility, I make that inference. Indeed, Respondent was free to rebut that inference by calling Ortiz as a witness and have him either deny he made the statement or explain that he was simply speculating about the reason for Salazar's discharge. Tellingly, the Respondent did not call Ortiz, its agent, as a witness. See *International Automated Machines*, 285 NLRB 1122, 1123 (1987).

Mejia

Mejia's case is not as egregious as Salazar's, but, here again, I found the circumstances of his discharge unusual and the reasons given by Respondent to be pretexts. Mejia was discharged the day after the union meeting he attended and the same day he gave a blank authorization card to driver Mike Messina. Messina later delivered the card to Respondent's officials and pledged his neutrality on the union issue. But Mejia was allegedly discharged for two questionable incidents, one of which allegedly took place 8 days before and the other that allegedly took place the day before, after he had distributed the authorization card to Messina. For the reasons stated below, I find that the Respondent's reasons for Mejia's discharge were pretextual.

According to Powell, who testified that she alone made the decision to discharge Mejia, the first incident involved Mejia approving an allegedly damaged trailer to go on the road contrary to her specific instructions. That incident apparently took place on April 16. But no one mentioned that impropriety to Mejia until the date of his discharge, at the end of the day on April 24. Powell claimed that she did not know that the damaged trailer was on the road until a "couple of days later," when told of that fact by Westgate, who did not testify in this case. But, even accepting the truth of that testimony, she had ample time before the actual discharge to discuss the matter with Mejia, which would have been done had there been a legitimate concern that Mejia did something wrong. But she did not. Not only did Mejia not know there was any impropriety on his part, but he could not know even that there was an "incident," because presumably Powell gives a lot of instructions to Mejia. It would thus have been difficult for Mejia to know what Powell was talking about in the April 24 meeting. Indeed, there is no corroborative testimony or documentary evidence that the trailer Powell instructed should not go on the road was the one that was damaged or that Mejia was the one who permitted it to go on the road. Another yard jockey or another driver may have permitted it to go on the road. In these circumstances, and because I have discredited Powell on another matter in this case, I cannot credit her on this issue.

The second incident, which took place on April 23, the day before the discharge, is even less understandable. Powell described the alleged impropriety, but she apparently did not witness it. She relied on the report of Christian Westgate, who, as indicated above, did not testify in this proceeding. The details are sketchy, but Westgate supposedly saw Mejia approach a shipping supervisor for Pratt Corrugated to talk about a trailer and this was deemed to be an impropriety because Mejia failed to notify Powell or Westgate first. If indeed this was a legitimate concern there is no reason why Westgate or Powell would not immediately mention the matter to Mejia. But they did not; instead Powell waited until the next day and combined the pretextual April 16 incident discussed above, with this new incident, and used them, in combination, to effectuate Mejia's discharge. Significantly, Mejia had two prior disciplinary reports about these very subjects before the advent of the union campaign. One involved a damaged trailer and the other, a counseling and not a warning, according to Powell, involved failing to notify her before talking to shipping supervisors. In a remarkable coincidence, both the April 16 and the April 23 incidents involved the same subjects discussed in the two prior lawful disciplinary reports. I find that this was no coincidence. Respondent used the April 16 and April 23 incidents as a pretext to mask a discriminatory reason for the discharge of Mejia.

The Layoffs

In view of the prior two discriminatory discharges and the timing of Respondent's sudden decision to lay off 11 of its remaining drivers, one week after Salazar's discriminatory discharge, the inference is clear that the April 27 layoffs were also discriminatory and part of a wholesale effort to defeat the Union. Indeed, as I have mentioned above, Olshefski virtually admitted that Salazar's discharge at least was part of his decision to lay off the drivers on April 27.

The Respondent's asserted reason for the April 27 layoff—that Respondent decided to replace its drivers with third-party carriers because its drivers were responsible for damaging too many trailers and that the use of third-party carriers would somehow cure this—is a pretext. There was no prior notification to the drivers that this was going to happen or that a management assessment about replacing them with third-party carriers was ongoing. Powell herself testified that she only learned about the decision the day before the layoffs, an odd omission since both Powell and Olshefski testified that they spoke several times a day. The Respondent had recently hired new drivers and had advertised and was planning to hire more. Surely, if there were a legitimate reason for the layoff and indeed an honest assessment of utilizing third-party carriers, some prior notice would have been given, at least to Powell, and Respondent would have stopped its hiring of new drivers. The only significant things that happened between April 16, when the last driver was hired, and April 27, when the drivers were laid off, however, was the union campaign, the commission of several unfair labor practices, including the discriminatory discharges of Salazar and Mejia, and the meetings of the self-styled "union buster" on Respondent's behalf. Indeed, after the layoffs, on Fri-

day, April 27, Powell had to scramble to get drivers from third-party carriers, in order to operate on the following Monday. And Olshefski admitted that, in the next 30 days, Respondent used some five to eight different carriers. As he testified, "some came in for a couple weeks, some left, others came in. It was a moving target." Tr. 359–360. This chaotic transition is not the way an employer with a legitimate reason to replace existing drivers with drivers from third-party carriers operates.

I specifically reject Olshefski's testimony about his reason for the layoff as not credible. As indicated above, I found Olshefski's testimony about the Salazar discharge incredible. His testimony on the mass layoff on April 27 stands on no stronger footing. Perhaps the most startling part of his testimony on this point was that, in his deliberations as to who would be laid off, Olshefski said he considered the work records of the drivers, including Salazar, who had been fired the week before. Yet Powell testified that, when she was notified of the layoffs, the day before they took place, Olshefski told her that Respondent would retain the four most senior or seasoned drivers, along with the yard jockey. Nothing in Powell's testimony suggests that Olshefsky said anything about considering the work records of the drivers in determining who was to be laid off. Tr. 434–437. This conflict is a serious impediment to accepting Olshefski's testimony.[31]

Olshefski testified at length about why and when he decided to go with third-party carriers, but his testimony on this issue is no more convincing than his other testimony on the important issues in this case. According to Olshefski, he decided to use third-party carriers primarily because of an increase in the cost of repairing damaged trailers at the Macungie facility. He testified that he started to "hit the panic button in terms of concern" in February or early March of 2012. Tr. 343. That is difficult to accept because Olshefski approved the hiring of numerous drivers after this "panic button" type of concern, and apparently never notified Powell that this concern would result in a mass layoff until April 26, the day before the layoff. Another reason to doubt his testimony is shown by the frantic effort to get drivers from third-party carriers after the layoffs. As indicated above, Olshefski admitted that Respondent used a lot of different carriers in the days after the layoff. And although Olshefski testified that he was speaking with representatives of U.S. Express to replace at least part of its driver work force well before the April 27 layoff, Respondent did not secure a bid from U.S. Express until September of 2012. Tr. 361.

Nor does Olshefski's testimony about unusual trailer damage at Macungie support the decision to terminate some but not all of the drivers. For example Respondent offered two exhibits (R. Exhs. 7 and 8) to show repairs to damaged trailers during the period from about February 1 through late April 2012. But Olshefski admitted that it could not be determined from those exhibits whether Respondent's drivers, or who among them, were responsible for the damages. Tr. 364–366. Thus, some of the damages could have been attributable to the leased equipment itself and not to the drivers at all. And there was no way to determine whether NFI drivers, who were driving some trailers during this period, were responsible for at least some of the damages. Nor was there any way to determine whether the terminated drivers or the retained drivers were responsible for the damages. Finally, as indicated above, there is a conflict in the testimony of Olshefski and Powell as to whether Respondent even considered the driving records of the drivers before the layoff decision.

Olshefski also testified that, after the change to mostly third-party carriers, Respondent had a measurable improvement in on-time deliveries, a decrease in equipment costs and damages, and a "positive financial result." Tr. 359. But Respondent offered no corroborating documentary support for that testimony. There was not even any documentary evidence about on-time deliveries before the layoff. Indeed, Respondent offered no documentary evidence that could be used to compare the cost for using third-party drivers as opposed to the cost of using its own drivers. Nor was there any way to determine whether the use of any of the retained employees was justified, given the alleged cost saving of using third-party carriers. Lack of such documentary evidence, especially when the only support for an economic defense comes from a witness who has otherwise been discredited, is not sufficient to defeat a finding of pretext or establish the defense. See *Davey Roofing, Inc.*, 341 NLRB 222, 223 (2004).

The Confidentiality and Nondisparagement Clauses[32]

As shown in the factual statement, in order to receive severance pay after the unlawful April 27 layoff, employees were required to sign a severance agreement that included a provision prohibiting them from disclosing the contents of the agreement to anyone, with exceptions not applicable here. Another provision prohibited employees from making statements or engaging in conduct that "disparages, criticizes . . . or otherwise casts a negative characterization upon . . . any Pratt Entity . . . nor . . . encourage or assist anyone else to do so." These provisions are too broad. They clearly prohibit employees from engaging in activity protected by Section 7 of the Act, including taking concerted action with fellow employees, or even talking to them, union representatives, or agents of the National Labor Relations Board with respect to the agreement. These provisions also prohibit employees from engaging in other protected activity, including criticizing their employer, for taking the very unlawful activity that spawned this case. Indeed, even without the involvement of the Board, employees are permitted to criticize their employer for its conduct in dealing with hours, wages and working conditions, so long as it

[31] Powell testified as follows about what Olshefski told her about the decision to go to third-party carriers the day before the layoff itself: "We're going to go with restructuring and these guys are just banging up too much stuff, and we decided to go with a third-party carrier because if they mess up the equipment they're going to pay for it and it's going to save us a lot of money in the long run." Tr. 434.

[32] Although the Acting General Counsel's brief mentions the complaint allegation covering these clauses in its introductory section (Br. 2), no further mention of the relevant allegation appears in the substantive portion of the brief. Without more, however, I cannot consider this omission a waiver of the issue. The complaint allegation was not withdrawn and the evidence on the matter remains in the record. Indeed, the Respondent fully briefed the issue. I am thus required to address it.

does not amount to disloyal, reckless or maliciously untrue and unprotected representations or conduct. See *Endicott Interconnect Technologies*, 345 NLRB 448, 450–452 (2005). It is settled that that the Board may find a violation based on the very existence of rules that could reasonably be construed by employees to prohibit protected activity, even if those rules are not actually enforced. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004).

Here, the broadly phrased language does not stand alone and unenforced. It was actually used in the severance agreements presented to the unlawfully laid-off employees. Accordingly, by requiring employees to abide by the unlawfully broad confidentiality and nondisparagement clauses as conditions for receiving severance pay, Respondent violated Section 8(a)(1) of the Act. See *DirectTV U.S. DirectTV Holdings, LLC*, 359 NLRB No. 54, slip op. 3 (2013); and *Clarement Resort & Spa*, 344 NLRB 832 (2005).

Contrary to Respondent's contention (Br. 46) the nondisparagement clause is not saved from its unlawful breadth by its provision that nothing in the clause is intended to prevent the employee signatory from testifying in a legal proceeding or complying with a subpoena. Employees have the right to consult with each other and with their union on employment matters, whether or not those matters lead to court or legal proceedings.

Respondent also asserts (Br. 48–49) that its position on the nondisparagement clause is supported by my decision concerning a different disparagement clause, which was affirmed, in pertinent part, in *Heartland Catfish Co.,* 358 NLRB No. 125 (2012). While I am flattered by the reference, I have no difficulty in distinguishing the two cases. In *Heartland*, the no disparagement clause, which was found lawful, was part of a general "common sense" rule that covered objectionable conduct in the workplace, including dishonest conduct, horseplay and abusive language. And, as Respondent observes, the rule in *Heartland* had no penalty attached to it. Here, on the other hand, Respondent's prohibition against disparagement is not a workplace rule; it is a post-employment prohibition, a condition for receipt of severance pay. Moreover, other penalties attach for breach of the severance agreement. See sections 6 and 15C of G.C. Exh. 20. Nor, contrary to the rule in *Heartland*, can the nondisparagement clause herein be limited to unprotected conduct since the context, not present in *Heartland*, was the discriminatory layoff of employees. Thus, the situation here is more akin to the *Claremont* case, 344 NLRB 832, cited above and distinguished in *Heartland*, than to the situation presented in the *Heartland* case itself. Indeed, because of the context of the unlawful layoff, the situation here is much stronger in support of a violation than that in *Claremont*.[33]

[33] I am unpersuaded by Respondent's attempt (Br. 47–48) to cast the severance agreement in this case as a non-Board settlement agreement under *Independent Stave*, 287 NLRB 740 (1987). The General Counsel was not party to the severance agreements and indeed there was no recognition in the severance agreements that the discriminatory layoff that precipitated the agreements was a potential violation of the Act. Thus, the employees could not possibly be fully informed of their rights under the Act in advance of signing the severance agreements.

CONCLUSIONS OF LAW

1. By coercively interrogating employees about their union activities, threatening employees with reprisals for engaging in union activities, creating the impression that union activities are under surveillance, soliciting employee complaints with the promise that they will be resolved without a union, and requiring employees to agree to broad confidentiality and nondisparagement provisions that restricted protected activity, Respondent has violated Section 8(a)(1) of the Act.

2. By discharging employees Christian Salazar and Guillermo Mejia, and laying off employees Abel Camilo, Dennis Cortes, Michael Dolan, Tyler Donnelly, Brian Fritzinger, Zsolt Harskuti, Luis Hernandez, William Lehuta, William Lengle, Jay Lohrman, and Michael Messina, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The above violations are unfair labor practices within the meaning of the Act.

4. The unlawfully discharged and laid off employees named above were entitled to vote in the election of June 8, 2012. Thus, Case No. 4–RC–080108 is remanded to the Regional Director to open and count the challenged ballots cast by those employees. After opening and counting the challenged ballots, the Regional Director shall issue a new tally and certify the results of the election.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall order it to cease and desist from such conduct and take certain affirmative action designed to effectuate the policies of the Act.[34] Having found that Respondent unlawfully and discriminatorily discharged and laid off certain named employees, I shall order it to offer them full and immediate 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 and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily under *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters, and shall compensate the affected employees for the adverse tax consequences, if any, of receiv-

[34] Because of Respondent's egregious and widespread violations, I shall include broad language in the order that Respondent not commit future violations in the manner it did in this case or "in any other manner." See *Hickmott Foods,* 242 NLRB 1357 (1979); and *Blankenship & Associates*, 306 NLRB 994, 995 (1992), enfd. 999 F.2d 248 (7th Cir. 1993). I am not convinced that the order should include a provision that requires Respondent to read the notice before assembled employees, as requested by the Acting General Counsel (Br. 58-59). I believe that the broad language and other remedies in the order, especially if enforced by a court of appeals, are sufficient impediments against future violations. See Judge Paul Buxbaum's discussion of this issue in *Print Fulfillment Services,* JD 29-12, 9–CA–068069, 2012 WL 2458520, at pp. 65–67 (June 27, 2012).

ing one or more lump-sum backpay awards covering periods of longer than one year. *Latino Express, Inc*., 359 NLRB No. 44 (2012).[35]

On these findings of fact and conclusions of law, and on the entire record here, I issue the following recommended[36]

ORDER

The Respondent, Pratt (Corrugated Logistics), LLC, Macungie, Pennsylvania, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union or other protected concerted activities.

(b) Threatening employees with reprisals, including termination, for engaging in union activities.

(c) Creating the impression among employees that union activities are under surveillance.

(d) Soliciting grievances from employees with the promise that they will be resolved without a union.

(e) Requiring employees to sign a severance agreement or any agreement that contains confidentiality or nondisparagement clauses that restrict employees from engaging in protected concerted activities.

(f) Discharging, laying off, disciplining, or otherwise discriminating against employees for engaging in union or other protected concerted activities.

(g) In any other 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 from the date of this order, offer employees Christian Salazar, Guillermo Mejia, Abel Camilo, Dennis Cortes, Michael Dolan, Tyler Donnelly, Brian Fritzinger, Zsolt Harskuti, Luis Hernandez, William Lehuta, William Lengle, Jay Lohrman, and Michael Messina immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or any other rights and privileges previously enjoyed; and make those employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Within 14 days of the date of this order, remove from its files any references to the unlawful discharges and layoffs of the above employees, and, within 3 days thereafter, notify them in writing that this has been done and that the discharges and layoffs will not be used against them in any way.

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

(d) Within 14 days after service by the Region, post, at its facility in Macungie, Pennsylvania, copies of the attached notice marked "Appendix."[37] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and all former employees employed by the Respondent at any time since April 20, 2012.

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

Dated, Washington, D.C., March 12, 2013.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate employees about their union or other protected concerted activities.

WE WILL NOT threaten employees with reprisals, including termination, for engaging in union activities.

[35] I understand that some of the employees may have been reinstated. Any questions concerning whether employees were properly offered reinstatement or whether those who accepted such offers were properly reinstated may be resolved in the compliance phase of this case.

[36] 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 waived for all purposes.

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

WE WILL NOT create the impression among employees that union activities are under surveillance.

WE WILL NOT solicit grievances from employees with the promise that they will be resolved without a union.

WE WILL NOT require employees to sign a severance agreement or any agreement that contains confidentiality or nondisparagement clauses that restrict employees from engaging in protected concerted activities.

WE WILL NOT discharge, lay off, discipline, or otherwise discriminate against employees for engaging in union or other protected concerted activities.

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

WE WILL offer employees Christian Salazar, Guillermo Mejia, Abel Camilo, Dennis Cortes, Michael Dolan, Tyler Donnelly, Brian Fritzinger, Zsolt Harskuti, Luis Hernandez, William Lehuta, William Lengle, Jay Lohrman, and Michael Messina immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or any other rights and privileges previously enjoyed; and WE WILL make those employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL remove from our files any references to the unlawful discharges and layoffs of the above employees, and notify them in writing that this has been done and that the discharges and layoffs will not be used against them in any way.

PRATT (CORRUGATED LOGISTICS), LLC