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

SOUTHERN BAKERIES, LLC

and

BAKERY, CONFECTIONERY, TOBACCO AND GRAIN MILLERS UNION, LOCAL 111

Cases 15-CA-101311
15-CA-103186
15-CA-104063
15-CA-106033
15-CA-107597
15-CA-108613
15-CA-109746
15-CA-109753
15-CA-109755
15-CA-115945
26-CA-077268
26-CA-077536

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David L. Swider* and *Sandra Perry, Esqs. (Bose McKinney & Evans LLP),
for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. On February 4 through 7, 2014, this case was heard in Hope, Arkansas. The complaint alleged that Southern Bakeries, LLC (the Company or Respondent) violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act).[1] On the entire record,[2] including my observation of the demeanor of the witnesses, and after thoroughly considering the parties' briefs, I make the following:[3]

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1 The General Counsel withdrew complaint pars. 14 and 17 covering Earnest Beasley's suspension and firing.

2 Transcript citations relate to the official transcript. The PDF transcript in NXGEN, the Agency's electronic case processing system, is paginated differently.

3 The joint motion to correct the transcript dated March 28, 2014 is granted, and received as JT Exh. 55.

FINDINGS OF FACT[4]

I. JURISDICTION

The Company operates a commercial bakery in Hope, Arkansas (the plant), where it annually sells goods valued at more than $50,000 directly to points outside of Arkansas. I find that it is an employer engaged in commerce under Section 2(2), (6), and (7) of the Act. I also find that the Bakery, Confectionary, Tobacco and Grain Millers Union, Local 111 (the Union) is a labor organization under Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The plant, a continuous operation, manufactures baked goods. In 2005, the Company purchased the plant from Meyer's Bakeries, Inc. It then recognized the Union as the exclusive collective-bargaining representative of the plant's production and sanitation workers (the unit), and adopted their collective-bargaining agreement. The parties, thereafter, memorialized this relationship in several contracts, with their most recent agreement running from February 8, 2010 to February 8, 2012 (the CBA).[5] (JT Exh. 1). There are 200 employees in the unit.

Cesar Calderon, International Union Representative, serviced the unit.[6] He handled bargaining, grievances and other matters. Alice Briggs, unit employee, is a Shop Steward. Rickey Ledbetter is the Company's Executive Vice President/General Manager, Dan Banks is the Director of Manufacturing, and Linda Burke was the Human Resources Manager.[7]

B. First Decertification Petition

On December 7, 2011, Nadine Pugh, an employee, filed an RD-Decertification petition (the first decertification petition) with the National Labor Relations Board (the Board), which sought to oust the Union. (R Exh. 4). Although the petition was blocked and never resulted in an election, it prompted a flurry of Union visits seeking to address the unit's disenchantment. The Company reacted by impeding the Union's access, and a battle ensued over such rights.

C. Plant Access Disputes Following the First Decertification Petition

1. CBA's Access Provision

Article I of the CBA provides:

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4 Unless otherwise explained, factual findings arise from admissions, joint exhibits, stipulations, and uncontroverted testimony.

5 All dates herein are in 2012, unless otherwise stated.

6 He serviced the unit from 2011 through mid-2013.

7 Burke has since resigned and is now employed by Tyson Foods, Inc.

> **Section 1.03. Union Representative.** . . . . [T]he Union shall . . . enter the production and sanitation departments [to] . . . see . . . that the Agreement is being observed after giving . . . twelve (12) hours actual notice . . . . The Company . . . may accept a reduced notice period . . . . The Union . . . agrees to limit break room visitation to a Company designated break room area . . . .

(JT Exh. 2).

2. Union Access Policy Prior to the First Decertification Petition

Calderon described the Company's Union access policy before the first decertification petition. Specifically, he testified that Union representatives freely met with the unit in the break area, which was a large rectangular room that was divided by a windowed wall into two smaller rooms.[8] See (JT Exh.44). He added that the Company solely sought advance notice, and never monitored visit subject matter or frequency. Sandra Phillips, a unit bread packer since 1993, stated that the Union previously met with the unit in the break area, without interference.

Ledbetter testified that Union representatives were only allowed to visit for grievance-handling. He stated that the CBA supports his position, and that the Company was consistent.

Given that Calderon stated that the Union was previously granted relatively unfettered access to the break area, while Ledbetter testified to the contrary, I must make a credibility determination. I credit Calderon. First, he was a straightforward witness, who answered all queries candidly and thoughtfully. Second, his testimony was corroborated by Phillips, who was also credible and had a strong demeanor. Third, Ledbetter appeared less than candid, sporadically argumentative, and parsed his words when answering tougher queries. Lastly, it is plausible that, when the parties' relationship was less adversarial, the Company took a more liberal stance on Union access.

3. March 8 – Ledbetter's Letter to Calderon

On this date, Ledbetter announced to Calderon that:

> Section 1.03 of the CBA limits the purpose for which you can meet at our facility . . . the only reason for such visits . . . is "for the purpose of seeing that the Agreement is being observed." To me, **that means you can visit employees at our facility . . . to investigate, resolve, and/or pursue potential violations of the contract** . . . . This clearly does not include general visits; visits to drum up support for the Union; . . . or to solicit/discuss ideas for contract negotiation purposes. Typically, these types of meetings are done offsite . . . .
>
> **Please narrow your time frame . . . to accomplish the limited appropriate purpose set out in Section 1.03 . . . or, let me know what possible contract violation(s) could consume so much unrestricted time**.

[8] He estimated that the frequency of his annual visits ranged from 2 to 36 visits.

(JT Exh. 44) (emphasis added).

4. March 12 to 20 – Parties' Replies Concerning Access

On March 12, Calderon responded:

> Section 1.03 of the CBA does not specify that the union requires a specified reason to conduct a union visit to your plant . . . .
>
> **In past practice, union officials have had access . . . to conduct union business for both specific reasons and general visitations . . . .**
>
> In addition, this letter will serve to notify management that the union will conduct . . . visit[s] . . . March 13th . . . [and] 14th . . . .

(GC Exh. 2) (emphasis added); see also (JT Exh. 44). Although Ledbetter initially denied this request, he later granted Calderon limited access on March 20 for grievance-handling. (Id.).

5. March 20 – Calderon's Plant Visit and the New Cubicle Policy

Calderon testified that Banks greeted him by announcing that he was no longer permitted to meet employees in the break area, and escorted him to an adjacent vending machine area, where a tiny cubicle had been set up for him.[9] He stated that Banks told him that he needed to identify whom he wanted to see, and that he would then retrieve the workers. He added that he explained that this new arrangement might be intimidating for employees, who often preferred a private audience before deciding whether to file a grievance. He recollected that the cubicle had no table and only a single chair. He added that he was unaware of the Union ever being relegated to a cubicle. He stated that Banks offered that employees had complained about him, as a rationale for his new isolation.[10] He added that he refused to enter the cubicle, and insisted that Banks permit him to meet in the break area, in accordance with past practice. He said that Banks then threatened to call the police, and that he then left the plant after only a short meeting. He related that unit employees were uncomfortable with the new arrangement and did not want to be seen meeting with him, due to the great hostility between the parties. He added that sitting in the break area often generated important impromptu meetings concerning the CBA, and that the cubicle rendered him virtually invisible. He stated that, in the past, he lingered in the break area for several hours at a time. David Woods, International Union Representative, corroborated his testimony about the cubicle and the past access policy.

Ledbetter admitted the new cubicle policy, and said that his actions were triggered by complaints. He stated that the CBA afforded him the right to relegate the Union to the cubicle.

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9 The cubicle was approximately 5 by 4 feet.

10 He said that he later learned that he had been accused of improperly hugging Juan Rivera, which he denied. It is noteworthy that Rivera never testified about this matter. For several reasons, I fully credit Calderon's denial regarding Rivera, and find the Company's accusation was a hoax. First, the Company failed to adduce testimony from Rivera or any other employee, who was harassed by Calderon. Second, the Company failed to provide any written documentation or reports, which demonstrated such harassment. Third, as noted, Calderon was a highly believable witness, with a stellar demeanor. Finally, I find it likely that the Company created a hoax about Calderon, as part of its multi-pronged strategy to oust the Union.

6. March 23 – Company's Ban of Calderon

On this date, Ledbetter banned Calderon from the plant as follows:

> We have received another employee complaint concerning inappropriate conduct by Cesar Calderon during his visits . . . . The complaint is that Cesar has, on more than one occasion, harassed this employee, continues to pressure the employee to support union organization after being told to be left alone; physically and mentally interfered with the employee's meal consumption; sent strangers to the employee's home; and, performed inappropriate touching . . . on March 20 . . . .
>
> We will endeavor to investigate the allegations of harassment . . . . In the meantime, we cannot allow Cesar Calderon to access our property . . . .

(JT Exh. 44). The Company, as noted, conspicuously failed to present any harassed workers or offer incident reports. As explained, I credit Calderon's denial and find that the ban was part of a systematic attempt to impede the Union's access before the decertification vote and that the harassment allegations were a hoax. The Company later reinstated Calderon's access rights, as part of an informal Board settlement agreement covering this matter and others.[11] (JT Exh. 4).

D. Second Decertification Petition

On May 23, John Hankins, a unit employee, filed another RD-Decertification petition (the second decertification petition) with the Board seeking to oust the Union. (JT Exh. 45). This petition was blocked by further unfair labor practice charges and an election was never held.

E. Plant Access Disputes Following the Second Decertification Petition

1. January 7, 2013 – Ledbetter's Letter to the Union

In response to the Union's access request, Ledbetter replied:

> Consistent with . . . our expired agreement and its established practice, . . . the visit may only be "for the purpose of seeing that the Agreement is being observed." . . . . These limitations will not permit your representatives to hold general solicitation or election propaganda meetings . . . . If we learn that this is the purpose . . . , we will not . . . allow your presence on our premises. . . .
>
> [Y]our visits will be confined to the reserved small employee break room and you will not be permitted to . . . disturb . . . employees in the large break room . . . .

(JT Exh. 44).

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[11] The Settlement Agreement stated that, "[b]y entering into this [resolution] . . . , the Charged Party does not admit that it has violated the National Labor Relations Act." (JT Exh. 4). This settlement was later rescinded by the Board due to the Company's ongoing violations of the Act. (GC Exh. 1(kk)).

2. January 8, 2013 – Surveillance Cameras and Break Area Windows

Calderon, Woods and Fields, met with Ledbetter, Banks and Burke at the plant. Calderon recalled Ledbetter affirming that the Union could only visit for grievances. Woods corroborated his testimony, and added that the Union also observed that surveillance cameras had been placed in the break area.[12] It is undisputed that these cameras were installed without notice or bargaining.[13] He added that he also learned that the windowed wall that divided the break area had been dismantled, and replaced with plywood.

Ledbetter explained that the cameras were installed to deter theft and averred that he was unobligated to bargain. He said that he offered to cover the cameras, whenever the Union visited.[14] See (GC Exh. 9). Regarding the break area windows, he alleged that, in January 2013, the break area air conditioning system failed, which required the Company to temporarily remove the windows for ventilation purposes. He stated that, once the air conditioning was repaired, he installed a plywood wall because food safety regulations required him to replace transparent windows with opaque materials. Banks corroborated this point. But see (GC Exh. 16) (Respondent counsel's position letter, which mentions "food safety," but, conspicuously fails to discuss a broken air conditioning system). It is equally noteworthy that Respondent failed to produce a work order or documents corroborating a broken air conditioning system. It is similarly striking that Respondent failed to cite the relevant food safety regulations that prohibited reinstalling non-breakable windows in the break area.

For several reasons, I do not credit Ledbetter's contention that he removed the break area windows because the air conditioning system failed and was prevented from reinstalling unbreakable windows by food safety regulations. First, his demeanor was less than credible. Second, his air conditioning testimony was contradicted by counsel's position letter, which conspicuously failed to cite a broken air conditioning system. Third, if the air conditioner had actually broken, counsel would have corroborated this point with a work order or other documentation. Finally, the Company failed to cite the supporting food safety regulations.

3. January 16, 2013 – Ledbetter's Letter

On this date, Ledbetter informed the Union that:

> [W]e now have it . . . that the reason for this sudden onslaught of visits has been to "campaign" and solicit support for the upcoming decertification election. That is . . . not consistent with . . . our expired contract . . . or our past practice . . . .

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12 Although surveillance cameras have historically monitored production areas, see (R. Exhs. 8–9), the parties stipulated that such cameras were first installed in the break area in November 2012. See (JT Exhs. 1 and 6).

13 Regarding the cameras, the Employee Handbook states that, "Southern reserves the right to use surveillance . . . equipment . . . . for the general protection of the workforce and for the good of the Company." (JT Exh. 3).

14 Robby Turner, Info. Technologist, said that the cameras do not pan or record audio. (JT Exh. 8; R. Exhs. 6–7).

> Accordingly, we can no longer permit you to access our premises without knowing . . . the particular issue . . . you wish to investigate. We will also need to know with whom you would like to meet . . . . If we become aware of continued deviation . . . , we will have no choice but to prohibit your . . . visits . . . .

(JT Exh. 44). The Company, thereafter, banned visits whenever Briggs, the Union Steward, was not scheduled to work.

4. January 21 and 22, 2013 – Ledbetter's Letters

In reply to Calderon's access request, on January 21, 2013, Ledbetter replied that:

> The terms of our approved visits remain the same . . . .
>
> [W]e require an explanation of the . . . . the issue(s) . . . you wish to investigate. We also need to know who(m) you would like to meet . . . .
>
> I will [then] let you know if the request . . . is approved . . . .

(JT Exh. 44).

In response to Calderon's reminder that the Union was, inter alia, investigating certain grievances, by letter dated January 22, 2013, Ledbetter replied as follows:

> [Y]our misguided belief . . . that the union does not need our permission to visit is simply untrue. . . . If a representative enters the property after the request is denied then it is trespassing on private property and subject to arrest . . . .
>
> If your next scheduled visit is to adjust grievances, as you have represented, the visit is granted. On the other hand, if the visit is to electioneer, solicit union support, or for any other reason . . . your request to visit is denied . . . .

(Id.).

5. February 2013 – Ongoing Access Issues

On February 7, 2013, Calderon informed Ledbetter that, "the union will be visiting the plant . . . February 8 [at various times] . . . ." (JT Exh. 44). This request was denied. (Id.).

6. April 17, 2013 – Ledbetter's Letter

On April 17, 2013, Calderon sought to visit on April 22. (JT Exh. 47). Ledbetter denied his request. (Id.). Calderon reported that, since that time, he has been barred from the plant.[15]

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[15] He left his Union position in August 2013, and commenced employment with a different labor organization.

F. January 17, 2013 - Posting

On this date, the Company posted a memo, which it labeled as "Answers to Employee Questions Dated January 16, 2013," and stated as follows:

> The union . . . . [has] plans to take our employees out on strike . . . same as they . . . did at Hostess, where over 18,000 jobs were lost and 33 bakeries . . . closed.

(JT Exh. 45). This memo attributed several inaccurate statements to the Union, including a racially divisive accusation that the Union said that the Company would, "fire Hispanics" after the election. (Id.). The Company failed to offer any proof that the underlying employee questions, or inaccurate Union campaign statements, were genuine.

G. Captive Audience Meetings

In January and February 2013, Ledbetter delivered several captive audience speeches. These speeches were presented in English, and translated into Spanish.

1. January 23, 2013 Speeches

Ledbetter delivered "kick-off" and "collective-bargaining" talks. (JT Exh. 13). Roughly 170 unit employees attended.

a. "Kick-off" Speech

This segment provided, inter alia, as follows:

> From an economic standpoint, we do not want a union here because . . . it drags our Company down . . . . If we can't beat our competition, we can't survive. Just look at what happened to the Hostess Bakeries, Automobile companies and Steel companies. Unions strangled these companies to death . . . .
>
> There are lots of things a union can do to hurt . . . . Higher costs, less flexibility, lower productivity, and loss of team unity can be crippling . . . and cost employees their jobs . . . .
>
> Just look at what happened to Meyer's Bakeries and . . . at Hostess. At Hostess, a union strike by [this Union] . . . resulted in the loss of over 18K jobs, the liquidation of 33 bakeries . . . . That is one of the reasons why we do not want a union here. Also, all of our costs related to dealing with this union leave less money for wages and benefits . . . .
>
> [The Union] could only hurt our chance of long-term success and security . . . .
>
> If any of you are harassed or threatened on any basis during this election campaign, regardless of whether you are for or against the union, we want to

> know about it immediately so we can address the problem . . . .
>
> [T]o remedy the problem . . . , you must bring it to our attention . . . .

(JT Exh. 7) (emphasis omitted).

b. "Collective-bargaining" Speech

This segment provided, inter alia, as follows:

> [U]nions are free to promise . . . . they can promise . . . the moon . . . . [T]he union has no power to make its promises come true . . . .
>
> [D]uring collective bargaining , all the union can do is ask and all the union can get is what the Company will agree to give . . . .
>
> [T]he union is free to make any promises . . . . but . . .could not guarantee anything . . . . Because of the rules surrounding collective bargaining, you could have ended up with less than the non-union employees here at Southern Bakeries, which has turned out to be the case . . . .
>
> Don't be a victim of . . . slick salespeople . . . . The union can only promise . . . .
>
> Why is it that collective bargaining . . . result[ed] in your getting less pay than non-union employees?[16] . . . .
>
> [O]ur bottom line is thin . . . , the money . . . spent . . . dealing with the union is money that is simply not otherwise available . . . . [W]e have to hire expensive lawyers to help us . . . [with the] union. Not including the administrative time and other expenses we have had to spend . . . , which takes time away from our efforts to maintain customers and grow . . . , we have incurred tens of thousands of dollars in legal fees that have left us with less money . . . [for] our unionized employees than we have been able to give to our non-union workforce . . . .
>
> Remember what happened to all of the Hostess employees – 2/3 were not part of BCTGM but also lost their jobs along with the striking BCTGM union-covered employees. Over 18,000.

(JT Exh. 8) (emphasis omitted).

2. February 1, 2013 Speeches

Ledbetter delivered "collective-bargaining," "strikes," and "job security" presentations.[17] (JT Exh. 14). Approximately 170 unit employees attended.

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16 This query was repeated 10 times. (JT Exh. 8).

17 The "collective-bargaining" segment was a redux of the January 23, 2013 speech.

a. "Strikes" Speech

This segment provided, inter alia, as follows:

> [A]ll a union can do is ask, and . . . get . . . what a company . . . . agrees to . . . .
>
> [T]he union has stated that it plans to deal with Southern Bakeries in the same way as Hostess with a strike and/or boycotts, by trying to get customers to stop buying our products if we don't agree to union demands. If that is the case, this is of great concern because, as you know, the BCTGM strike closed Hostess . . . .
>
> [S]ee if the Union will sign a warranty coupon when it promises you something. Otherwise you have no guarantee . . . only a worthless promise . . . .
>
> [S]trikes hold a real threat of backfiring. And, when they backfire, employees and their families . . . get hurt. Hostess's closure is a good example . . . .
>
> [T]he BCTGM is union that likes to strike . . . the BCTGM has been responsible for at least 42 strikes since the beginning of 2000 . . . .
>
> [E]conomic strikers . . . can also be permanently replaced. During a strike, a company has the right to continue operating . . . . It can . . . be done with employees of other companies through subcontracting. When that happens, jobs are often lost at the striking facility . . . .
>
> Unions sometimes force employees to get involved in union boycotts of our customers . . . . This can be devastating . . . this makes it harder for the company to survive and can obviously lead to less jobs. . . .
>
> The bottom line is that rather than increasing . . . , job security can be seriously threatened by a union.
>
> If a strike does succeed in crippling a company, the company might not have the ability to satisfy its customers' demands . . . . This is how the BCTGM strike closed down the Hostess Company. Over 18,000 jobs. . . .
>
> Can the union help . . . ? Would strikes, boycotts, permanent replacements, labor/management discord, and loss of profitability help . . . ?

(JT Exh. 9) (emphasis omitted).

b. "Job Security" Speech

This segment provided, inter alia, as follows:

5 There are many ways that a union can threaten job security . . . .

Just because the contract is for a certain period . . . doesn't meant that the company has to stay open . . . .

10 Just remember what happened to Meyer's Bakeries. They had a union contract but went bankrupt and out of business.

If business conditions require, the company can . . . close its doors tomorrow. . . .

15 It doesn't do you any good to make $20 per hour under your union contract if you don't have a job . . . .

The union was willing to put your jobs on the line . . . . They appear ready to . . . put your jobs at risk if they continue to represent you after the Election.
20 Specifically, we are hearing . . . that the union is planning to repeat boycotts of our customers . . . on your behalf. . . .

[V]ote NO and stop any risk of lost jobs . . . .

25 It makes sense that the more money a company spends on a union, the less money it has to provide safe, steady and secure good-paying jobs for its employees . . . .

Do you trust BCTGM, who did nothing to prevent Meyers and Hostess and several other companies from going out of business . . . ? . . . .

30

[V]ote "NO" to the . . . possible loss of job security.

(JT Exh. 10) (emphasis omitted).

35 **3. February 5, 2013 Speech**

Roughly 150 unit employees attended Ledbetter's "final speech," which provided:

We encourage you to vote "NO".

40

We have learned that collective bargaining only gives the union the right to ask the company for . . . what the union wants. . . .

All a union can do is ask and all a union can get is what a company can
45 voluntarily agree to give. . . .

[W]hen you understand the limits of collective bargaining, you begin to realize how a union is powerless . . . .

I continue to be concerned that the money spent dealing with the union . . . means less money that is available for wage and benefit increases. . . .

You're voting on whether you want to pay this union to put all of your wages [and] benefits . . . on the bargaining table again and risk them in a game of high stakes poker . . . .

The recent Hostess strike by BCTGM . . . put over 18k people out of work. . . .

A company may legally transfer work and jobs to another facility or subcontract the work. Those types of decisions can be permanent. . . .

Employees . . . may lose work and job security. . . .

[T]his company fought this union so hard because we believe that we would all be much better off without it . . . .

[I]ncreased costs . . . may affect our job security . . . .

Unfortunately, unions too often bring high costs and inflexibility to a competitive workplace environment. Time spent . . . bargaining and . . . in . . . resolving grievances is non-revenue generating unproductive time . . . .

[J]ob security is really the basic issue you will be voting on . . . .

You know that job security does not come from a union . . . .

[A] union can often take away a company's ability to survive . . . .

[Y]our choice should be an easy one. VOTE NO! . . . .

As we are getting our head above water, the Harlans have shared this success with us as employees. We have received each year since our beginning in 2005, wage increases and annual cash bonuses and continued competitive benefits.

Exceptions: As a result of collective bargaining . . . Production and Sanitation employees did not receive a wage increase in 2008, 2009 and 2012.

Shipping, Receiving, Maintenance and Driver employees (not represented by a union) received pay increases every year . . . .

The union . . . can show you only a history of plant closings, boycotts, strikes, union dues and broken promises . . . .

(JT Exh. 12) (emphasis omitted); see also (JT Exh. 15).

H. Disciplinary Actions

1. Sandra Phillips' Written Warning and Related Investigation

a. General Counsel's Position

Phillips testified that, on January 31, 2013, she and coworker, David Capetillo, Jr., discussed the Company's repeated accusation that the Union caused Hostess' closure. She said that Capetillo blamed the Union, while she blamed poor management. She stated that she is an open Union supporter.[18] She added that a few days later, she found an article, which supported her position, and shared it with Capetillo on the plant floor. She stated that he did not appear upset and their exchange lasted a couple of minutes. See (JT Exh. 29). She related that Capetillo later complained to management, and she was summoned to a meeting with Burke. On March 27, 2013, *i.e., 2 months later*, she received this written warning:

> [Y]ou admitted approaching Capetillo at his work station during . . . paid work time, removing a newspaper article . . . [and] ask[ing him] to read the article . . . .
>
> This behavior is a direct violation of Group B Rule 8:
>
> *Group B Rule 8: Bringing newspaper . . . into a production or distribution area.*
>
> Management respects each individual's right to their opinion . . . however, behavior which may create an unpleasant, threatening or hostile work environment must not be allowed. Demonstrating such acts during the paid working time of either employee is also a violation of Company Rules . . . .
>
> Following the Group B step process you will receive disciplinary action in the form of a 1st Written Warning for violation of Group B Rule 8. . . .
>
> You are also warned to refrain from . . . harassment of fellow employees . . . .

(JT Exh. 32).[19] Phillips stated that the warning was befuddling, given that Pugh openly disseminated the first decertification petition in production areas, without reprisal. She added that coworkers commonly brought newspapers onto the plant floor, without discipline.

b. Company's Position

Ledbetter testified that Phillips jeopardized food safety, and that the prohibition against bringing newspapers onto the plant floor was designed to prevent food contamination. He stated that an auditor could have shut the plant down, on the basis of Phillips' actions.

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[18] Calderon credibly testified that Phillips, a vocal Union supporter, handled grievances and related duties.

[19] The Facility Rules provide a written warning for a first infraction of a Group B Rule. (JT Exhs. 32-33).

2. Vicki Loudermilk's and Lorraine Marks' Investigations and Personnel File Documentations

The Company also investigated Vicki Loudermilk, whom Capitello accused of, "asking him how [he] . . . was going to vote," and Lorraine Marks, whom he accused of saying that he would lose his job, if the Union were ousted and asking about his vote. (JT Exh. 28). Marks was summoned to Burke's office, and denied these accusations. (JT. Exh. 30). Loudermilk, whom was also summoned to Burke's office, claimed that Capitello openly volunteered how he intended to vote. (JT Exh. 31).

On March 27, 2013, the Company issued Personnel File Documentations to Marks and Loudermilk. (JT Exhs. 34-35). It told Marks that, although it could not resolve the credibility dispute, it would place its investigation report in her personnel file. (JT Exh. 34). It told Loudermilk that, while she violated workplace rules by interfering with a coworker, it would limit its response to placing its investigation report in her personnel file. (JT Exh. 35).

3. Marks' Suspension

a. General Counsel's Position

Marks testified that she regularly met with Union representatives at the plant, attended Union meetings and filed grievances.[20] (GC Exh. 5). She stated that, on March 24, 2013, she had an unexpected and dire need for a restroom break, but, could not find a supervisor or team leader to notify. She added her regularly assigned team leader was on leave, and that the replacement team leader was on a break, when her emergency arose. She stated that, consequently, she left the production line for a short period without advising supervision. She stated that she told Phillips, her coworker, before she left, who covered her 5-minute absence. She added that she has previously taken the same actions under comparable circumstances, without issue. She related that, upon her return, she encountered Banks, who inquired about her whereabouts. She averred that she was then summoned to Burke's office, who issued her a suspension pending investigation for leaving her work area, without permission.[21] (JT Exh. 48). She indicated that she has subsequently seen others taking comparable breaks, without issue.

Phillips stated that Marks was absent for less than 5 minutes, after first unsuccessfully searching for supervision. She stated that she filled in for her and production was unharmed. She stated that coworkers regularly left the line to use the restroom, without issue. She estimated that she personally covered for such coworkers at least once per month. She added that, while supervisors were generally available, there were substantial periods when they were not.[22]

Briggs, another unit employee, testified that she told Banks that she "saw three people walking . . . to the bathroom without permission" and that he coyly replied that, "they weren't

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20 She stated that, about 3 years earlier, she picketed on behalf of the Union concerning contract negotiations.

21 She was then suspended from work without pay from March 24 through 31.

22 She estimated that a supervisor was available for coverage about 90 percent of the time.

investigating them."[23] (Tr. 422). She stated that Marks was treated unfairly.

Calderon testified that Marks was an active Union member, who pursued a key grievance involving temporary workers in 2012, which resulted in 15 workers receiving backpay. He stated that she campaigned for the Union, which included distributing literature and telephoning employees. He noted that she encouraged new employees to become Union members. He said that her suspension was the first discipline of its kind involving a bathroom break.

b. Final Written Warning and Suspension

On May 30, 2013, Marks received the following Final Written Warning:

> You were suspended May 24, 2013 pending investigation of Immediate Termination Rules, Group A Rule(s) 3 and 22.
>
> *Rule 3: Using Company time. . . for personal use unrelated to employment . . . without proper authorization. <u>This includes leaving Company property during paid breaks or leaving your assigned work area without permission</u>.*
>
> *Rule 22: Job abandonment, including . . . <u>leaving an assigned work area without permission – i.e. walking off the job.</u>*
>
> **<u>Conclusion:</u>**
>
> During our investigation you indicated that you did not obtain permission to leave your work area . . . . .
>
> - Department Supervisor Ray Golston informed me that he was in the department . . . .
> - On your way to the restroom you walked past [Dan Banks] . . . .
>
> Management has considered all mitigating circumstances concluding that discharge is appropriate, but recognizes your long term service. You may return to work without back pay . . . subject to a Final Written Warning.

(JT Exh. 49).

c. Company's Position

Ledbetter testified that, although abandoning the production line is a terminable offense, Marks' lengthy service record warranted lesser discipline. He explained that the bakery is a continuous operation, and that her actions could have interrupted operations. He stated that her

[23] She stated that she was later asked to reveal these employees to Burke, and refused.

actions violated work rules and that she had been given notice of such rules.[24] He indicated that the Company has a paging system and it is unacceptable to solely seek a coworker's coverage. He related that Marks was placed on suspension pending investigation and allowed to return to work after 6 days without pay. He denied that others left the line without consent.

Banks testified that Marks works on a fast-paced line. He stated that unscheduled breaks must be reported, and employees can always page supervision on the intercom. He stated that, on May 24, Marks walked right by him, without speaking to him about her issue. Golston, Marks' supervisor, testified that he was only 20 feet from her and that she could have sought his aid. He agreed that she previously sought, and received, permission to leave for restroom breaks.

d. Credibility Resolutions

Although it is undisputed that Marks had substantial and open Union activity, left the line for less than 5 minutes for an emergency break, her absence was covered by Phillips, production was unaffected, she previously asked for and received restroom breaks and that the normal team leader was absent, there is a credibility dispute over whether supervisor Golston was present. I credit Marks' testimony on this point. First, she was a very believable witness with a solid demeanor. She had a good recollection and was unflustered by the courtroom. Second, her testimony was corroborated by Phillips and Briggs, who stated that Golston was not present. Lastly, it is implausible that Marks, who has previously asked Golston for permission to take restroom breaks, would have neglected to ask him for permission on this occasion, if he were actually there.

I also credit Marks', Phillips', and Briggs' claims that bathroom breaks are commonplace and accepted. I credit them for the reasons previously discussed, but, also on the basis of the Company's conspicuous failure to show that anyone else has been disciplined for this type of offense. It is also plausible that, if the Company policed this work rule as diligently as suggested, it would possess several similar disciplinary records.

e. Other Discipline for Leaving the Production Line

The General Counsel provided some disciplinary records involving employees leaving the production line for extended periods, which demonstrate the Company meting out far less severe discipline under vastly more egregious circumstances. The following chart is illustrative:

Date	Employee	Summary
10/17/12	C. Booker	Without permission, he went home mid-shift. He returned in 2 days, said that he was frustrated and was reinstated under a last chance agreement, without loss of pay.
3/17/12	Brandon Moses	Without permission, he left the production area for a reported restroom break and went home. He was reinstated , with only a final written warning.

[24] See (JT Exh. 5 ("Employees must not . . . be out of their assigned work area without permission . . . . Doing so is a Group A violation . . . . .")); (JT Exh. 16)("[When an] urgent . . . situation occurs, and you need to leave your assigned job . . . between scheduled breaks . . . . [,] quickly locate your supervisor . . . for permission. . . . Walking off the job without permission is a Group A rule violation which results in immediate discharge.")).

(GC Exhs. 11–12).

4. Christopher Contreras' Interview and Termination

a. January Interview

Contreras, a unit worker, was interviewed by Burke and Banks. He recalled Burke stating that:

> There was a Union . . . and that if anybody tries to ask you to talk about the Union, then just ignore it . . . because they're . . . trying to get rid of the Union . . . if you want to get paid more . . . then ignore everybody who's in the Union.

(Tr. 437). Both Banks and Burke denied this exchange.

I credit Contreras; he was credible, possessed a straightforward demeanor and had a strong recall. Also, this commentary was consistent with the Company's anti-Union campaign.

b. Tenure

i. General Counsel's Position

Contreras began on January 26. He was supervised by Kenny White, who initially granted him leave to see his probationary officer,[25] but, then rejected his later requests in November and December. He stated that he joined the Union in late-August.[26] See (GC Exh. 8). He said that, in November, he observed Hankins and supervisor White walking around the plant and soliciting employees to sign a petition seeking to oust the Union. He said that they told him to sign the petition, if he wanted more money. (Tr. 449). He added that White told him that, "if they did not get the Union out, then this facility would go down like Hostess." (Tr. 450). He said that he declined, and that 2 weeks later White asked why he wanted to pay $40 per month in Union dues and prompt a plant closure. He said that White later told him that he had the upper hand and could remove him if desired, which he linked to his Union support. He related that he was fired on April 16, 2013. He explained that a warrant had been issued for his arrest because he missed multiple probation meetings. He said that he was stopped for an unrelated matter, arrested for probation revocation, and held for 3 days. He contended that the jail telephone did not permit him to dial extension numbers, which precluded him from notifying the Company. He stated that he later met Burke, who told him that he had been fired for a "no call, no show" violation and nothing could be done. See (JT Exh. 41).

ii. Company's Position

Contreras was granted 7 excused absences between April 2012 and February 2013. (R. Exh. 3). Not including the absence that led to his firing, he sustained four additional

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25 He was convicted of theft and receiving stolen property.

26 Calderon testified that he attended Union meetings.

unexcused absences, and received a second written warning and a 1-day suspension for these transgressions. (R. Exh. 3; JT Exhs. 38–40). In total, he was absent a 12 times during his roughly 1 year tenure.

Ledbetter testified that regular attendance is mandatory and Contreras' firing was warranted. The Company's rules expressly provide that incarceration is not a valid excuse for an absence. He stated that "no-call, no-show" employees are generally fired. He stated that Contreras' Union activities were unknown, and played no role in his removal. The Company's personnel records demonstrated that it routinely fired employees for "no-call, no-show" offenses, and other attendance problems. See (R. Exhs. 10-11).

Banks testified that Contreras was fired for missing work without notice. He added that he reached the maximum allowable points under the attendance system and could have also been fired on that basis. He indicated that absences connected to incarceration are unexcused.

White testified that absentees must call in an hour before their scheduled start time. He agreed that Contreras requested leave to visit his probation officer, and that he approved some requests. He indicated that Contreras had repeated attendance issues. He denied knowing about his Union activities, or making the anti-Union comments.

iii. Credibility Resolution

Although Contreras did not dispute his attendance record or that he was "no-call, no-show," there was a credibility dispute over White's plant closure comments and threats. I credit Contreras. First, as noted, he was a generally credible witness, who was candid about sensitive issues, including his poor attendance and criminal record. Second, I found White to be a less than credible witness, who seemed more committed to pleasing supervision than offering a candid account. Finally, I note that White's plant closure and other threats were highly consistent with the Company's election mantra and that he was likely repeating this theme.

I. April 2013 Interview Comments

Jeremy Woods, who was employed from about April to July 2013 as a muffin mixer, testified that he was interviewed by Burke and Banks. He recalled them stating that there was an impending Union decertification vote, and that, "they could offer him better wages than the Union could and . . . the Union was responsible for shutting down Hostess Bakeries." (Tr. 215).

Banks denied such commentary, but, did not have any specific recollection of the interview. Burke similarly denied these comments.

I credit Woods. He had a strong recollection. Burke and Banks, on the other hand, had a poor recall of the meeting, and their comments were deeply consistent with the Company's anti-union mantra.

J. Withdrawal of Union Recognition

On June 13, 2013,[27] Hankins submitted a petition to the Company (the third decertification petition), which was signed by a majority of unit employees,[28] and stated:

> PETITION TO REMOVE UNION AS REPRESENTATIVE
>
> The undersigned employees of Southern Bakeries do not want to be represented by Bakery, Confectionary, Tobacco Workers and Grain Millers ("BCTGM") union. We hereby request that our employer immediately withdraw recognition from the BCTGM union, as it does not enjoy the support of a majority of employees in the bargaining unit.

(JT Exh. 46). Burke stated that she verified the authenticity of the signatures.

Hankins, a production coordinator/scheduler,[29] testified that he has been employed for 3 years. He claimed that he became disenchanted with the Union because the unit had not received a raise for several years. He stated that, after the earlier decertification drives failed, he prepared the third decertification petition, after consulting with the National Right to Work Foundation. He stated that he received no aid from management in its dissemination. He denied promising anything, in exchange for signatures. Israel Amidares helped him disseminate the petition amongst Spanish-speaking workers.

K. July 3, 2013 – Withdrawal of Recognition

On this date, Ledbetter sent the following letter to the Union:

> On Friday, June 14, 2013; we received a petition filed by the vast majority of our bargaining unit employees requesting that we withdraw recognition of the BGTGM union . . . . We . . . have no reason to believe that any of the signatures are not legitimate.
>
> Accordingly, . . . we hereby withdraw recognition of your union . . . .

(JT Exh. 51). The Company subsequently ceased deducting and remitting Union dues.

L. July 22, 2013 – Union Rejects Withdrawal of Recognition

On this date, the Union rejected the withdrawal of recognition and requested plant access. (JT Exh. 53). The Company denied their access request. (JT Exh. 54).

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27 The third decertification petition was signed between May 31 and June 12, 2013.

28 Approximately 2/3 of the unit signed the third petition. See (JT Exh. 46; R. Exh. 13; tr. 575).

29 Lewis testified that this position is not in the unit, although there is no evidence that it is supervisory. Lewis was, however, uncertain if the position was newly created, or akin to a unit team leader. Ledbetter stated that Hankins was, at all times, a unit team leader, who was mistaken about his exact job title.

M. September 29, 2013 – Unilateral Wage Increase

On this date, the Company unilaterally increased the unit's wages by an average of 27 cents per hour. (JT Exh. 1). The increase was implemented without notice or bargaining. (Id.).

III. ANALYSIS

A. Section 8(a)(1) Allegations

The General Counsel, in some cases, has alleged cumulative Section 8(a)(1) violations of the same strain (e.g. multiple plant closure threats). In such cases, where merit was found and the remedy was unaltered by finding cumulative violations, only a few illustrative examples were analyzed. See, e.g., *Smithfield Foods, Inc.*, 347 NLRB 1225, 1228-29 (2006).

1. Interrogations[30]

The Company violated Section 8(a)(1), when it interrogated employees about their Union activities. Two examples are demonstrative: in September, White asked Contreras why he became a dues-paying Union member; and on January 23, 2013, Ledbetter told employees that: "If any of you are harassed or threatened on any basis during this election campaign, regardless of whether you are for or against the union, we want to know about it immediately . . . ."

In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that the following factors determine whether an interrogation is unlawful:

> (1) The background, i.e. is there a history of employer hostility and discrimination?
> (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
> (3) The identity of the questioner, i.e. how high was he in the company hierarchy?
> (4) Place and method of interrogation, e.g. was employee called from work to the boss' office? Was there an atmosphere of unnatural formality?
> (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

> In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at page 940.

White's comments were an unlawful interrogation; he was Contreras' direct supervisor,

[30] These allegations are listed under pars. 6(a), 9 (f), 10(a), 11(f) and (h), 12 and 39 of the complaint.

he plainly sought information about his Union activities, and this interrogation was, as will be discussed, accompanied by an unlawful plant closure threat. Ledbetter's commentary was another interrogation. He is the Company's highest ranking plant official and his comments equated to a mass questioning about Union activities, with a charge to report such interactions. His comments were also, as will be discussed, accompanied by other unlawful statements.

2. Discharge and Job Loss Threats[31]

The Company violated Section 8(a)(1), when it repeatedly threatened job loss. Two examples are demonstrative: in September, White, concerning Contreras' refusal to sign a decertification petition, told him that he had the "upper hand" and could get rid of him whenever desired; and on February 1, 2013, Ledbetter repeatedly told employees that unionization would lead to strikes, which could backfire, and damage families and job security.

A statement is an unlawful threat, when it coerces employees in the exercise of their Section 7 rights. 29 U.S.C. § 158(a). In evaluating such statements, the Board:

> [D]oes not consider subjective reactions, but rather whether, under all the circumstances, a respondent's remarks reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed under the Act.

Sage Dining Service, 312 NLRB 845, 846 (1993); *Double D Construction Group,* 339 NLRB 303 (2003) ("test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction.").

Both Ledbetter's and White's comments threatened job loss, and, as a result, reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed under the Act. Moreover, the Company failed to demonstrate that Ledbetter's job loss predictions were reasonably based upon objective facts.

3. Plant Closure Threats[32]

The Company repeatedly threatened plant closure. Ledbetter continuously told employees at captive audience meetings, that retaining the Union would threaten job security, prompt a closure and cripple the business. He added that the Union would kill the Company, in the same way that it toppled Meyers Bakeries and Hostess. White told Contreras that the Union would cause a Hostess-like closure. An employer violates Section 8(a)(1), when it engages in conduct that might reasonably tend to interfere with employees' Section 7 rights, which includes plant closure threats, in retaliation for engaging in union activity. *Mid-South Drywall Co., Inc.*, 339 NLRB 480 (2003). Unsubstantiated predictions that a plant shutdown will result from a union victory are unlawfully coercive. *Federated Logistics & Operations.*, 340 NLRB 255, 256

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31 These allegations are listed under pars. 6(b), 9(a), 11(a) and 39 of the complaint.

32 These allegations are listed under pars. 8(a), 9(b), 10(b), 11(b), 13(b) and 39 of the complaint.

(2003).[33] The above-described comments were, accordingly, unlawful.

4. Surveillance[34]

5 The General Counsel failed to show that the Company engaged in surveillance at the January 23 and February 1, 2013 meetings, as alleged in the complaint. The General Counsel failed to adduce evidence of surveillance, brief the matter, or explain its theory. These allegations are, thus, dismissed.

10 ### 5. Impression of Surveillance[35]

The Company created an unlawful impression on surveillance, when it installed cameras in the break area. An employer creates an unlawful impression of surveillance, if reasonable employees would assume that their union activities are being monitored. *Stevens Creek*
15 *Chrysler*, 353 NLRB 1294, 1295–1296 (2009). Given that the break area was the hub, where Union agents conducted their business, the installation of cameras during a decertification campaign reasonably caused employees to assume that their Union discussions and activities in this hub were being monitored.

20 ### 6. Futility of Bargaining and Unionizing[36]

The Company violated Section 8(a)(1), when Ledbetter repeatedly conveyed that unionization was futile. Specifically, he repeated, at captive-audience meetings, that: "unions are free to promise away"; "they can promise employees the moon"; "the union has no power to
25 make its promises come true"; "all the union can do is ask and all the union can get is what the Company will agree to give"; "the union is free to make any promises . . . . but . . . could not guarantee anything"; "don't be a victim of believing slick salespeople"; and "collective bargaining can, and did, result in your getting less pay than non-union employees."

30 The Board has held that, barring outright threats to refuse to bargain in good faith with an incoming union, the legality of any particular statement depends upon its context. See, e.g., *Somerset Welding & Steel, Inc.,* 314 NLRB 829, 832 (1994). Statements made in a coercive context are unlawful because they, "leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore."
35 *Earthgrains Co.,* 336 NLRB 1119, 1119–1120 (2001); see, e.g., *Smithfield Foods,* 347 NLRB 1225, 1230 (2006) (statement from highest official that company was in complete control of future negotiations was unlawful); *Aqua Cool*, 332 NLRB 95, 95 (2000) (statement that employees were unlikely to win anything more at the bargaining table than other employees).

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33 Although a prediction of plant closure may be lawful, if the employer can show that it is the probable consequence of unionization for reasons beyond its control, see *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), there was no evidence presented, which shows that the Company's repeated comparisons to Hostess Brands and Meyers Bakeries and their shutdowns were rational predictions based on probable consequences beyond its control. These statements were, thus, unsupported predictions designed to intimidate employees.

34 These allegations are listed under pars. 9(f), 11(f) and 39 of the complaint.

35 These allegations are listed under pars. 7 and 39 of the complaint.

36 These allegations are listed under pars. 9(e), 11(e) and 39 of the complaint.

Ledbetter's comments unlawfully conveyed that ongoing unionization was futile.

7. Promising Benefits[37]

The Company violated Section 8(a)(1), when it continuously promised to reward employees with higher wages, if they rejected the Union. Ledbetter repeatedly advised the unit that their non-Union colleagues were paid more and received wage increases while theirs stagnated, and identified the Union as the cause. Specifically, in early 2013, he made these statements: "[a]ll of our costs related to dealing with this union leave less money for wages and benefits"; "[w]hy is it that collective bargaining can, and did, result in your getting less pay than non-union employees?"; "[m]oney . . . spent on bargaining and grievances and otherwise dealing with the union is money that is simply not otherwise available to our employees"; and "we have incurred tens of thousands of dollars in legal fees that have left us with less money to put into the pockets of our unionized employees than we have been able to give to our non-union workforce." (JT Exhs. 7-8). Banks and Burke mimicked this theme, when they told Woods that a Union decertification vote was approaching and "they could offer . . . better wages than the Union."

An employer violates the Act, when it promises to reward employees, in order to curtail unionization. See *Curwood, Inc.*, 339 NLRB 1137, 1147 (2003). The danger inherent in a well-timed promise to bestow a benefit is the implication that employees must disavow their union support, in order to obtain the benefit. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The obvious message behind the above-described unlawful statements was that, if unit employees wanted a raise, they first needed to jettison the Union.

8. Threats of Unspecified Reprisals[38]

The Company violated Section 8(a)(1), when it threatened employees with unspecified reprisals. Ledbetter made this statement in January 2013:

> If any of you are harassed or threatened on any basis during this election campaign, regardless of whether you are for or against the union, we want to know about it immediately so we can address the problem . . . .

(JT Exh. 7). The Board has held that such invitations are unlawful. See, e.g., *Ryder Truck Rental*, 341 NLRB 761, 761–62 (2004) ("the Act allows employees to engage in persistent union solicitation even when it annoys or disturbs the employees who are being solicited . . . . [and] an employer's invitation to employees to report instances of "harassment" by employees engaged in union activity is violative of Section 8(a)(1).").[39]

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37 These allegations are listed under pars. 9(c)-(d), 11(c)-(d), 13(a) and 39 of the complaint.

38 These allegations are listed under pars. 9(g)-(i), 11(g)-(i) and 39 of the complaint.

39 See also *Hawkins-Hawkins Co.*, 289 NLRB 1423 (1988) ("if anyone was harassed by the Union . . . contact management and they would take care of it"); *W. F. Hall Printing Co.*, 250 NLRB 803, 804 (1980).

9. Disparagement of the Union[40]

The Company violated Section 8(a)(1), when it repeatedly disparaged the Union in its January 17, 2013 memorandum. (JT Exh. 25). This memo repeatedly labeled the Union's alleged campaign statements as fraudulent, in tandem with advancing an unlawful plant closure threat[41] and appeal to racial prejudice.[42] See, e.g., *Sears, Roebuck & Co*., 305 NLRB 193 (1991) (disparagement of a union becomes unlawful, when accompanied by other coercive statements); *Tony Silva Painting Co.*, 322 NLRB 989, 993 fn. 5 (1996).[43]

B. Section 8(a)(3) Allegations[44]

The General Counsel alleged that the Company violated Section 8(a)(3) when it: placed Loudermilk, Phillips and Marks under investigation and issued Personnel File Documentations; issued Marks a warning; suspended Phillips; fired Contreras and refused to grant him time off; and granted a wage increase to the unit following its withdrawal of recognition.[45]

1. General Legal Principles

The framework described in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982) sets forth the appropriate standard:

> Under that test, the General Counsel must prove by a preponderance of the evidence that union animus was a substantial or motivating factor in the adverse employment action. The elements commonly required to support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and union animus on the part of the employer.
>
> If the General Counsel makes the required initial showing, the burden then shifts to the employer to prove, as an affirmative defense, that it would have taken the

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40 These allegations are listed under pars. 8(b) and 39 of the complaint.

41 The memo stated that, "the union appears to have plans to take our employees out on strike here in Hope, same as they recently did at Hostess, where over 18,000 jobs were lost and 33 bakeries and retail outlets were closed." (JT Exh. 25). The Company failed to produce any evidence showing that the Union actually had concrete strike plans, or that its closure prediction was a probable consequence of the strike for reasons beyond its control. Such commentary was, therefore, unlawful. See *Federated Logistics & Operations.*, supra, 340 NLRB at 256.

42 The memo attributed this racist statement to the Union: "[the Union said that the Company is] "gonna fire Hispanics (Latino employees) if they change their names." (JT Exh. 25). Given that the Company failed to show that the Union actually made this divisive statement, its usage of racial baiting to further its election interests was unlawful. See *Holiday Inn of Chicago South*, 209 NLRB 11 (1974) (election appeal to racial prejudice is unlawful).

43 The repeated nature of the instant disparagement also, arguably, violated the Act. See *Regency House of Wallingford*, *Inc.*, 356 NLRB No. 86 (2011) (repeated denigration implies that unionization is futile).

44 These allegations are listed under pars. 15, 16, 18, 19, 20, 21, 22, 36 and 40 of the complaint.

45 Given that that the increase independently violated Section 8(a)(5), it is unnecessary to pass on whether it also violated Section 8(a)(3) because the ultimate remedy would be unaltered. *Bryant & Stratton Business Institute,* 321 NLRB 1007 fn. 4 (1996).

> same action even in the absence of the employee's union activity. To establish this affirmative defense, "[a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity."

Consolidated Bus Transit, 350 NLRB 1064, 1065-66 (2007) (citations omitted).

If the employer's proffered defenses are found to be a pretext, i.e., the reasons given for its actions are either false or not relied upon, it fails by definition to show that it would have taken the same action for those reasons, and there is no need to perform the second part of the Wright Line analysis. However, further analysis is required if the defense is one of "dual motivation," that is, the employer defends that, even if an invalid reason might have played some part in its motivation, it would have taken the same action against the employee for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

2. Loudermilk Investigation and Personnel File Documentation

a. Prima Facie Case

The General Counsel made a prima facie *Wright Line* showing concerning Loudermilk's investigation and Personnel File Documentation. Union activity was established, when Loudermilk told Capitello, who was anti-Union, that she supported the Union, and opined that it should not be blamed for the Hostess closure. (JT Exh. 31). Knowledge was adduced, when Loudermilk prepared a written statement for the Company about this exchange. Union animus was demonstrated by the multitude of violations present herein.

b. Affirmative Defense

The Company failed to show that it would have taken these actions, absent Loudermilk's Union activity. First, the decision to expend resources interviewing her, investigating uncontested conduct for a full 2 months, and preparing a lengthy memo and analysis is highly suspect, given that she only asked someone about his vote. (JT Exh. 28). The decision to respond so dramatically to such a minor and lawful interaction reeks of invidious intent. Moreover, given that there is no evidence that the Company limited other workplace comments beyond pro-Union banter, or investigated Capitello for his comparable activity, its actions were discriminatory. Finally, the multitude of additional violations present herein further establish that Loudermilk's treatment was unlawful.

3. Marks Investigation, Personnel File Documentation and Suspension

a. Prima Facie Case

The General Counsel has made a prima facie *Wright Line* showing concerning Marks' investigation, Personnel File Documentation and suspension. Calderon testified that she had significant Union activity, which included meeting with Union representatives in the break area, attending Union meetings and handling grievances. The Company knew about these activities,

on the basis of her grievance-handling, and Capitello's complaints. See (JT Exh. 28). As noted, animus was demonstrated by the multitude of violations present herein.

b. Affirmative Defense

The Company failed to show that it would have taken these actions, absent Marks' Union activity. First, regarding the investigation and documentation, it is implausible that the Company would have conducted a multiple-month investigation and drafted a lengthy memo regarding such a minor verbal exchange, absent an anti-Union motive. Moreover, if the Company investigated every minor infraction with the same fervor, it would hardly have time to fulfill its primary purpose. Second, regarding Marks' suspension, its rationale was pretextual. Simply put, it opted to suspend a long-term employee because she needed to use the bathroom and returned in five minutes, when it is undisputed that: she found coverage; there was no team leader or supervisor present for immediate short-term relief; and production was unaffected. The Company failed to show that others were disciplined for similar conduct and only provided documentation that others were disciplined less severely for more egregious abandonments. I credited the testimony, as noted, that others routinely left the line for short restroom breaks, without issue and with supervisory knowledge.

4. Phillips Investigation, Personnel File Documentation and Written Warning

a. Prima Facie Case

The General Counsel has made a prima facie *Wright Line* showing concerning Phillips' investigation, Personnel File Documentation and written warning. Union activity was adduced, when she urged Capitello to support the Union and offered him a pro-Union article. (JT Exh. 31). Knowledge was derived by the Company's investigation of this issue. As noted, animus was demonstrated by the multitude of violations present herein.

b. Affirmative Defense

The Company failed to show that it would have taken these actions, absent Phillips' Union activity. Its decision to investigate her, reflect upon her case for multiple months, prepare a lengthy memo analyzing her actions, and then issue a warning stating that termination was strongly considered, to someone who <u>solely</u> handed a coworker an article, renders its actions highly suspect. It provided no evidence that: she was a recidivist rule violator that jeopardized food safety; handled similar cases comparably; or production was harmed. Additionally, the extensive additional violations present herein irreparably undercut any assertion that its actions were non-discriminatory.

5. Contreras Failure to Grant Leave and Discharge

Contreras' firing and leave refusal were lawful. Although the General Counsel established a prima facie case, the Company adduced that it would have undertaken such actions, absent his Union activity.

a. Prima Facie Case

The General Counsel made a prima facie *Wright Line* showing. Contreras engaged in Union activity, when he joined the Union and rejected White's invitation to sign an anti-Union petition. Knowledge and animus were established by White's anti-Union comments.

b. Affirmative Defense

The Company demonstrated that it would have denied his leave request and fired him, absent his Union activity. Simply put, he had a horrendous attendance record and the Company reached the point, where it rationally determined that it would no longer grant him leave or retain his services. His "no-call, no-show" connected to his arrest was the final straw in this process. The Company's actions were consistent with its workplace rules and repeated terminations of other employees, with severe attendance issues, and, thus, were lawful.

C. Section 8(a)(5) Allegations

1. Pre-Withdrawal of Recognition Unilateral Changes

a. Surveillance Cameras[46]

The Company's installation of surveillance cameras in the break room violated Section 8(a)(5). The installation of such cameras is a mandatory subject of bargaining, which requires pre-implementation notice and bargaining. See, e.g., *Anheuser-Busch*, 342 NLRB 560 (2004); *Colgate-Palmolive Co.,* 323 NLRB 515 (1997); *Nortech*, 336 NLRB 554, 568 (2001). It is undisputed that the Company took unilateral action, without notice or bargaining. The existence of analogous cameras in production areas, where there was limited Union activity, was not a clear and unmistakable waiver of the Union's right to bargain over the installation of such cameras in the break area, where there was repetitive Union activity. The CBA also failed to contain a clear and unmistakable waiver of the Union's right to bargain over this topic. These actions, therefore, violated Section 8(a)(5).

b. Union Access[47]

The Company violated Section 8(a)(5), when Ledbetter repeatedly altered the Union's access rights. These changes, which greatly deviated from the Company's past access practices, included, inter alia: requiring the Union to divulge its reasons for visiting the plant; mandating it to identify the employees that it sought to meet with; banning all visits not involving grievances; prohibiting solicitation and election discussions; capping the duration and frequency of visits; prohibiting meetings in the large break area and then relegating the Union to a cubicle; threatening to respond to violations with expulsion, arrest and total exclusion; prohibiting all access between March and November 2012, and at other times thereafter; and removing the window between the small and large break rooms that the Union used to communicate with unit

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46 These allegations are listed under pars. 24, 37 and 41 of the complaint.

47 These allegations are listed under pars. 25, 26, 27, 28, 29, 30, 31, 32, 33, 37 and 41 of the complaint.

employees. It is undisputed that these changes were imposed, without notice or bargaining.[48]

A contractual union access provision is a term and condition of employment that survives the agreement's expiration. Moreover, changes to contractual access provisions or past access practices are mandatory subject of bargaining, which require notice and bargaining before enacting such changes. *Turtle Bay Resorts*, 353 NLRB 1242, 1275 (2009); *T.L.C. St. Petersburg,* 307 NLRB 605, 610 (1992); *Ernst Home Centers*, 308 NLRB 848–49 (1992).

The Company's voluminous unilateral changes to the Union's access rights violated Section 8(a)(5). See, e.g., *BASF Wyandotte Corp.*, 274 NLRB 978 (1985) (unilateral changes to union office space was unlawful); *Ernst Home Centers, Inc.,* supra, 308 NLRB 848–49 (unilaterally changes to past access practice); *Frontier Hotel & Casino.,* 323 NLRB 815, 818 (1997); *Oaktree Capital Management*, 355 NLRB 1272 (2010).

2. Withdrawal of Recognition[49]

On July 3, 2013, the Company unlawfully withdrew recognition from the Union, as the unit's exclusive collective bargaining representative. As a threshold matter, an employer cannot lawfully withdraw recognition from a union where it has committed unfair labor practices that directly relate to the employee decertification effort, such as actively soliciting, promoting or assisting the effort. See *Hearst Corp.*, 281 NLRB 764 (1986), enfd. 837 F.2d 1088 (5th Cir. 1988)). In circumstances where the employer engages in this type of misconduct, the Board "presumes that the employer's unlawful meddling tainted any resulting expression of employee disaffection, without specific proof of causation, and precludes the employer from relying on that expressed disaffection to overcome the union's continuing presumption of majority support." *Id*. In *Ardsley Bus Corp.*, 357 NLRB No. 85 (2011), the Board further explained that:

> Upon expiration of a collective-bargaining agreement, an incumbent union is presumed to have majority support among the employees it represents. An employer may withdraw recognition from the union only if the union has actually lost majority support. . . . An employer may not, however, lawfully withdraw recognition from a union where it has committed unfair labor practices that have a tendency to cause the loss of union support. . . . Where the unfair labor practices do not involve a general refusal to recognize and bargain with the union, there must be a causal relationship between the unfair labor practices and the loss of support in order for the withdrawal of recognition to be unlawful. . . . To determine whether there is a causal connection between an employer's unfair labor practices and employees' disaffection, the Board considers the following factors:
>
> (1) The length of time between the unfair labor practices and the withdrawal of recognition;
> (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees;

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48 I credited the General Counsel's witnesses, who said that these changes significantly altered prior policies.

49 These allegations are listed under pars. 38 and 41 of the complaint.

(3) any possible tendency to cause employee disaffection from the union; and
(4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

357 NLRB No. 85, slip op. at 4.

In the instant case, the Company's extensive and repeated violations caused the widespread employee disaffection, which prompted the third decertification petition. These violations were close in time to this petition, and were so voluminous and egregious that they naturally spawned significant disaffection from a Union that had been rendered powerless by a recalcitrant employer. As noted, the Company repeatedly and unlawfully threatened and disciplined Union adherents, threatened that ongoing Union support would cause a plant closure, continuously labeled ongoing Union support as futile and useless, and deeply undermined the Union by making several unilateral changes, which included eviscerating its ability meet with unit employees at the plant. Such actions naturally spawned the third petition, and left an indelible message that continued unionization was tantamount to job loss and a pointless exercise. See *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1068 (2001).

3. Post-Withdrawal of Recognition Unilateral Changes[50]

Given that the Company unlawfully withdrew recognition from the Union, its subsequent unilateral changes regarding wages and Union access were unlawful. See, e.g., *Northwest Graphics, Inc*., 342 NRLB 1288, 1288 (2004) (unilateral wage increases); *Turtle Bay Resorts*, supra, 353 NLRB at 1275 (union access).

The Company's refusal to deduct and remit dues to the Union since July 2013, however, was lawful. Although the Board previously held that dues checkoff provisions survive contract expiration and that post-expiration cessation was unlawful (see *Alamo Rent-A-Car*, 359 NLRB No. 149, slip op. at 4 (2103); *WKYC-TV, Inc.*, 359 NLRB No. 30, slip op. at 8 (2012)), such precedent was recently set aside by the United States Supreme Court. See *NLRB v. Noel Canning*, No. 12-1281, ___ S.Ct. ___ (Jun 26, 2014) (setting aside Board precedent from January 4, 2012 through August 4, 2013 because the Board lacked a quorum during this period, as a consequence of the invalid appointments of three of its five members). I find, as a result, that the Board's pre-*Noel Canning* precedent is controlling herein, which provides that employers do not violate Section 8(a)(5) by unilaterally ceasing dues checkoff following the expiration of their collective-bargaining agreements. See, e.g., *Hacienda Resort Hotel & Casino*, 331 NLRB 665 (2000). Thus, given that the parties' CBA expired on February 8, 2012, the Company's July 2013 cessation of dues deductions and remissions was valid.

CONCLUSIONS OF LAW

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

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50 These allegations are listed under pars. 34–37 and 41 of the complaint.

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

3. The Union is, and, at all material times, was the exclusive bargaining representative for the following appropriate unit:

> All full-time and regular production and sanitation employees employed by the Company at its Hope, Arkansas plant, excluding all other employees, including temporary and seasonal employees as defined in the parties' expired collective bargaining agreement, office clerical employees, professional employees, guards and supervisors as defined by the Act.

4. The Company violated Section 8(a)(1) of the Act by

a. Threatening employees with discipline, job loss and other unspecified reprisals, if they engaged in Union or other protected concerted activities.

b. Interrogating employees concerning their Union or other protected concerted activities.

c. Creating the impression that employee Union activities were under surveillance.

d. Telling employees that it would be futile for them to retain the Union as their collective-bargaining representative.

e. Promising employees improved wages and other unspecified benefits, in order to discourage them from retaining the Union as their collective-bargaining representative.

f. Disparaging the Union, while appealing to racial prejudice, in order to discourage employees from retaining the Union as their collective-bargaining representative.

g. Threatening employees that the Company would close, if they engaged in Union or other protected concerted activities.

5. The Company violated Section 8(a)(1) and (3) of the Act by

a. Subjecting Loudermilk to a disciplinary investigation and issuing her a Personnel File Documentation because she engaged in Union or other protected concerted activities.

b. Subjecting Marks to a disciplinary investigation and issuing her a Personnel File Documentation and suspension because she engaged in Union or other protected concerted activities.

c. Subjecting Phillips to a disciplinary investigation, and issuing her a

Personnel File Documentation and written warning because she engaged in Union or other protected concerted activities.

6. The Company violated Section 8(a)(1) and (5) of the Act by

a. Withdrawing recognition from the Union on July 3, 2013.

b. Unilaterally installing surveillance cameras in the break area.

c. Unilaterally changing the Union's plant access rights and procedures.

d. Prohibiting the Union from entering the plant between March and November 2012, and, at all times, after February 2013.

e. Unilaterally increasing employees' wages in September 2013.

7. The Company has not otherwise violated the Act.

8. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company committed certain unfair labor practices, it must cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

It shall expunge from its records any reference to these personnel actions: Loudermilk's disciplinary investigation and documentation; Marks' disciplinary investigation, documentation and suspension; and Phillips' disciplinary investigation, documentation and warning. It shall also provide them with written notice of such expunction, and inform them that its unlawful conduct will not be used against them as a basis for future discipline. It shall also make Marks whole for her suspension; her 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 as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

It shall also recognize the Union and, upon request, meet and bargain with it regarding the unit's terms and conditions of employment. It will reinstate its access rights, and rescind any unilateral changes made to such access rights since March 8, 2012. It shall remove the surveillance cameras that were installed in the break area in January 2013 and restore the windowed walls that divided the break area. It will, if requested by the Union, rescind the unilateral wage increase that was implemented after its withdrawal of recognition.

It shall distribute appropriate remedial notices electronically via email, intranet, internet, or other appropriate electronic means to unit employees, in addition to the traditional physical posting of paper notices, if it customarily communicates with workers in this manner. See *J*

Picini Flooring, 356 NLRB No. 9 (2010). Because the record demonstrates that it employs a significant number of unit employees, who do not speak or read English, the attached notice shall be posted in English and Spanish.

In addition to the traditional remedies for the violations found herein, Ledbetter will read the notice marked "Appendix" to unit employees at the plant, during work time, in the presence of a Board agent. His notice reading will simultaneously be translated into Spanish. A notice reading will counteract the coercive impact of the instant unfair labor practices, which were substantial, pervasive and frequently committed at analogous captive audience meetings. See *McAllister Towing & Transportation Co.*, 341 NLRB 394, 400 (2004).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[51]

ORDER

The Company, Southern Bakeries, LLC, Hope, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Threatening employees with discipline, job loss and other unspecified reprisals, if they engage in Union or other protected concerted activities.

b. Interrogating employees concerning their Union or other protected concerted activities.

c. Creating the impression that employee Union activities were under surveillance.

d. Telling employees that it would be futile for them to retain the Union as their collective-bargaining representative.

e. Promising employees improved wages and other unspecified benefits, in order to discourage them from retaining the Union as their collective-bargaining representative.

f. Disparaging the Union, while appealing to racial prejudice, in order to discourage employees from retaining the Union as their collective-bargaining representative.

g. Threatening employees that the Company would close, if they engaged in Union or other protected concerted activities.

h. Commencing disciplinary investigations against, issuing written warnings

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

and personnel file documentations to, suspending, or otherwise discriminating against Lorraine Marks, Sandra Phillips or Vicki Loudermilk, or any other employee, for supporting Bakery, Confectionary, Tobacco, Grain Millers Union, Local 111, or any other labor organization, or for engaging in other protected concerted activities.

i. Withdrawing recognition from the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time and regular production and sanitation employees employed by the Company at its Hope, Arkansas plant, excluding all other employees, including temporary and seasonal employees as defined in the parties' expired collective-bargaining agreement, office clerical employees, professional employees, guards and supervisors as defined by the Act.

j. Granting a wage increase to its unit employees, without providing the Union notice and an opportunity to bargain.

k. Implementing new rules regarding the Union's access to unit employees at the plant since March 8, 2012, and, thereafter, barring the Union from entering the plant, without providing it notice and an opportunity to bargain.

l. Installing surveillance cameras in the break area, without providing the Union notice and an opportunity to bargain.

m. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[52]

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

a. Recognize the Union as the exclusive collective-bargaining representative of the unit and, upon request, bargain with it regarding the wages, hours, and terms and conditions of employment of unit employees and, if an understanding is reached, embody the understanding in a signed agreement.

b. If requested by the Union, rescind the wage increase that was implemented in September 2013, and bargain with it before implementing future wage and benefit increases for unit employees.

c. Restore the plant access policy, which was in effect prior to March 8, 2012.[53]

d. Remove the surveillance cameras that were installed in the break area, and bargain with the Union before installing such cameras in the break area in the future.

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52 A broad cease and desist order is appropriate herein. See, e.g., *Regency Grande Nursing & Rehabilitation Center*, 354 NLRN No. 75, slip op. at 2, n. 10 (2009).

53 This includes restoring the windowed wall, which divided the break area.

e. Make Marks whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

f. Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful disciplinary investigations, written warning, Personnel File Documentations and suspension concerning Marks, Phillips and Loudermilk, and within 3 days thereafter notify them, in writing, that this has been done and that such discipline will not be used against them in any way.

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

h. Within 14 days after service by the Region, physically post at its Hope, Arkansas facility, and electronically send and post via email, intranet, internet, or other electronic means to its unit employees who were employed at its Hope, Arkansas facility at any time since March 8, 2012, copies of the attached Notice marked "Appendix" in English and Spanish.[54] Copies of the Notice, on forms provided by the Regional Director for Region 15, after being signed by the Company's authorized representative, shall be physically posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Company 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 Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by it at the facility at any time since March 8, 2012.

i. Within 14 days after service by the Region, hold a meeting or meetings during working hours, which will be scheduled to ensure the widest possible attendance of unit employees, at which time the attached notice marked "Appendix" is to be read to its employees by Ledbetter in the presence of a Board agent; such notice reading will be simultaneously translated into Spanish by an interpreter.

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

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54 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."

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

Dated Washington, D.C. July 17, 2014

Robert A. Ringler
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten discipline, job loss or other unspecified reprisals, because you support the Bakery, Confectionary, Tobacco and Grain Millers Union, Local 111 (the Union) or any other union.

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

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

WE WILL NOT tell you that it would be futile or useless for you to retain the Union as your collective-bargaining representative.

WE WILL NOT promise you better wages and benefits, in order to discourage you from retaining the Union as your collective-bargaining representative.

WE WILL NOT disparage the Union, while appealing to racial prejudice, in order to discourage you from retaining the Union as your collective-bargaining representative.

WE WILL NOT threaten that we will close the plant, if you engage in Union or other protected concerted activities.

WE WILL NOT investigate you, issue written warnings and personnel file documentations, suspend you, or otherwise discriminate against because you support the Union or any other labor organization, or for engaging in other protected concerted activities.

WE WILL NOT withdraw recognition from the Union or refuse to bargain with it as the exclusive collective-bargaining representative of employees in the following appropriate unit:

> All full-time and regular production and sanitation employees employed at our Hope, Arkansas plant, excluding all other employees, including temporary and

seasonal employees as defined in the parties' expired collective-bargaining agreement, office clerical employees, professional employees, guards and supervisors as defined by the Act.

WE WILL NOT make changes to your wages, hours, and other terms and conditions of employment, without first notifying the Union and offering it an opportunity to bargain regarding these proposed changes.

WE WILL NOT limit the Union's ability to enter the plant and break area, without first notifying the Union and offering it an opportunity to bargain regarding the proposed changes.

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

WE WILL recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of our unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, upon request, cancel and rescind all terms and conditions of employment that we unlawfully implemented since March 8, 2012, which included our installation of surveillance cameras in the break area, changes in the Union's plant access rights and wage increase, but we are not required to cancel any unilateral changes that benefited you, such as the wage increase that we implemented in September 2013.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful investigations, personnel file documentations, written warnings and suspensions involving Lorraine Marks, Sandra Phillips and Vicki Loudermilk.

WE WILL make Marks whole for any loss of earnings and other benefits resulting from her suspension.

WE WILL, within 3 days thereafter, notify Marks, Phillips and Loudermilk in writing that the above-described actions have been taken and that the investigations, personnel file documentations, written warning and suspension will not be used against them in any way.

WE WILL hold a meeting or meetings during working hours and have this notice read to you and your fellow workers in English by Executive Vice President Rickey Ledbetter, and simultaneously translated into Spanish, in the presence of an agent of the National Labor Relations Board.

SOUTHERN BAKERIES, LLC
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

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

600 South Maestri Place, 7th Floor, New Orleans, LA 70130-3413
(504) 589-6361, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-101311 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (504) 589-6389.