JD–29–01
Detroit, MI

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

MAGNA INTERNATIONAL, INC.	Cases 7–CA–43093(1)
MAGNA INTERIOR SYSTEMS, INC.,	7–CA–43093(2)
BRIGHTON INTERIOR SYSTEMS DIVISION)	7–CA–43173(1)
(VERSATRIM ASSEMBLY AND SEQUENCING DIVISION)	7–CA–43173(2)
(VERSATRIM DIVISION)	7–CA–43173(4)
MAGNA MIRROR SYSTEMS,	7–CA–43212(1)
(LOWELL ENGINEERING, INC.)[1]	7–CA–43212(2)
	7–CA–43212(3)
	7–RC–21817

and

INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO

John Ciaramitaro, Judith Schulz and Robert Dryzga, Esqs. for the General Counsel.
Maurice Jenkins and Timothy Howlett, Esqs., (Dickinson Wright PLLC), Detroit, Michigan, and *Andrew Stanivsz, Esq., Magna International, Aurora, Ontario,* for the Respondent.
Betsy A. Engel and Catherine Trafton, Esqs., Detroit, Michigan, for the Charging Party.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit and Grand Rapids, Michigan on October 23-26, November 27–28 and December 11-14, 2000. The charges were filed between May 30, and July 20, 2000. Before me also are objections filed on July 7, 2000 to the elections conducted on June 29, 2000 at the Versatrim Howell, Michigan facility and the Versatrim Assembly and Sequencing facility located in Auburn Hills, Michigan. A consolidated complaint and order consolidating the unfair labor practice charges and the representation proceeding was issued on August 31, 2000. A second such order and amended complaint was issued on September 29, 2000. The complaint was further amended on October 20, 2000 and at the conclusion of the hearing.

[1] The original caption in this matter included Vehma International, Inc., with respect to which no evidence was introduced at the hearing.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and Charging Party, I make the following

Findings of Fact

I. Jurisdiction

Magna International, Inc., is a corporation headquartered in Aurora, Ontario, with approximately 165 manufacturing divisions worldwide, which provide components and systems to automobile manufacturers. Magna employs over 60,000 people. Fifty-five of its divisions are in Ontario, Canada, 38 are in the United States and 14 are in the State of Michigan. Among Magna International's divisions is the Versatrim division (also called the Magna Interior Systems Group). Versatrim is part of Atoma, Inc., a corporation wholly-owned by Magna International.

The Versatrim division includes the Versatrim plant in Howell, Michigan, which manufactures door and instrument panels (hereinafter "the Howell plant"), and the Versatrim Assembly and Sequencing plants in Auburn Hills and Warren, Michigan (hereinafter "the Auburn Hills" and "Warren" plants). These two facilities produce instrument panels and some interior door panels. The other divisions involved in this case are Brighton Interior Systems in Brighton, Michigan ("the Brighton plant" or "BIS")[2], and Lowell Engineering, Inc. in Alto, Michigan ("the Alto plant"), which is part of Magna Mirrors Systems, Inc., and produces automobile mirror assemblies.

Each of these divisions realized gross revenues in excess of $1,000,000 in calendar year 1999 and purchased or caused to be shipped to its various Michigan facilities goods valued in excess of $50,000, which were shipped directly to its Michigan facilities from points located outside the State of Michigan. Each of these divisions admits and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Wages increases implemented and announced during the UAW's organizing drives (Complaint paragraph 8)

On May 17, 2000, the UAW filed a petition to represent employees at ten facilities, including the five at issue in this proceeding. Organizing activity began at the Howell plant sometime in February 2000. Management at the Howell plant became aware of this activity early that month.[3]

---

[2] It is not entirely clear how the Brighton plant fits into Magna's overall organizational scheme. However, its management report to Peter Schmied, the president of Atoma, as does the management at Howell, Warren and Auburn Hills.

[3] I conclude that Howell management was aware of organizing activity in February from Bradley House's uncontradicted testimony that between February 5 and 7, 2000, Supervisor Rick Putnam asked him about a Union meeting that Versatrim employees had attended. Moreover, Department Manager Ken Garrison testified that he was aware from Putnam, as well

Continued

Brighton, Alto, Auburn Hills and Warren management became aware of organizing drives at their facilities on May 2 or 3, 2000, when UAW organizers distributed union literature outside of the entrances to these facilities.

The announcement of wage Increases at the Auburn Hills and Warren facilities

In January 2000, Arthur Van Meggelen, general manager of the Auburn Hills and Warren facilities, announced to employees at both plants that they would be receiving a wage increase of 10 cents per hour effective February 1, 2000. On March 23, 2000, the human resources manager for these two facilities may have sent out inquiries to other businesses regarding their wages and benefits.[4] In May, management conducted a meeting for Auburn Hills employees at which the subject of wage increases was discussed. Employees were shown wage rates at other facilities on an overhead projection and were told that because the wages at Auburn Hills were higher, there would be no wage increase.[5] On about June 1, Van Megellen learned that a representation election was scheduled to be held on Thursday, June 29, at both plants.

Van Megellen conducted meetings for all employees at both facilities generally on the second Wednesday of each month. In June, this meeting was held on or about June 14 at Auburn Hills and either the same day or during the following week at Warren. At these meetings, Van Meggelen announced that employees at both plants would be receiving a 50 cent per hour wage increase retroactive to the June 12, an additional 25 cents effective February 1, 2001 and another 25 cents on August 1, 2001. He also announced that on August 1, 2000, employees at both facilities would receive a 4% cost of living adjustment (COLA). At Auburn Hills, Van Meggelen informed employees that the increases, other than the 4%, were being implemented pursuant to a wage and benefit survey. There is no evidence that employees were aware that any such survey had been conducted prior to the announcement of wage increases in June.[6]

---

as from several rank and file employees, that an organizing drive was underway sometime prior to the beginning of May, when UAW organizers distributed literature in front of the plant. Although Garrison recalled that he received this information only a week or two prior to appearance of the UAW organizers, I conclude, on the basis of House's uncontradicted testimony, that Howell management was aware of the organizing drive in February.

Howell's testimony that in early April, Human Resources Manager Charles Branche, told him that, "I hear you're trying to get a union started in here," is also uncontradicted.

[4] According to Greg Eldridge, the assistant general manager of the Alto plant, other employers sometimes ignored these surveys, particularly in the kind of tight job market that existed in mid-2000. Thus, to establish that it relied on a survey initiated in March to raise wages in June, Respondent would have to show that it received an adequate number of responses and that the data it received explains the wage increases granted. Magna did not establish any connection between the letter dated March 23, 2000 and the wage increases announced in mid June.

[5] I credit the testimony of Wahnetah Wray and Elke Hall as to what was said to employees about wage increases in May 2000. Their testimony was not contradicted by Respondent. Indeed, Arthur Van Meggelen's testimony at Tr. 1334-5 tends to corroborate their testimony, albeit in a rather evasive manner. Catherine Tourangeau, site manager at Auburn Hills, who should be able to contradict the testimony of Wray and Hall on this issue if their testimony is inaccurate, did not do so.

[6] The survey data supposedly relied upon by Respondent in June is not the same information presented to employees in May. Van Meggelen testified that he received the survey data from corporate headquarters in June and determined the size of the wage increases 3 – 5

Continued

In every year between 1993 and 1999, Magna's corporate headquarters recommended that employees of its affiliated companies receive a 3% adjustment. In 1992, corporate headquarters recommended a 4% COLA and in 1991, it recommended 3 ½ %. Management of the five plants herein followed these wage adjustment recommendations in every year that they were applicable to these facilities.

The 4% recommendation in 2000 was initiated internally by Donald Amos, then corporate vice-president for human resources in Aurora, Ontario, on or about April 20, and was applicable to all Magna facilities in North America. The recommendation was communicated on May 25, to a number of high level Magna officials including Peter Schmied, the president of Atoma Interiors Group, to whom the general managers of the Brighton, Howell, Warren and Auburn Hills facilities report, and to Hans Huber, president of Magna Mirror Systems group, to whom the general manager of the Alto plant reports.[7] Although Donald Amos testified that Magna facilities are not required to follow the wage adjustment recommendation, management of the plants herein implemented the headquarters' 4% adjustment without any independent evaluation of whether the 4% increase was necessary or desirable.[8]

The "survey-driven" wage increases at Auburn Hills and Warren were implemented in response to the UAW's organizing drive in order to dissuade employees from unionization.

While the Board does not presume that wage increases granted during an organizing campaign are unlawful, it will draw an inference of improper motivation and interference with employee free choice from all the evidence presented and an employer's failure to establish a legitimate reason for the timing of the increases, *Montgomery Ward & Co.,* 288 NLRB 126, 127 n. 6 (1988), *Dealers Mfg. Co.,* 320 NLRB 947 (1996).

In the instant case I infer the wage increase implemented in mid-June and the announcement of the deferred increases in February and August 2001 were unlawful. The timing of these unprecedented increases, two weeks prior to the representation election, Respondent's hostility to unionization and its pretextual explanation for the increase lead me to conclude that the timing of the increases and their announcement to employees were designed to dissuade employees from supporting the Union.

When announcing a 10-cent per hour increase in January 2000, General Manager Arthur Van Meggelen[9] gave employees no indication that they might receive additional increases within the next year. In May, he told Auburn Hills employees that they were not getting any increase. The announcement of wage increases made at the June meeting was a complete reversal of what Respondent had previously been communicating to its employees about their compensation.

Van Meggelen testified that a wage and benefit survey was conducted between March and May 2000, and that the raw data of this survey was sent to the corporate headquarters in Aurora, Ontario. He further testified that the corporate human resources department,

---

days before they were announced to employees, Tr. 1349-50.

[7] The Howell, Brighton, Warren and Auburn Hills plants are part of Magna Interiors Group, which in turn is part of Atoma, a corporation wholly owned by Magna International, Inc.

[8] For example, Arthur Van Meggelen, general manager of the Warren and Auburn Hills facilities, testified that he was directed to grant the 4% increase by Schmied.

[9] From GC Exh. 5 and R. Exh.24, I infer that this witnesses' name is spelled incorrectly in the transcript.

"assembles this information and brings this information back to us in a presentable format with overheads." According to Van Meggelen, he and his plant human resources department then determined that a $1 wage increase was warranted, spread out over a 13-½ month period.

Van Meggelen's testimony is not credible. First of all, he did not attempt to explain how the survey results warranted the raises or why the survey results necessitated that these wage increases be announced and be partially implemented just prior to the election. Respondent offered no documents to corroborate Van Meggelen's testimony regarding the wage and benefit survey and no specific explanation of how the survey justified the increases granted. It also offered no explanation for the sudden reversal of its position regarding wage increases at Auburn Hills.

Indeed, when Van Meggelen was asked, "where did you get the one dollar an hour from?" He replied, "that was a comparison of our wages at the time verses those, of among others, our Versatrim Howell plant and a number of other factors as well as other responses to our wage survey." While there is no specific evidence as to how wages at the Howell plant or responses to the wage survey justified the increase, I conclude that among the "other factors" that primarily motivated the increase and the timing of the announcement of the increase was the Union's organizing campaign and the proximity of the election.

It is well settled that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal, *Fluor Daniel, Inc.,* 304 NLRB 970, 971 (1991); *Fast Food Merchandisers,* 291 NLRB 897,898 (1988), *Shattuck Denn Mining Corp.,* 362 F.2d 466, 470 (9th Cir. 1966).

Indeed, in a very recent case arising under the Age Discrimination in Employment Act, the Supreme Court reiterated the probative value of an employer's pretextual reasons for a personnel action in proving discrimination.

> Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive…In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt."…Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision...

Reeves v. Sanderson Plumbing Products, Inc., _U.S._, 120 S. Ct. 2097 at 2108 (June 12, 2000). The pretextual nature of Van Meggelen's explanation for these wage increases is a major factor leading me to conclude that they were unlawfully motivated.

The Announcement and Implementation of Wage Increases at Alto

Wage increases were also announced and implemented at the Alto plant a few weeks prior to the election. On June 8, meetings were conducted for the approximately 590 employees at the plant. In addition to Alto plant management, these meetings were attended by

Donald Amos, executive vice president of Magna International and Joyce Baxter, another employee of the corporate human resources department.

A management representative announced that it had performed a wage survey and that effective June 12, most employees would be getting substantial wage increases.[10] The implementation of the 4% COLA was also announced, although in a question and answer period, Donald Amos informed employees that if the UAW was certified as their bargaining representative, Respondent would have to get the Union's permission to implement this 4% adjustment. This statement by Amos, constitutes a separate and distinct violation of Section 8(a)(1) from others alleged in complaint paragraph 8. For reasons set forth below, I conclude that Respondent did not violate the Act in granting employees a 4% increase, but conclude it violated the Act in announcing the size of the increase in the period between the representation petition and election. Additionally, once Respondent created the expectation of a wage increase, it violated Section 8(a)(1) in suggesting to the Alto employees that they might not receive this increase if they selected the Union as their bargaining representative, *America's Best Quality Coatings Corp.,* 313 NLRB 470, 484 (1993); *Atlantic Forest Products,* 282 NLRB 855, 858 (1987); *Twin City Concrete,* 317 NLRB 1313, 1318 (1995).

As in the case of the Warren and Auburn Hills plants, I find Respondent's nondiscriminatory explanation for the June "survey-driven" wage increases to be not credible. Management of the Alto plant has conducted annual wage and benefit surveys prior to the spring of 2000. Gregory Eldridge, Alto's assistant plant manager, testified that the 1999 wage and benefit survey was "not successful", apparently due to a paucity of responses. Eldridge testified further as follows: he asked Michelle Kostuck-Owens, a employee of corporate human resources in Canada, to review the results of the 1999 survey, but these results could not be found. Then, in February 2000, Kostuck-Owens agreed to assist the Alto human resources department in conducting another survey.

According to Eldridge, Kostuck-Owens (who did not testify), sent out questionnaires to various employers requesting wage information by job title. He testified that Respondent received responses for the molding department, some painter positions, the assembly positions and some quality assurance positions in late May or early June, and on that basis announced on June 8, that some of the employees would receive wage increases. Respondent made no attempt to explain how the data justified or necessitated the increases granted and introduced no documentary corroboration to support Eldridge's testimony. On that basis I discredit this testimony and find Respondent's explanation for the June increases to be pretextual.

---

[10] Harriet Fillion, a mirror assembler, received a 77-cent per hour raise. When Fillion began receiving the cost of living adjustment in August, her wage rate was $1.44 higher than it had been seven weeks earlier. While not every employee received a wage increase and the amount of the increases differed, I infer that almost all the Alto employees who were eligible to vote in the June 29 election, received significant wage increases. When I asked Assistant General Manager Gregory Eldridge who didn't get a raise, he only mentioned two employees who worked in the tool room, one of whom received a 1-cent per hour raise. Eldridge also told some employees in the paint department that the company had not received sufficient information regarding their positions. It is not clear whether they were led to believe they might not get any raise or whether they were told that additional information was needed to determine the size of the increase. Subsequent to June 8, at least some of these employees received a raise retroactive to June 12.

Similarly, incredible is Respondent's explanation as to why it was necessary to announce these increases three weeks before the election. When asked why Respondent didn't wait until after the election to announce the wage increases resulting from the wage and benefit survey, Eldridge replied:

> Basically, we had been talking with the employees for sometime about the wage and salary survey. In the employee meetings we had said that it was being conducted. There was a lot of pressure from the employees as to what was being done about their wages. They were beginning to feel that their wages were not competitive, as well. The rising gasoline prices were an added pressure. Many of our employees drive several miles to work and that was becoming an increasing burden to them. They were talking of personal experiences where they knew other similar factories were paying more for certain positions. There was a morale issue, as well.

Tr. 1000.

On cross-examination, Eldridge repeated the assertion that management had been talking to employees about the survey being done for several months, and had promised employees that it would publish the results when they came in. He also explained Respondent's unwillingness to wait until after the election as being due to the fact that all production lines would not be shipping on June 29.

There is no evidence to corroborate Eldridge's claim that management had ever mentioned to employees the new wage and benefit survey allegedly initiated by Michelle Kostuck-Owens in February 2000. Indeed, on the basis of Harriet Fillion's testimony, I find that Respondent never mentioned the Kostuck-Owens survey until June 8. In response to questions by Respondent's counsel, Fillion testified that she was aware that prior to 2000, Respondent conducted wage and benefits surveys and made adjustments to employees' compensation as a result of those surveys. However, Fillion testified that she was not aware of any survey being conducted prior to the organizing campaign.

Similarly, there is no evidence to corroborate Eldridge's testimony that Respondent was under a lot of pressure from employees to raise wages. While employees always welcome a increase in their compensation, there is no basis in this record for concluding that they were exerting more pressure after the Union filed its representation petition than before the petition was filed. Whatever moral issues existed over low wages also were present prior to the filing of the representation petition.

Finally, Respondent has made no convincing argument as to why the announcement of the wages increases could not have been delayed until after the representation election had been conducted. Whatever morale problems existed in the workforce could easily have been rectified by announcing the wage increase after the election and making it retroactive to June 12. Moreover, I discredit Eldridge's testimony that a mid-June announcement was necessitated by Respondent's shipping schedule at the end of June.

While Respondent may not have been shipping to all customers, Eldridge conceded that on Thursday, June 29, there was "very close to a full complement of employees" working at the plant. He testified, however, that there was no longer a full complement on Friday, June 30, due to the fact that the plant was shutting down for two weeks and would not be shipping products again until August. However, Eldridge was unable to state how many employees were missing on June 30, or even to specify which parts of the assembly department would not have been at

work on that Friday.[11] Finally, Respondent has made no showing that it was necessary to announce the wage increases prior to employees returning to work in mid-July. I therefore find that Respondent has not established that it could not have announced these wage increases after the representation election had been conducted and indeed, that it announced the increases on June 8, to discourage employees from voting for the UAW.[12]

Announcement of wage increases at Howell

Sometime in April or early May 2000, employees at Versatrim in Howell were given a substantial wage increase retroactive to March 1, 2000. For at least some employees this raise was as much as $1.19 per hour. Prior to the announcement of this raise, employees at Howell had been complaining to management that they were underpaid in comparison to employees at Magna's Brighton plant. Brighton employees received a wage increase effective March 1, 2000.

It is unclear when the Howell pay increase was first discussed with employees, or when it was finalized. The minutes of Respondent's employee meetings of April 26 and 27, 2000 note that, "Salary raises – still working on, delay due to management changeover, will be retro to 3/1/00." I conclude that Howell management was aware of the union organizing drive when it decided to grant these increases. Moreover, in part due to the corporate-wide effort to wean employees from any inclination to vote for the Union by raising wages, I infer the late April/early May increases at Howell were similarly motivated and therefore unlawful.

On May 1, 2000, Bernard Scibienski assumed the duties of general manager at the Howell plant. In June, prior to the election, Scibienski informed Howell employees that in addition to the wage increase they had just received, they would be getting a discretionary annual increase, (a cost of living adjustment or COLA) of 4% in August 2000.[13] Previously, on April 19 and 20, management had informed employees that they would be getting an increase in August, but did not indicate the size of the increase.

Announcement and Implementation of the 4% cost-of-living adjustment at all five plants in June 2000.[14]

The 4% cost-of-living adjustment was announced at employee meetings at all five plants in June, but was effective on August 1, 2000. The pay increase differs from the "survey-driven" increases in that Magna employees received a COLA every year in August. The issue herein is whether Respondents unlawfully gave employees a higher COLA and announced the higher COLA just prior to the election in order to discourage employees from voting for the UAW.

---

[11] Respondent made no attempt to corroborate Eldridge's testimony by introducing attendance records for June 30, 2000, which it is reasonable to assume are maintained.

[12] The election was conducted at Alto from 5:00–9:00 a.m. and from 1:30–5:30 p.m. Thus, Respondent would have had an opportunity, on June 29 and 30, to notify in person all employees of the wage increases, except for those first shift employees, if any, not scheduled to work on June 30.

[13] That the 4% COLA was announced at Howell after the filing of the representation petition is established by Bernard Scibienski's testimony that he announced this increase after receiving instructions from Peter Schmied, his superior. Schmied was informed of the 4% increase by Don Amos on May 25 (R. Exh. 12).

[14] Brighton employees also received a "survey-driven" wage increase effective March 1, 2000. However, as this wage increase was implemented prior to Respondent's knowledge of the organizing campaign at Brighton, this increase was lawful.

While employees expected a cost-of-living adjustment, there was no reason for them to expect a 4% COLA, as opposed to the 3% they had received for the past eight years.

Respondent contends that it was customary for it to announce the size of the COLA just prior to the annual two-week shutdown of its plants at the end of June. I find that Respondent has not established such a practice. At employee meetings in March and April of 1999, management responded to questions as to whether the effective date of the COLA for that year would change. Management answered by telling employees that they would continue to receive their cost-of-living adjustments in August. There is no evidence that the size of the adjustment was announced prior to the mid-year plant shutdown—except for testimony by Gregory Eldridge, the Assistant General Manager at Alto, which I find incredible.[15]

I make this finding regarding the credibility of this testimony on the basis of the absence of any corroborative evidence and the lack of credibility of Eldridge's testimony regarding the "survey-driven" wage increases. While I conclude that the evidence is insufficient to establish the illegality of the 4% increase, I conclude that the 4% increase was announced to employees just prior to the election in order to interfere with employees' free choice in deciding whether to select the Union as their bargaining representative and that therefore the announcement was unlawful.

Response to NLRB subpoenas (Complaint paragraph 9)

On May 24, 2000, the NLRB's Regional Office issued a notice scheduling a hearing in representation case 7-RC 21817 for June 1, 2000. A few days before the scheduled hearing, the Charging Party distributed NLRB subpoenas to a number of employees at the Howell, Brighton, Warren and Auburn Hills plants, directing them to appear on June 1.[16] At least some of the employees filled in their own names on the subpoenas.

After receiving the subpoenas, James Nemeth, the acting human resources director at Howell, informed employees that they did not have to honor the subpoena and if they did so and attended the hearing, they would either have to use one of their three annual emergency days, a vacation day or be charged with points under Respondent's absenteeism policy. An employee accumulating points under this policy is subject to progressive discipline, including discharge upon the assessment of six points. Some employees who received subpoenas would have been subject to discipline pursuant to this policy. Jeffrey School, for example, would have been subject to discharge—given his pre-existing absentee record.

---

[15] Respondent had an opportunity, through the six employee witnesses called by the General Counsel to establish that it had a practice of announcing the size of the COLA prior to the plant shutdown. Harriet Fillion was asked if the company had performed wage and benefits surveys conducted by Respondent prior to the year 2000, but not whether the company had announced the size of the COLA prior to the plant shutdown. Respondent did not call Alto witnesses other than Eldridge.

[16] There is no evidence that employees at the Alto plant, which is in western Michigan, were subpoenaed for the representation hearing.

It is unclear how many employees were subpoenaed by the Charging Party. Sixteen employees who worked either at Howell, Auburn Hills or Warren were subpoenaed. Debra Struk testified that she received over 100 subpoenas from Brighton employees, but I am unable to credit her testimony or determine how many Brighton employees were subpoenaed.

In the late afternoon or evening of May 31, Nemeth informed at least some employees that the representation hearing had been postponed until Friday, June 2, and that they would be excused from work to attend the hearing. The hearing was soon thereafter cancelled pursuant to a stipulated election agreement covering all the facilities at issue.

Debra Struk, the human resources director at Brighton, Arthur Van Meggelen and other managers at Warren and Auburn Hills, also told employees that they were not required to honor the subpoenas and that if they attended the representation hearing, they would either have to take an emergency day, a vacation day or be charged with an unexcused absence. Unlike management at Howell, no contrary message was given to employees prior to the cancellation of the hearing. Van Meggelen also told employees at Auburn Hills that if all the subpoenaed employees missed work the same day and caused General Motors to shut down production, the Auburn Hills employees would probably not have jobs on the following Monday.[17]

The Board, in *Newland Knitting Mills,* 165 NLRB 788, 793-794 (1967), found an employer in violation of Section 8(a)(1) in circumstances similar to the instance case. In *Newland*, the union had subpoenaed 12 to 15 employees to appear at a representation hearing. The employer informed these employees that it could not let all of them attend because they were needed to get production out. However, the employer told the employees to pick five of their number to attend; anyone else honoring the subpoena would be discharged. On the basis of the following analysis, set forth in *Newland*, I find that Respondent also violated Section 8(a)(1) in its response to the Union's subpoenas in this case:

> Employees have the right to participate in proceedings before the Board, and the Board has the power to compel their attendance when the issuance of subpoenas has been requested. While the right to participate absent a subpoena may be balanced against production needs or other considerations, when subpoenas have been issued an employer may not interfere with fulfillment of the obligation to attend by threatening reprisal for honoring a subpoena.
>
> Here there is no evidence that Respondent sought to contact the Union or the Board to explain the production problem caused by the subpoenas and to seek to determine whether the Union would be willing to release some of the employees from their subpoenas or to arrange for some employees to be called from the plant as they were needed at the hearing. Insofar as the record shows the employer dealt directly with the employees and required all but five to choose between their jobs and honoring their obligation to appear at the hearing…Respondent violated Section 8(a)(1) of the Act by its threat to discharge any employees who attended the hearing other than the five to be selected by the subpoenaed employees from among themselves.

If releasing all the subpoenaed employees from work created production problems for Respondent, it was Respondent's obligation to seek an accommodation from the Union and/or the Board, "because it uniquely knew its own requirements", *Laidlaw Waste Systems,* 305 NLRB 30, 35-36 (1991). In the absence of any such effort, Respondent violated the Act in dealing directly with the subpoenaed employees by requiring them to use emergency days, vacation days, and in some cases to accumulate points and/or face discipline or discharge under Respondents' policy with regard to absenteeism.

[17] Elke Hall's testimony in this regard is uncontradicted.

Respondent, at the Brighton plant, violated Section 8(a)(1) by soliciting employee grievances through the establishment and revitalization of "focus groups" and committees.

Paragraphs 10 (a) and (b) of the Complaint allege that Respondent at a number of facilities violated the Act by soliciting employee grievances in response to the UAW organizing campaign by setting up or revitalizing "focus-groups" and/or committees to address employee concerns. There is no evidence to support this allegation at Magna facilities other than the Brighton plant.

Debra Struk, the human resources manager at Brighton, concedes that Respondent established or re-established four "focus groups" or committees at Brighton in mid to late May 2000. These committees addressed the issues of Respondent's attendance policy, overtime and job postings, communication and fair treatment. Struk further testified that these committees were set up with the assistance of Joyce Belcourt, a representative from the corporate human resources department, pursuant to an opinion survey she began on May 3. May 3, was either the day or the day after Struk became aware of the charging party's organizing campaign. I do not credit Struk's testimony that information regarding this survey had been posted and that employees had been told about the survey at the April 2000 employee meeting. There is no corroborative evidence and I draw an adverse inference from Respondent's failure to introduce the minutes of the April employee meeting.

Respondent introduced the minutes of the March 22, 2000 employee meeting, which indicates that an individual named Libby Hood reviewed communication survey results from a survey that was done in November 1999. Ms. Hood also announced that management would "come up" with an action plan to improve on communication. There is no mention, however, regarding the establishment of a "focus group" or committee on this subject or any other employee opinion surveys that were under consideration.

Debra Struk testified that Respondent has minutes similar to those of the March 22, meeting for all employee meetings. Respondent's failure to introduce the minutes of the April meeting leads me to conclude that employees were not told about an opinion survey at that meeting and that the May survey was performed, and the groups or committees established, as alleged, to solicit employee grievances in response to the UAW organizing drive. I therefore conclude that Respondent violated Section 8(a)(1) as alleged in complaint paragraphs 10(a) and (b) at the Brighton plant.

Did Respondent(s) violate Section 8(a)(1) by announcing and posting the position of Employee Advocate in June 2000, as alleged in Complaint paragraph 10(c) and 18?

In a meeting with randomly selected employees from various Magna facilities in November 1999, Magna Chairman Frank Stronach discussed the creation of a position called the Employee Advocate (R. Exh. 8, pg. 3). In the *Magna People 1999 Employee Annual Report*, which was made available to employees at all five plants herein sometime during the first quarter of the year 2000, Stronach described this position:

> With the Employee Advocate, Magna employees will have a dedicated spokesperson who can address their concerns – someone who cannot be dismissed by management and who is accountable to the employees in his or her division. The Employee Advocate will be able to go to division management *and speak on behalf of employees to help resolve issues that arise within the division*. We in executive management at the head office will back up the Employee Advocate. (emphasis added)

> The Employee Advocate's main responsibility will be to interface with fellow employees to make sure that any problems that arise are dealt with quickly and in accordance with the Employee's Charter and Corporate Constitution. In essence, the Employee Advocate must ensure that employees within the division are satisfied. Employees will be able to vote via a secret ballot to express their approval of disapproval of the Advocate. If employees are not satisfied with the performance of the Advocate, then he or she will be replaced.
>
> Our rapid growth over the past five years has meant that some of Magna's managers are new to the company and therefore not fully familiar with our unique employee relations philosophy. As a result, it is more important than ever that employees have a representative who can ensure that the principles of the Employee's Charter are being constantly upheld in each and every division…The Employee Advocate is simply a new and different mechanism for ensuring fairness.

On May 4, Donald Amos sent to all Magna's general managers and human resource managers in the United States and Canada a memorandum entitled "May 2000 Communication Strategy". The memorandum asks that the recipients present the information transmitted regarding the Employee Advocate and new pension plan options at their May employee meetings.[18]

In June, a few weeks before the election, Amos personally visited the Howell, Alto, Brighton, Warren and Auburn Hills facilities and discussed or supervised the discussion of the Employee Advocate positions at plant-wide employee meetings. Amos did not travel to any other Magna facilities to introduce this program, except possibly to two plants in Ontario. Other human resources personnel may have traveled to a plant in South Carolina and few others in Ontario to introduce the program.

When Amos was asked his purpose for visiting the Alto plant on June 8, to discuss the Employee Advocate, he testified:

> The main reason was to discuss the role of the employee advocate because they were getting questions about how this employee advocate was going to work.

Tr. 1145-46.

While the Employee Advocate was mentioned in several company publications that were available to employees at Alto, there is absolutely no evidence that any employees at Alto had asked any questions of management about it. Gregory Eldridge, the only Alto manager who testified, did not mention receiving any questions about the Employee Advocate. Employees may have been told at a May 2000 meeting that Amos was coming to the plant to discuss the Employee Advocate program.

It is well settled that when an employer institutes a new practice of soliciting employee grievances during a union organizational campaign, there is a compelling inference that it is implicitly promising to correct those inequities it discovers, and is urging on its employees the

[18] An employee advocate position may have been established a several selected plants prior to May. However, the communication strategy does not reflect this.

notion that the combined program of inquiry and correction will make union representation unnecessary, *Reliance Electric Co.,* 191 NLRB 44, 46 (1971). By the device of the Employee Advocate, Respondent sought to solicit and remedy employee grievances.

While the concept of the Employee Advocate predates the filing of the representation petitions herein, the timing of Amos' visits to these five facilities was intended and would reasonably have the effect of indicating to employees that the Union was unnecessary. Nothing else explains why these plants would be singled out for immediate orientations regarding the employee advocate program.[19] This is particularly true in light of the delays in implementing the program at each of these plants. The position was filled at Alto in late October or early November 2000 and at Brighton, it was posted for several days, then cancelled and never filled. It is unclear when the Employee Advocate job was filled at Warren or whether it was ever filled at Auburn Hills or Howell. I therefore find that Respondent violated Section 8(a)(1) in selecting the five facilities at issue for an accelerated introduction to the Employee Advocate program just prior to the election.

Amos' testimony downplayed the benefit of the Employee Advocate to employees, thereby suggesting that his visits were not part of the effort to wean employees from the Union. He described the position as being like a "traffic control director", who insures that employees' concerns are addressed by those within Magna's hierarchy who could resolve them most quickly. However, consistent with Corporate Chairman Stronach's description of the position, at least some employees were left with the impression that the Employee Advocate would be taking their side in disputes with plant management, much like a union steward or grievance committeeperson.[20]

Complaint paragraph 10(d): increased life insurance benefit

Paragraph 10(d) of the Complaint alleges that during June 2000, Respondent violated Section 8(a)(1) by its agents, including Art Van Meggelen, Peter Smith and Greg Eldridge in announcing and granting a life insurance benefit that was greater than any such benefit previously announced. Smith and Eldridge are the general manager and assistant general manager of the Alto plant. Van Meggelen is the general manager of the Warren and Auburn Hills plants. There is no evidence supporting this allegation with regard to Warren and Auburn Hills.

With regard to Alto, Harriet Fillion, an employee at that facility testified that at an employee meeting occurring on about June 8, 2000, "Bruce", who I presume to be Bruce Carrier, the interim human resources manager at the facility, said that Respondent was increasing employees' life insurance coverage from $100,000 maximum to $200,000. Although this testimony is not directly contradicted, I decline to credit Fillion on this issue for several reasons.

First of all, her testimony is inconsistent with the only other evidence regarding Magna's life insurance coverage. The January 2000 issue of *Magna People*, which was made available

[19] From Bernard Scibienski's testimony at Tr. 118, I infer that there was no significant discussion of the Employee Advocate program at the Howell plant until Amos' visit in June.

[20] See, e.g. testimony of Linda Anderson at Tr. 495-6 and Karen Tucker at Tr. 697. Lamarr Lee and Harriet Fillion's recollection of what was said about the Employee Advocate is more similar to the neutral traffic cop described by Amos.

to employees prior to April 1, announces a number of "new and improved" benefits that would be effective on August 1. With regard to life insurance, the newsletter announced:

> Currently basic life insurance benefits are 1.5 times basic annual earnings with certain maximums.
> Effective August 1, there will be no maximum on basic life insurance benefits.

Secondly, none of the other five employee witnesses from Alto recalled an announcement such as that testified to by Fillion. I therefore conclude that she either misunderstood what was said or recalled it inaccurately. I thus dismiss the allegation contained in Complaint paragraph 10(d).

Complaint paragraph 11: allegations limited to the Alto, Michigan facility

Paragraph 11(a) and (b): the posting of the solicitation and distribution rule in Respondent's employee handbook

The employee handbook for the Alto plant states at page 21:

> Solicitation and Distribution:
>
> …
>
> Written solicitations, including the distribution of pamphlets and similar materials, on behalf of any organization, individual, or cause will be allowed only on non-working time in non-working areas. Verbal solicitations will be allowed only on non-working time.
>
> Approval for any solicitation, or sale of personal items, must be approved by the Human Resources Manager.

Respondent's rule is overly broad and thus violative of Section 8(a)(1) under long-standing NLRB caselaw, as alleged by the General Counsel in complaint paragraph 11(a). As noted by the judge in *Kenworth Truck Co.,* 327 NLRB 497 (1999), such a rule is readily susceptible of being interpreted as barring employees from engaging in union or other protected concerted activity without the prior approval of management.

In this case the rule was more likely to be so interpreted due to the fact that on May 15, 2000, two weeks after the organizing drive started, General Manager Peter Smith posted a memo to employees setting forth the rule verbatim. The timing of this posting, particularly in the absence of any alternative explanation by Respondent, establishes that this rule was posted in response to the organizing drive, as alleged in paragraph 11(b) of the complaint, and that it was intended to suggest to employees that they needed management approval to engage in certain protected activities. Moreover, employees had routinely posted commercial notices on several plant bulletin boards prior to May 15, without having them approved by Respondent. Such notices at times stayed on the bulletin boards for weeks without being removed. Thus, I conclude that prior to start of the organizing drive, Respondent did not rigorously enforce the rule regarding prior approval of solicitation or sale of personal items and decided to do so in reaction to the organizing drive. Accordingly, not only was the rule unlawfully broad, but it was unlawfully posted and enforced.

Respondent unlawfully prohibited the posting of any material related to the organizing campaign on its bulletin boards (Complaint paragraph 11(c))

At its Alto plant, Respondent maintains several bulletin boards. Some of these are glass-enclosed and are reserved for notices from management. However, employees are allowed to post personal and commercial notices on several others, which are not glass-enclosed. Respondent prohibited the posting of any materials concerning the Union or the organizing campaign, regardless of whether it favored or opposed the UAW. In doing so, it violated Section 8(a)(1) of the Act.

It is well established that there is no statutory right of employees or a union to use an employer's bulletin board. However, when an employer permits employees to post personal notices on its bulletin boards, it cannot restrict prohibit the posting of matter related to union or other protected matters, *Container Corporation of America,* 244 NLRB 318 (1979). It is not a defense that anti-union material was also prohibited. By analogy, an employer may forbid the discussion of non-work subjects during working hours. However, if it allows discussion of non-work-related subjects, it cannot prohibit discussions about a union or other protected matters, *M. J. Mechanical Services,* 324 NLRB 812 (1997).

Respondent, having permitted the posting of non-work-related items on its bulletin boards cannot lawfully prohibit the posting of material the concerning employees' rights either to support or not support the Union. I therefore find a violation of Section 8(a)(1) as alleged in complaint paragraph 11(c).

Respondent, on two occasions, prohibited employees from passing out union literature in the lobby area of the Alto plant as alleged in complaint paragraph 11(d).

On two Sunday evenings during the organizing drive, Brian Oczepek, a management official, told pro-union employees that they could not distribute union literature in the lobby near the plant entrance. On other occasions, pro-Union employees distributed union literature freely at this location and they routinely were allowed to distribute such material elsewhere in non-working areas, while not on the clock. Nevertheless, Respondent, by Oczepek violated Section 8(a)(1) as alleged in paragraph 11(d) since management allowed other non work-related activities, such as a bake sale to take place in the same location. Oczepek did not testify and Respondent offered no legitimate business reasons for his actions. Thus, forbidding the distribution of union literature in this lobby was discriminatory.

Complaint paragraphs 11((i) and (j), alleging that Respondent violated Section 8(a)(1) by changing the employee prescription co-pay and granting two half days' leave with pay for medical appointments, are dismissed.

The General Counsel alleges that, at the June 8, employee meeting, Alto management announced two new benefits to employees in order to interfere with their free choice in deciding whether to select the charging party as their bargaining representative. This allegation rests entirely on the testimony of employee Harriet Fillion, who recalled that at this meeting management announced that employee would only pay a minimum of $5 and a maximum of $20 as a copayment for prescription drugs. Fillion also testified that Respondent announced on June 8, that employees would soon be allowed two half-days paid leave for medical appointments.

Greg Eldridge, the Alto plant manager, testified that the minimum/maximum co-pay for prescription drugs was not announced until July 27, after the election. He concedes that

questions were asked about the Respondent's prescription drug plan at the June 8, meeting but insists that employees were merely told that Magna was looking into this issue.[21] I credit Eldridge's testimony in part because, as I found with regard to Fillion's testimony regarding an increase in life insurance benefits, I deem her recollection of what was said at the June 8 meeting to be unreliable.

The January 2000 issue of *Magna People* informed employees that two half-days paid leave for medical and dental appointments would be implemented on August 1, 2000. As this benefit was granted to all employees in Magna facilities and the announcement in *Magna People* predates the organizational drive at Alto, I conclude Respondent did not violate Section 8(a)(1) even assuming it advised employees of this benefit at the June 8 employee meeting.

Allegations of surveillance and disparate enforcement of the policies regarding employee access to the plant (complaint paragraphs 11(k) and (m))

The allegations in complaint paragraphs 11(k) and (m) are predicated entirely on the testimony of Harriet Fillion, who openly supported the Union beginning on May 3. She testified that on June 23, she returned to the plant several hours after her shift (first) and went onto the plant floor to ask when employees received their break and then went to the breakroom where she discussed the union with employees on the second shift. After the break she went back onto the plant floor to talk to another employee. Peter Dyehouse, a leadman, told Fillion to leave the area.

Fillion then went outside and went back and forth between several break areas set aside for smokers, where she spoke to employees about the Union and distributed union literature. While she did this she was followed by a plant security officer in an automobile.

On June 26, Fillion returned to the plant. As she pulled into the plant, she passed Peter Smith, the plant manager, who was leaving. As she got out of her car, a security guard met her and told Fillion that Smith left orders that Fillion was to be asked to leave the premises. Fillion ignored the security guard and entered the plant. A second security talked to her several times and then met her in a lunchroom and escorted Fillion out of the building.

The Alto plant handbook states that, "Employees not scheduled to work should not be on the premises. If you are not working and need to speak with your Team Leader/Supervisor, Human Resources or anyone else on business related issues, please do so without disrupting other working employees."

Respondent did not strictly enforce a policy that employees, who were not on duty, could not be inside the plant. However, there is no evidence that Respondent permitted off-duty employees from coming onto the production floor to talk to employees who were working. Thus, I find no evidence of disparate treatment or a violation of the Act in Dyehouse telling Fillion to leave the production floor.

I do, however, find a violation with regard to Peter Smith's ordering the security guards not to let Fillion on the premises. Smith did not testify and I therefore credit Fillion's uncontradicted testimony in this regard. Respondent has offered no explanation for these

[21] Magna instituted a new prescription benefit plan at Alto on January 1, 2000, with which some employees were unhappy. Under that plan employees paid 20% of the cost of prescription drugs with no maximum for the employee co-pay.

instructions and I therefore infer that Smith did not want her campaigning for the Union on the premises—even in non-work areas.

I also conclude that the security guard's surveillance of Fillion on June 23, was done pursuant to a reasonable interpretation of the instructions given to the security guards by Respondent and that their actions are therefore imputed to Respondent. In response to the start of the organizing campaign, Alto management enhanced security arrangements at the plant. Magna contracted with Nationwide Security in mid-May and instructed Nationwide to keep the parking lot and plant perimeter under surveillance. In addition to asking Nationwide to be alert to vandalism and thefts from cars, Alto's management also instructed Nationwide to make sure that persons distributing union literature did not open the doors of unlocked automobiles to place this literature on the dashboard or the seat.[22] Thus, the fact that Nationwide guards placed suspected union activists under surveillance outside the plant is consistent with the instructions Nationwide received from Respondent. Accordingly, I find the violations alleged in complaint paragraphs 11((k) and (m) as discussed herein.

Complaint paragraphs 12 and 16(f) (allegations limited to the Auburn Hills facility)

The General Counsel alleges in paragraph 12 that Respondent's human resources director at Auburn Hills, Derrick Collins, coercively interrogated employees and threatened employees with discharge in retaliation for union and other protected activities. Paragraph 16(f) alleges that Respondent discriminatorily removed employees Karen Brown and Robert Boka from their temporary positions in violation of Section 8(a)(1) and (3) of the Act.

The violation alleged in paragraph 12(b) is established by the uncontradicted testimony of Wahnetah Wray, that during the organizing drive she was walking to her car with her sister, following a discussion of the Union. Derrick Collins, who was near her during the conversation, walked behind her and remarked, "these people are crazy, they don't know what they're doing, this is only a million dollar project…and we can close it." I infer that Collins' remark was intended to intimidate employees and would reasonably have such an effect. I therefore find that this remark violated Section 8(a)(1), as alleged.

Karen Brown and her boyfriend, Robert Boka, began working at the Auburn Hills facility as temporary employees, through Express Personnel Services. They were told by Express that if their performance was satisfactory they would be offered permanent positions at Magna after 90 days.[23] Both Brown and Boka received favorable performance reviews from Magna Supervisor Rudy Werner after 30 days on the job and again after 60 days at the Auburn Hills plant. Werner described both as excellent team players and good workers.

On May 3, two days after the sixty-day evaluation, both Brown and Boka signed UAW authorization cards. By May 3, the general manager of the Auburn Hills plant, Arthur Van Meggelen was aware of the organizing drive. The next day, while handing out paychecks, Derrick Collins remarked to Brown that he would bet that she signed "that paper" too. I infer that Collins was communicating to Brown his suspicion that she supported the UAW.

---

[22] Management also advised employees to lock their cars in the parking lot.

[23] Since Respondent did not contradict this testimony, I conclude that Brown and Boka would have been offered permanent employment after 90 days if their performance was satisfactory. I also conclude the Express employees were acting as agents of Respondent when making this representation to Brown and Boka.

When Collins gave Boka his check, he asked him if he had signed a union card. Boka told him it was none of his business and that they weren't supposed to be talking about the Union while he was working. Collins replied that it didn't matter because Boka was just a temporary employee.[24]Collins' interrogation of Boka violated Section 8(a)(1) as alleged in paragraph 12(a) of the complaint. Given the fact that Boka had not openly displayed his union sympathies and his tenuous status at the plant, I find the interrogation coercive.

Six days later, Plant Manager Van Meggelen and Auburn Hills Site Manager Catherine Tourangeau conducted a meeting for employees on the evening shift. A quarter to a half of these employees were temporary employees like Brown and Boka. Van Meggelen began talking about what happens when a "third party" comes into a plant. Karen Brown left the meeting to go to the restroom.

Van Meggelen opened the meeting for questions and a number of employees asked questions concerning the organizing drive. Boka tried to ask a question and Van Meggelen told him that he could not participate in the question and answer session because he was a temporary employee. At previous employee meetings, Van Meggelen had answered questions from temporary employees. Boka and Steven Furth, a permanent employee, got up and walked out of the room.

Supervisor Rudy Werner left the meeting room and told Furth that if he didn't return to the meeting, he would be discharged. He did not address Brown or Boka, although he was also their direct supervisor at the plant. Werner and Furth returned to the meeting.

Site Manager Tourangeau then went outside the meeting room and asked Brown and Boka to return. Boka replied that if they weren't going to be allowed to ask questions, they didn't want to participate in the meeting. Torangeau responded that Respondent was on a tight time schedule and had to give permanent employees the opportunity to ask questions first. Tourangeau then suggested that Brown and Boka return for a raffle that was conducted at the end of the meeting; they declined. At no time did Tourangeau order them to return to the meeting or say that they would be discharged or disciplined if they did not do so.

After the meeting, the assembly line, which was not operating, started up again. Brown and Boka returned to work. Respondent contacted Express Personnel Services and instructed Express to inform Brown and Boka that they had been terminated. Express so informed Brown and Boka the next morning.

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must show that union activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.[25] Once the General Counsel had made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have

---

[24] I credit the testimony of Brown and Boka because it is uncontradicted and because I draw an adverse inference from the fact that Respondent did not call Derrick Collins as a witness to testify as to what he said to them.

[25] *Flowers Baking Company, Inc.,* 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.,* 321 NLRB 366, 375 (1996); *W. F. Bolin Co. v. NLRB,* 70 F. 3d 863 (6th Cir. 1995).

taken the same action even if the employee had not engaged in protected activity. *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (Ist Cir. 1981).

Karen Brown and Robert Boka engaged in union activity by signing authorization cards. From Derrick Collins' comments and from Van Meggelen's reaction to Boka's attempt to ask a question at the May 10, meeting, I conclude that Respondent at least suspected that Brown and Boka were union sympathizers. Respondent's animus towards employees' union activities is established by a number of factors, including Collins' threat of plant closure and Respondent's unlawful wage increases just prior to the election. Finally, I draw the inference that the termination of Brown and Boka was in large part motivated by their union activities.

As temporary employees, Brown and Boka were much easier to terminate than other employees. I conclude their departure from the meeting was a pretext for Respondent to rid itself of two suspected Union supporters, who would in the normal course of events have become permanent employees on June 1, and would thus have been eligible to vote in the representation election.[26] In part I rely on the fact that Tourangeau did not order Brown and Boka to return to the meeting or threaten discipline. From this I conclude that neither Tourangeau nor Van Meggelen considered the absence of Brown and Boka from the meeting as warranting discharge and that they changed their minds after realizing that they had been provided with an excuse to rid Respondent of suspected union supporters. I therefore find that Respondent violated Section 8(a)(1) and (3) in terminating the employment of Karen Brown and Robert Boka.

Complaint allegations limited to the Warren plant (paragraphs 15 and 16(e))

In early May, Derrick Collins, Respondent's human resources director for both the Warren and Auburn Hills plants, approached Coteria Zachery, who had already attended union meetings, to hand her a paycheck. He asked her how her union rally was going. Zachery asked Collins what he meant. Collins replied that he had people "out there" that had seen her. I credit Zachery's uncontradicted testimony in this regard and find that Respondent, by Collins, violated Section 8(a)(1) by coercively interrogating Zachery and engaging in surveillance of employees' union activities.

On June 2, 2000, Zachery was transferred from a job as a quality inspector in the door assembly area to an assembly position. Zachery did not suffer a loss in pay from the transfer but the assembly position is a more strenuous and less desirable job than the position of quality inspector. I credit the testimony of Linda Shepard, the site manager at Warren, which is corroborated by documentary evidence, that Zachery was transferred due to her failure to catch errors in the doors and that her transfer had nothing to do with her union activities.[27] I therefore dismiss complaint paragraph 16(e).

---

[26] I recognize that a representation petition had not been filed by May 11, when Brown and Boka were dismissed. However, I infer that Respondent was well aware that such a petition might be filed and that a representation election might take place in the very near future—at a time when Brown and Boka would be eligible voters.

[27] Quality inspectors were tested with the wrong parts that were purposely inserted in the doors. Zachery failed to detect a number of such erroneous parts in May 2000 and I credit Shepard's testimony that Zachery's performance on these tests was significantly worse than that of other quality inspectors.

Allegations limited to the Brighton plant (Complaint paragraph 13)

Paragraph 13(a): On about May 4, Timothy Persails was at his work station and was wearing a UAW button on his shirt that had a "smiley face" on it. His supervisor, Arthur Kinney, approached Persails at a moment when he was smiling and said that Persails should knock that smile off his face. Kinney never made any other similar remarks to Persails that could conceivably refer to his support for the Union and their relationship was generally a good one. I conclude that Kinney's isolated and ambiguous remark did not interfere with, restrain or coerce Persails or any other employees in their exercise of their Section 7 rights. I therefore dismiss this portion of the complaint.

Paragraph 13(b): In mid-June 2000, Peter Werner, an assistant general manager at the Brighton plant, walked up to David Dunston, while he was working and tapped on a union button Dunston was wearing. Werner told Dunston that the Union can't guarantee job security and that another company, Peregrin, had "gone union and lost its contract". Werner did not say that Respondent would close its plant if employees selected the UAW and there is no indication in this record whether his assertion regarding Peregrin was accurate or not. I conclude that Werner's statement does not rise to the level of a threat and did not violate the Act.

Paragraph 13(c): Alleged threats by Magna's Chairman of the Board, Frank Stronach

The General Counsel alleges that Magna International's Chairman, Frank Stronach, threatened employees with plant closure or relocation if the Brighton facility became unionized. Stronach, whose office is near Toronto, visited both the Brighton and Howell plants on June 27, two days before the representation election at these facilities to speak to employees. [28] He also spoke to the majority of the employees at the Alto plant either the same day or the day before.

At Brighton, Stronach addressed all employees present at the plant in the morning and then addressed the entire evening shift in the late afternoon. Respondent has offered no evidence as to what he said at these meetings, while the General Counsel has offered several varying accounts. I conclude that the most reliable accounts of the morning speech are those of Gary Marshall and Lisa Arnold, who testified that Stronach said that he could have easily closed the Brighton plant because it had lost money for the past three years but had not done so. Stronach also asked employees to give Tom Heiman, the Brighton general manager, "a chance". Contrary to the testimony of several witnesses, I find that Stronach did not say that he could have moved the plant to Mexico or might do so in the future.

With regard to Stronach's speech in the evening, I find on the basis of David Dunston's testimony that Stronach asked rhetorically why the UAW didn't buy its own business and run it. I decline to credit the witnesses who testified that Stronach threatened to close the plant and/or move it to Mexico. There is a strong suggestion from Dunston's testimony and others, and the absence of such testimony from some witnesses' affidavits that much of this more damaging testimony emanates from discussions pro-Union witnesses had about the speech after it occurred.

Having determined what Stronach said to Brighton employees, the question remains whether he violated Section 8(a)(1). One can argue that his statement that he could have easily closed the plant in the past suggests that he might do so in the future if employees selected the Union. However, I do not draw such a conclusion. Rather, I interpret this as merely an appeal

[28] Stronach's remarks at Howell are the subject of complaint paragraph 14(l).

to employees' sense of gratitude—which I deem not to be coercive.[29] I thus dismiss the 8(a)(1) allegation with regard to Stronach's remarks at Brighton.

Complaint paragraph 13(d): Peter Werner conveys to employees the impression that their union activities are under surveillance.

At approximately 5:00 a.m. on May 16, 2000, about ten pro-union employees distributed union literature in front of the employee entrance to the Brighton plant for at least 15-20 minutes. These employees were standing about 20 feet from the doorway in two rows, five on each side of the walkway. While they were engaged in this activity, Assistant Plant Manger Peter Werner approached these employees and told them they were "breaking Magna's law". He then asked to see all the employees' company identification badges. Then he went into the plant.[30] Werner did not specify the manner in which employees were violating company policy and did not indicate that they were too close to doorway of the plant. He also did not indicate that he was concerned or suspected that some of the individuals were not employees of Respondent.[31]

> The idea behind finding, "an impression of surveillance" as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways...an employer creates an impression of surveillance by indicating that it is closely monitoring the degree of an employee's union involvement.

Flexsteel Industries, 311 NLRB 257 (1993).

Pursuant to the above principles, I conclude that Werner conveyed the impression that the employees' union activity was being monitored by Respondent and that disciplinary action might be taken if these protected activities continued. Thus, Respondent , by Werner, violated Section 8(a)(1) as alleged.

Complaint paragraph 13(d) also concerns a conversation that Linda Anderson, a member of the in-house organizing committee, had with Werner. The day after the organizing committee had posted its picture on a UAW internet web site, Werner told Anderson that he liked her picture. The General Counsel alleges that this constitutes conveying the impression of surveillance.

By merely observing open union activity, an employer does not engage in surveillance in violation of Section 8(a)(1). I consider Werner's visit to the UAW website analogous. However, when Werner made a point of telling Anderson that he had seen her picture on the internet, he

---

[29] However, as noted in my discussion of complaint paragraph 14(l), there is no evidence in this record that the Brighton plant had been losing money.

[30] Employees Lamar Lee and Gary Marshall gave somewhat different accounts of this incident. I find them both truthful and consistent. They did not, however, recall all the same facets of the incident. Respondent did not call Werner as a witness; it chose instead to rely on a hearsay account of the incident by Debra Struk, to which I accord no weight.

[31] I thus reject Respondent's defense to this allegation at pages 38-39 of its brief. There is no substantial or credible evidence to support its contention that Werner was, "simply ensuring that the company's non-employee solicitation ban was being followed and that employees were not being intimidating on company property."

was conveying the impression that he was keeping track of her union activities and thus was creating the impression of surveillance, *Fred'k Wallace & Sons, Inc.,* 331 NLRB No. 113 (July 31, 2000), *Flexsteel,* supra. I therefore find that Werner's conversation with Anderson violated Section 8(a)(1).

Complaint paragraph 13(e): alleged implementation and enforcement of an overly broad no-distribution policy by Debra Struk.

General Counsel witnesses David Dunston and Sharon Bowlin testified that Human Resources Manager Debra Struk told them that they could not distribute union literature on company property and that Struk insisted that they go out to a public road to distribute such material. Struk testified that she only insisted that pro-union employees not block the doorway to the plant and told these employees that they could distribute union literature on the walkway leading to the plant entrance.

I credit Struk's testimony on this matter over that of Dunston and Bowlin. Struk's testimony is consistent with that of General Counsel witness Lamarr Lee that he generally was able to distribute union literature whenever he wanted so long as it was done in non-working areas and during non-working hours. Moreover, Dunston's testimony is internally inconsistent as at one point he stated that Struk told him that he had to pass out literature at the employees' entryway. For these reasons, I dismiss paragraph 13(e) of the complaint.

Complaint paragraphs 13(f) – (i): Alleged violations regarding the prohibition of union literature at employee's workstations.

Complaint paragraphs 13(f) – (i) allege that about, or since May 12, 2000, Respondent, by Fred Ritter, Kelly Columbo, Jon Banfield, Missy Baldridge and Chris Belcourt, issued and enforced an overly broad rule prohibiting employees from keeping union literature at their work stations, and enforcing this rule disparately. The record evidence shows that Supervisor Missy Baldridge confiscated 50 sheets of union literature, which employee Lamarr Lee kept on a shelf at his workstation, and took it to the human resources department. When Lee asked Baldridge, Banfield (Baldridge's supervisor) and Belcourt about this, he was told that he was soliciting in working areas by having the material at his workstation.

Baldridge credibly testified that she required employees to put all non work-related literature out of view. She did concede, however, that she did not take other employees' material to the human resources department:; she merely told them to put the material out of sight. In this respect and in this respect only, I find that Baldridge violated Section 8(a)(1) by her disparate treatment of Lee and his material, as alleged in paragraph 13(h). The other allegations in these paragraphs have not been established.[32]

Complaint paragraph 13(j): disparate enforcement of plant access rule

On May 24, after their shift ended at 2:30 a.m., 6-7 employees, most of whom were open supporters of the Union, remained at work, just outside the plant doors for 15–30 minutes, discussing the events of the day. Supervisor Brad Cole, walked out of the plant and told them

[32] John Walker's uncontradicted testimony that Supervisor Fred Ritter told him to put away a union flier that was on his workbench is credited. However, I find that Respondent, by Ritter, did not violate the Act in doing so.

they had to leave the premises. Then a security guard approached them and also ordered them to leave and they did so.

Respondent's plant standards (disciplinary rules) prohibit, "[e]ntering or remaining at the plant when not on duty or scheduled for work." Brighton management did not strictly enforce this rule and allowed employees who were waiting for carpools to remain at the plant to wait for fellow carpool members. Respondent never announced that this was an exception to the plant standards.

It is a violation of Section 8(a)(1) for an employer to limit the access of off-duty employees to its property unless its rules:

> (1) limit access solely with respect to the interior of the plant and other working areas; (2) are clearly disseminated to all employees; and (3) applies to off duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates and other non-working areas will be found invalid.

Tri-County Medical Center, 222 NLRB 1089 (1976); *The Timken Co.,* 331 NLRB No. 86 (July 13, 2000) (slip opinion at page 9-11).

Although Respondent's rules do not comply with the criteria set forth by the Board, I dismiss the allegation in paragraph 13(j) because there is no evidence that the employees in question were engaging in union or other protected activity. Had they been doing so, as were the employees at the Howell plant discussed below in regard to paragraphs 14(m) and 16(d) of the complaint, Respondent's enforcement of its plant access rule would clearly have violated the Act.

Complaint paragraph 13(k): alleged disparate enforcement of rule prohibiting non work-related material to be displayed on hi-low vehicles.

In May 2000, Respondent's supervisors required employee Sam Brown to remove from view union literature that he was displaying on his hi-low vehicle. I credit the testimony of Supervisor Marissa Baldridge that this rule was not disparately enforced and dismiss this portion of the complaint.

Complaint paragraph 13(l): alleged coercive interrogations by supervisors Steve Spencer and Pam Cranfill.

Interrogation or discussion by Spencer

On the evening of June 19, ten days before the election, employee Thomas June, entered the cubicle of a dayshift employee to borrow a stapler. This employee apparently complained to management. The next evening, Supervisor Steve Spencer summoned June into his office and informed him that he was investigating this complaint. After discussing the events of the prior evening, Spencer asked June, "which way are you swinging?" June, who was wearing a yellow UAW button, answered, "I'm swinging yellow," thus indicating that he was inclined to vote for the Union. Spencer replied that June should, "swing pink," i.e., vote against the Union.

Although no disciplinary action was taken against June as a result of Spencer's investigation, I conclude that Respondent, by Spencer, violated Section 8(a)(1) in discussing June's union sympathies during a discussion of events which potentially could have resulted in the imposition of disciplinary measures. Given the precariousness of June's situation, the discussion was coercive even though June openly supported the Union.

Interrogation by Cranfill

Sometime in early June, Pam Cranfill, a supervisor, took employee Gary Marshall aside just outside his paint booth, to discuss his support for the Union. Marshall openly supported the Union and in fact was wearing UAW buttons when Cranfill talked to him. Cranfill asked Marshall if he believed everything on the Union flyers. She asked him what he expected from the Union. Cranfill also told Marshall that the Union could not guarantee him anything.

Whether interrogation by a supervisor violates Section 8(a)(1) depends upon whether under the circumstances, it reasonably tends to restrain, coerce or interfere with rights guaranteed by the Act, *Rossmore House,* 269 NLRB 1176 (1984). Considering the fact that Marshall openly and notoriously supported the Union and considering the nature and context of Cranfill's questions and comments, I conclude that Respondent, by Cranfill, did not violate the Act by her inquiries to Marshall.

Complaint paragraphs 13(n) and 16(b): alleged stricter and disparate enforcement of Respondent's dress code and disciplinary measures taken pursuant to such enforcement.

On June 26, a few days prior to the representation election, a number of employees supporting the Union came to work wearing blue t-shirts with General Motors and UAW logos, and the words "GM-UAW partners in quality" on them. Respondent insisted that these employees either put on another shirt, wear their shirts inside out or tape over the logo and writing.[33] Virtually all the employees complied. However, several employees on the evening shift, Sharon Bowlin, Arnold White, David Dunston, Chris Duncan, Shena Nunn, Gary Nunn and James Bates, removed the tape hours later and refused to put the tape back on when ordered to do so. They were escorted from the plant and given disciplinary write-ups. Each of these employees lost 4 hours of pay and some lost 4 hours of "earned time" which they could have used as additional leave.

In July 1999, BIS implemented a dress code, which stated in pertinent part, "Our company dress code includes our BIS T-shirt, polo shirt, and sweat shirt and golf shirt. Shop coats may also be available." In November 1999, BIS issued an addendum which stated:

> Supervisors have the discretion to allow coats or plain sweatshirt jackets to be worn over the approved BIS shirt in areas impacted by the shipping and receiving doors or any other factors that cause below normal temperatures on the Production floor. Please be aware that you must still wear a BIS shirt underneath the coat or jacket at all times.

At some time prior to the organizing drive, Respondent provided employees with five BIS t-shirts. After that, employees were required to wear either a BIS t-shirt or a shirt without any

[33] Throughout the campaign, pro-union employees were allowed to wear UAW buttons, hats, headbands and t-shirts dyed yellow, which indicated support for the Union. Anti-union employees wore t-shirts dyed pink and/or pink hats.

logo or writing on it—with one exception discussed below.[34] In March 2000, Debra Struk announced that in June employees would receive $50 for the purchase of additional BIS shirts.

Employees who produced parts for the Cadillac division of General Motors were, however, allowed to wear shirts with a Cadillac logo at work and regularly did so. Debra Struk testified that Respondent considered these shirts to be Brighton Interior Systems approved shirts. However, employees were never told that the Cadillac t-shirts were approved BIS shirts and thus employees could reasonably conclude that Respondent was not, in some respects, strictly enforcing its dress code. Indeed, after the election Respondent posted a memo announcing that effective August 7, 2000, it would be enforcing its dress code and would send home noncomplying employees. This was the first written notification to employees apprising them that the dress code would be strictly enforced. Given these facts and the fact that the shirts worn by the union supporters on June 26, differed from the Cadillac shirts only in that they bore the name and logo of the UAW, I conclude that Respondent violated Section 8(a)(1) in disparately enforcing its dress code and violated Section 8(a)(3) in disciplining Sharon Bowlin, Arnold White, David Dunston, Chris Duncan, Shenna Nunn, Gary Nunn and James Bates for violation of the code.

Allegations limited to the Howell plant

Complaint paragraphs 14(a) – (d): interrogations by Rick Putnam and Charles Branche; conveyance of the impression of surveillance by Putnam; promises to rectify grievances by Branche and statement regarding the futility of unionization by Branche.

Complaint paragraph 16(c): refusal to reinstate starting time and discipline of Brad House by Respondent.

I find Section 8(a)(1) violations as alleged in complaint paragraph 14(a) based upon the uncontradicted testimony of employee Bradley House, which I credit.[35] In February 2000, before House began to openly display his support for the Union, his supervisor, Rick Putnam, asked House if he was going to "the Union meeting." Then, Putnam told House that he had learned about the meeting from other employees. I find Putnam's inquiry to be coercive under the *Rossmore* test; however, I do not find that he conveyed the impression of engaging in surveillance of employees' union activities as alleged in paragraph 14(b). The General Counsel has not established that an employee in House's situation would reasonably believe that surveillance, rather than voluntary disclosures by employees, brought the union meeting to Putnam's attention, *Sage Dining Service,* 312 NLRB 845, 846 (1993)

In April, Putnam asked House to work for a few days in a department that started work at 4:00 a.m., rather than House's normal starting time of 6:00 a.m. House agreed. On the first day that House was to report at 4:00 a.m., he was two hours late because his daughter, who was to give him a ride, broke her leg and did not pick him up. When he got to work, Putnam charged him with an early leave day.

[34] I do not credit the testimony of those employees who stated that shirts or sweatshirts with the logos of sports teams or apparel companies on them were often worn by employees in the year 2000.

[35] Neither Rick Putnam nor Charles Branche, the management officials alleged to have violated the Act in their conversations with House, testified.

House then went to see Charles Branche, then the human resources director at Howell, to complain about being charged with an early leave day and to try to switch back to a job he had previously held. Branche began the conversation by telling House that he heard House was trying to start a union. Branche then told House that the Union will try to drive up wages and benefits; the company will say no and there might be layoffs or the plant may close.

Branche declined to overrule Putnam's decision to assess an early leave day against House. House then told Branche that he wanted his old job back, running a piercing machine, which required him to report at 6:00 a.m. However, House complained that the dust from the machine made him sick and hadn't been fixed despite his complaints about it over a two-year period. Branche then called Thomas Zalucki, the Howell safety and health co-ordinator, and ordered him to fix the piercing machine immediately. Branche got off the phone and asked House, "Now that I've done you a favor, what are you going to do for me?"

I find that Respondent, by Branche, violated the Act as alleged in paragraphs 14(c) & (d), in that Branche indicated to House that unionization would be futile and sought House's abandonment of his union activities in gratitude for granting House's requests for his prior job and having his machine repaired. However, I dismiss complaint paragraph 16(c) as the record shows that Respondent in fact honored House's request to be reinstated to the job that commenced at 6:00 a.m. and, given that he showed up for work two hours late without calling in, the imposition of an early leave day cannot be attributed to retaliation for union activity.

Complaint paragraph 14(e): prohibition of union material on bulletin boards.

During May, Deborah Seabert, another human resources manager at Howell, informed pro-union employees, that nothing could be posted on the bulletin boards in the employee break rooms without the approval of management. Previously, employees had posted commercial messages without such approval. Seabert also refused to allow employees to post union literature.

Respondent violated the Act by implementing its new bulletin board policy in response to the organizing drive and in implementing an invalid rule which allowed the posting of non work-related material, but prohibited the posting of union material, *Container Corporation of America, supra.*

Complaint paragraph 14(f): Deborah Seabert violated the Act by telling employees that they could not solicit for the Union on company property.

On about May 11, Deborah Seabert told Bradley House that he could not solicit for the Union on company property; this statement clearly violates the Act. Several days later, however, Seabert told House that she was mistaken and that he was allowed to distribute literature and solicit for the Union in non-work areas at non-work times. Thereafter, House and other Union supporters distributed union literature and solicited support for the Union at the Howell facility on a daily basis.

Paragraphs 14(g) and (h) of the complaint are dismissed because there is no evidence to support the allegations contained therein.

Paragraph 14 (i): Respondent, by supervisor Kenneth Garrison, violated the Act by instituting stricter enforcement of plant rules regarding leaving the work area and breaks, and by telling employees they could not discuss the Union during working hours.

Paragraph 14(n): Respondent, by Matt Angle, violated the Act by forbidding employees to discuss the Union, while allowing the discussion of other non work-related topics.

On about May 13 or 14, Manager Kenneth Garrison assembled employees in his department and told them from now on there would be no leaving their job during work hours. Employees would be allowed to get coffee only on breaks. He also indicated that employees would not be as free as before to go to the bathroom when not on break. If they did so, they would have to notify their supervisor.

Garrison testified that he made these announcements pursuant to instructions from higher level management:

> We were told to do a memo and to have meetings with everyone to let them know ...things are changing and we have new management and we want things to be better and work as a team. And one of the things as a team that we felt we needed to do again was to reinforce our work rules that had been kind of neglected because they hadn't been able to be enforced with certain management that had been there...and it was simply reinforcing, reminding them of the rules of the handbook and the reasons for them.

Tr. 1431.

Bernard Scibienski became the Howell plant manager on May 1. However, his arrival at the plant coincides with the beginning of the open and notorious organizing campaign by the UAW at Howell. In view of the timing of Respondent's stricter enforcement of its work rules, its hostility towards unionization and the scanty explanation of reasons for this enhanced enforcement, I conclude that it was implemented in retaliation for the organizing drive to coerce employees in the exercise of their Section 7 rights.

Garrison also announced that employees would not be able to discuss the Union while working. Similar prohibitions were announced to employees by Supervisor Matt Angle. While an employer may prohibit the discussion of non work-related topics, it cannot limit such a prohibition to unions or other protected subjects, *Altorfer Machinery Co.,* 332 NLRB No. 12 (2000) (slip opinion at page 4); *M. J. Mechanical Services,* 324 NLRB 812 (1997). [36] Thus, Respondent, by Garrison and Angle, violated Section 8(a)(1) as alleged.

---

[36] Assuming that under some circumstances an employer could prohibit protected discussions to maintain discipline and order, such limitations were not adequately justified by Respondent. Angle testified on direct that, "employees complain[ed] to me that there were arguments being raised about [the] union pro and con." He then made the bald assertion, which I do not credit, that such discussions were causing work stoppages. On cross-examination, Angle testified merely that "one of my employees came to me very frustrated because they had started arguing about various issues and....he said that he was tired of having to talk about it and listening to them because they were just starting to fight." On the basis on his testimony, I conclude only that Angle learned from employees that they were discussing the Union while working. I find that Respondent has not established that production was being effected or that employees were doing anything but expressing their differing opinions as to the wisdom of selecting the UAW as their bargaining representative.

Complaint paragraph 14(j): discriminatory enforcement of distribution rules in the break rooms prior to the commencement of employee meetings.

Several pro-union employees attempted to distribute union literature to employees in breakrooms just prior to start of employee meetings called by management. Plant Manager Bernard Scibienski prohibited them from doing so. While I am unable to find that anti-union employees were allowed to distribute their literature before and during such meetings, company supervisors regularly distributed non-work related company material to employees while they were working at their workstations.[37] Some of this material may have stated Respondent's opposition to the Union. In view of these facts, I conclude that Respondent interfered with the Section 7 rights of employees by prohibiting them from distributing union literature before the employee meetings.

Complaint paragraph 14(k): alleged indication of the futility of unionization by Bernard Scibienski.

Employees testified that the Howell plant manager, Bernard Scibienski, told them at an employee meeting that if the Union won an election, Respondent would not necessarily have to bargain with it. Scibienski testified that what he said was that if the Union wins the election, it wins the right to negotiate. I credit Scibienski's account and find that he did not violate the Act. I therefore dismiss complaint paragraph 14(k).

Complaint paragraph 14(l): alleged implied threats by Frank Stronach of unspecified adverse consequences if the Howell facility became unionized.[38]

Magna International's chairman, Frank Stronach visited the Howell plant on June 27, two days before the representation election. He addressed 40-50 employees in person on that morning; others employees watched a video presentation by Stronach. There is no evidence in this record regarding the content of the video.

However, the uncontradicted testimony of Thomas Sump, a hi-low driver on the first shift, which I credit, regarding Stronach's speech to the live audience, is as follows:[39]

---

[37] This material included the *Magna People* newsletter and *1999 Employee Annual Report.* It may have included other material from the human resources department as well.

[38] At page 2 of his brief, the General Counsel moves to further amend the Second Amended Consolidated Complaint by withdrawing allegations 11(g), 13(m), and 14(l). No reason for withdrawing these allegations is given. However, no evidence was introduced in support of paragraph 11(g) and the record clearly warrants dismissal of paragraph 13(m).

Complaint paragraph 14(l) is an entirely different matter. Not only is Thomas Sump's testimony as to what Frank Stronach said not contradicted, the credibility of his testimony is not even attacked in Respondent's defense of this allegation at pages 58-59 of its brief. The only question is whether what Stronach said constitutes a threat violative of Section 8(a)(1), which I find to be the case. Given what he did say, I conclude it is irrelevant that he did not say that he would "move work" if employees selected the Union. I therefore deny the General Counsel's motion to amend the complaint by withdrawing paragraph 14(l). I would also note that even if the motion were granted, Sump's testimony is relevant to the Union's objections to the conduct of the election at Howell.

[39] Respondent introduced no evidence regarding the Stronach speech. Moreover, an affidavit executed by Sump on August 15, 2000, is completely consistent with his testimony regarding the speech.

> He [Stronach] said the Union was good and he said that he had asked the Union to buy their own plant so they could feel what is like to have a Union in it and so forth, if they wanted a Union plant…
>
> The main thing I remember him saying clearly was that we had been losing a lot of money. We are losing money every year and if we—that we were part of the family, what he called the Magna family. And that if we went Union, he could not consider us as part of the family and he would funnel his money in a different direction. And that is the thing that stuck with me the most out of the whole thing.
>
> Q. Do you recall anything else that Mr. Stronach said about the Union?
>
> A. No. Not other than he was good friends with the Union people and so forth and so on…

Tr. 151-2.

The legal issue with regard to Stronach's statements is whether they are predictions based on objective fact, which are protected by Section 8(c) of the Act, or threats of action Respondent may take on its own initiative for reasons unrelated to economic necessities or factors beyond its control, *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 618 (1969); *NLRB v. General Fabrication Corp.,* 222 F. 3d 218, 230 (6th Cir. 2000); *Indiana Cal-Pro Inc.,* 863 F. 2d 1292, 1297-99 (6th Cir. 1988); S*eton Co.,* 332 NLRB No. 89 (October 31, 2000). Respondent presented no objective evidence that unionization would require the channeling of its funds to other facilities or enterprises.[40] Stronach made a threat of action that was entirely within his control; thus, his statements were coercive and violated Section 8(a)(1), as alleged. The fact that he made reference to his friendship with the Union does not detract from the coercive nature of his statements. As the court observed in *V & S Progalv, Inc.,* 168 F. 3d 270, at 279 (6th Cir. 1999), threatening comments are often couched in ostensibly friendly or humorous terms.

Complaint paragraphs 14(m) and 16(d): Respondent, by Ken Garrison and Donna Lewis, violated Section 8(a)(1) of the Act by prohibiting employees from distributing union literature in break areas outside and inside of the Howell facility and violated Section 8(a)(3) of the Act by issuing written disciplinary notices to Bradley House and Jason Trikes for doing so.

On June 15, 2000, first shift employees Bradley House and Jason Trikes returned to the Howell plant at about 7:00 p.m. and began distributing union literature to second shift employees in a break area outside the plant. House entered the plant to distribute some literature in non-working areas. He encountered Supervisor Donna Lewis, who told him that he was not allowed to be on company property.

Lewis summoned Department Manager Ken Garrison, who came to the break room inside the plant, and ordered House to leave. After some delay, House left the plant and he and Trikes left Respondent's property. The next day both House and Trikes received a written corrective action notice for violating Respondent's plant standard # 10.

---

[40] Respondent also did not introduce any evidence to support the statements by Stronach that the Howell and Brighton plants (see discussion of complaint paragraph 13(c)) were losing money.

Plant standard #10, which prohibits employees from entering or remaining at the plant when not on duty or scheduled for work, violates the Act insofar as it is applied to union or other protected activity. This rule is overly broad in that it is not limited to the interior of the plant and other working areas, *Tri-County Medical Center,* 222 NLRB 1089 (1976); *The Timken Co.,* 331 NLRB No. 86 (July 13, 2000) (slip opinion at page 9-11). Since House and Trikes, as employees of Respondent, had a protected right to distribute union literature outside of the plant and inside the plant break rooms, the disciplinary notices issued to them are illegal.[41]

The single employer issue

The General Counsel argues that Magna International, Inc., and each division, facility and affiliated entity associated with Magna International in this case are a single employer or joint employers of the employees working at each of these five facilities. I infer that the objective in making this argument is to make Magna International responsible for remedying all the unfair labor practice violations found in this case. Thus, I conclude that the issue herein is whether Magna International and the individual facilities herein are a "single employer".

> The terms "joint employer" and "single employer" have often been used interchangeably and the difference blurred. Perhaps the clearest distillation of the distinction between the two doctrines is found in *Browning-Ferris Industries of Pennsylvania v. NLRB,* [691 F. 2d 1117 (3d Cir. 1982)] where the Third Circuit analyzed the doctrines' purposes and origins and held that a "joint-employer" issues presupposes two separate, legally distinct businesses whereas the "single-employer" issue involves the question of whether two allegedly separate businesses are in fact one.

The Developing Labor Law, 3d Edition, Vol. II (1992) at page 1599.

The Board considers four factors in determining whether more than one business is a single employer: interrelationship of operations, common management, centralized control of labor relations, and common ownership or financial control. Of these factors the Board has held that most important is the control one business entity has over another's labor relations, *Green Valley Grocery Outlet,* 332 NLRB No. 160 (December 15, 2000). While in many respects the Magna facilities and divisions operate as separate business entities, I conclude that they constitute a single employer.

The most important consideration is that Magna International orchestrated a co-ordinated response to the UAW's organizing campaign—thus revealing that corporate headquarters exercises a great deal of control over labor relations at each of the individual facilities. Frank Stronach, the Chairman of Magna International spoke to employees at the Howell, Brighton and Alto plants, a few days before the election to encourage them not to select the Union as their bargaining representative. The identical initial response of the four Detroit area plants to the NLRB subpoenas also establishes highly centralized control of labor relations by Magna International, as does the orientation regarding the employee advocate at all five plants by Donald Amos, the corporate executive vice-president for human resources. I also infer the unlawful wage increases and the unlawful announcement of these wage increases were at least co-ordinated by Magna International.

---

[41] As the cited cases make clear, employees have a much greater right than non-employees to access to their employer's property.

Other indicia that lead me to the conclusion that Magna International, Inc., and the other named respondents are a single employer are as follows:

All five divisions involved in this case are ultimately wholly owned by Magna International, Inc.;

Employee benefits for the employees of all Magna affiliated companies were announced in the *Magna People* newsletter made available to employees at all five plants;

At Alto, new benefits were announced to employees in person, in February 2000, by Michelle Kostuck-Owens, an employee of the corporate human resources department;

The employee relations principles of all Magna affiliated companies are set forth in the "Magna Charter" which is contained in the Employee Annual Report made available to all employees at the five facilities;

Magna International maintains a "hotline" for employees at all Magna plants to call if they believe they are not being treated in accordance with the Magna Charter by plant or division management;

Magna International maintains a training center for management personnel of all affiliated companies and the employee advocates at all such companies;

The general managers at the five facilities all report to the head of a Magna Group, who reports to Donald Walker, the CEO of Magna International. With the exception of the Alto general manager, who reports to Hans Huber, president of Magna Mirror Systems, the general managers all report directly to Peter Schmied;

There is some degree of interchange of management personnel within the Magna family as evidenced by James Nemeth's change of jobs from corporate headquarters to human resources manager at the Howell plant;

The 4% COLA was implemented at all five plants without any evidence of an independent evaluation as to whether it was warranted at the individual plant.

All Magna facilities must participate in the corporate 401(k) plan. Each facility must contribute a minimum percentage of each employee's contribution. Each facility's contribution to the 401(k) plan is computed by corporate headquarters personnel. Pension benefits are portable for employees who leave one Magna facility to go to another. Other benefits, such as seniority are apparently not portable.

All employees at all Magna facilities participate in a Magna International profit-sharing plan. Under this plan 3% of Magna's profits are either paid to an employee in cash or are placed into the corporate 401(k) plan; 7% is invested in Magna stock.

OBJECTIONS TO THE CONDUCT OF THE ELECTIONS AT AUBURN HILLS AND HOWELL

The charging party's objections to the conduct of the elections at Auburn Hills and Howell have been consolidated with the unfair labor practice charges before me.

Objections concerning the election at Auburn Hills

Objection 1: the employer announced, put into effect and promised changes in wages to influence the outcome of the election. This objection corresponds to the allegations in complaint paragraph 8 that Respondent violated Section 8(a)(1) in announcing and implementing wage increases at all five facilities. As I have previously found that Respondent illegally announced and implemented wage increases at the Auburn Hills facility during the period between the filing of the petition and the election, this objection is sustained.

Objection 2: the employer threatened employees with adverse consequences and/or discipline if they complied with NLRB subpoenas and participated in NLRB hearings. This objection corresponds to the allegations of unfair labor practices in complaint paragraph 9. I have found a violation in this regard at the Auburn Hills plant. Therefore, this objection is sustained.

Objection 3: the employer threatened loss of work if employees voted for the UAW. I have previously found that Respondent threatened at least two employees at Auburn Hills with loss of work, as alleged in complaint paragraph 12(b). This objection is sustained.

When an employer violates Section 8(a)(1) during an election campaign, the usual remedy is to order a second election because such prohibited conduct interferes with the "laboratory conditions" of the first election. The only exception to this policy is where the misconduct is *de minimis*, i.e., such that it is virtually impossible to conclude that the election outcome was affected. The number of violations, their severity, the extent of dissemination and the size of the unit, are among the relevant factors to consider in determining whether the misconduct warrants setting aside an election result, *Sea Breeze Health Center,* 331 NLRB No. 149 (2000) (slip opinion at 16) and cases cited therein.

Given the fact that the tally of ballots at Auburn Hills showed 25 votes in favor of the Union and 25 against, it cannot be said that any of the unfair labor practices were *de minimis*. However, one does not have to consider the effect of the conduct in objections 2 and 3 because the illegal announcement and implementation of the wage increases clearly could have affected the outcome of the election. Therefore, the first election should be set aside and a second election should be ordered.

Objections concerning the election at Howell

Objection 1: the employer promulgated and enforced a discriminatory no-solicitation and no-distribution rule.

Objection 2: the employer interfered with and disciplined employees for engaging in protected solicitation and distribution of literature.

These two objections are closely related and correspond to the unfair labor practices alleged and found in complaint paragraphs 14(f), (Deborah Seabert telling employees they could not solicit on company property), 14(i) and (n) (prohibitions on working time discussions regarding the Union by Ken Garrison and Matt Angle), 14(j) (Respondent's prohibiting employees from passing out Union literature prior to employee meetings) and 14(m) (preventing employees from distributing union literature at the plant after their shift and the discipline imposed on two who attempted to do so). I sustain the Union's objections for the reasons that I found the corresponding unfair labor practices.

Objection 3: the employer announced changes in wages to influence the outcome of the election. Generally, in ruling on objections to the conduct of a representation election, the Board will only consider conduct that occurred between the filing of the representation petition and the election, *Ideal Electric & Mfg. Co.,* 134 NLRB 1275, 1278 (1961). There are limited circumstances, however, in which the Board will consider conduct that occurred prior to the filing of the petition, *See, National League of Professional Baseball Clubs,* 330 NLRB 112 (2000) (Slip opinion pages 7 – 8). In the instant case, I have found unfair labor practices with regard to the announcement and implementation of wage increases at the Howell plant. While some of this conduct occurred prior to the filing of the petition, the illegal announcement of the 4% cost of living increase was made afterwards. Objection No. 3 is therefore sustained.

Objection 4: the employer threatened loss of work and/or plant closing if workers joined the UAW. I found with regard to complaint paragraph 14(l) that Magna Chairman Frank Stronach threatened 40-50 employees that if they selected the Union, he would funnel his money elsewhere. I therefore sustain objection No. 4.

Objection 5: the employer threatened employees with adverse consequences and/or discipline if they complied with NLRB subpoenas and participated in NLRB hearings. I have found unfair labor practices in this regard at Howell in connection with complaint paragraph 9. Thus, this objection is sustained.

Objection 6: the employer designated and the Board agent allowed a person closely identified with management to serve as an observer throughout the duration of the election. This allegation, which is not the subject of an unfair labor practice charge, concerns Thomas Zalucki, who served as an election observer for Respondent. The Board has held that an employer may not select a statutory supervisor or other individual who is "closely identified with management" as its election observer, *BCW, Inc.,* 304 NLRB 780, 780-781 (1991).

There is no evidence that the Union or any employee objected to Zalucki serving as an observer prior to the filing of the objections. While it is not clear where the burden of proof lies on this issue, I conclude that the Charging Party has waived its right to object to the conduct of the election on this basis, *Howard Cooper Corporation,* 121 NLRB 950, 951 (1958). Assuming, however, that the right to object has not been waived, I overrule the objection on the merits.

Zalucki is the health and safety co-ordinator at the Howell plant and co-chairman of the plant safety committee. The other co-chairperson is a rank-and-file hourly employee. Zalucki reports to Human Resources Manager James Nemeth. Zalucki is a salaried employee and has an office on the second floor of the plant; the offices of top management and the human resources office are on the first floor. I credit his testimony that he did not distribute anti-union literature or sell anti-union t-shirts during the organizational campaign.

Zalucki does not attend management meetings, but presents plant safety statistics at the monthly employee meetings. He is responsible for compliance with EPA waste disposal requirements and keeps management abreast of OSHA regulations. If he sees an employee violating OSHA regulations (e.g., an employee not wearing a respirator who is required to do so) or plant safety rules, he informs a supervisor; he has not disciplined employees himself. Zalucki provides safety orientation for new employees and some training on other specific safety matters (i.e., the requirements of OSHA's lockout/tagout regulation). He maintains records regarding the health and safety training of specific employees to comply with certain OSHA record-keeping requirements.

Although there are many similarities between Zalucki's duties and those of Ken Vivian, a compliance/training specialist found to be "closely identified with management" in *BCW, supra,* I conclude that there are enough material differences that I reach a contrary result with respect to Zalucki. Zalucki's duties, unlike Vivian's, were strictly limited to the area of safety and health. There is no evidence that employees subjectively perceived him as having any other role at the plant, *see Vestal Nursing Center,* 328 NLRB No. 16 (1999) (slip opinion pp. 16-17). Finally, in many respects, such as the location of his office, Zalucki was set apart from the plant management and I conclude that a reasonable employee would not necessarily perceive him as part of the management team.

Despite the fact that the Union had many opportunities to distribute its literature and solicit employee support, I have sustained a number of objections with respect to which it cannot be said with certainty that they did not affect the outcome of the election. This is particularly so with regard to: the announcement of the 4% increase; the threat made by Stronach; the prohibition of talking about the Union while working; the prohibition of distribution and solicitation by employees before and after their shifts and the discipline of employees who distributed union literature after their shift. I therefore will set aside the first election and recommend that a second election be conducted.

Conclusion of Law

By interfering with, restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, as set forth above, and by discriminating, as set forth above, in regard to the tenure of employment of Karen Brown and Robert Boka and the terms and conditions of employment of Bradley House, Jason Trikes, Sharon Bowlin, Arnold White, David Dunstan, Chris Duncan, Shenna Nunn, Gary Nunn and James Bates, Respondent, a single employer consisting of Magna International, Inc., Magna Interior Systems, Inc., Brighton Interior Systems Division, Versatrim Division, Versatrim Assembly and Sequencing Division, Magna Mirror Systems and Lowell Engineering, Inc., have engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) of the Act and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I further recommend that the election of June 29, 2000 at the Howell and Auburn Hills facilities be set aside and Case 7-RC-21817 be remanded to the Regional Director for the purpose of conducting a new election at such time as he deems that circumstances permit a free choice regarding a bargaining representative.

Respondent, having discriminatorily removed employees Robert Boka and Karen Brown from their temporary positions, must notify Express Personnel Services that it has no objection to restoring Brown and Boka to the positions they occupied prior to May 11, 2000.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[42]

---

[42] 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.

ORDER

The Respondent, Magna International, Inc.; Magna Interior Systems, Inc.; Versatrim Division, Howell, Michigan; Versatrim Assembly and Sequencing Division, Auburn Hills and Warren, Michigan; Brighton Interior Systems, Brighton Michigan; Magna Mirror Systems and Lowell, Engineering, Inc., Alto, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with employees' free choice in deciding whether or not to select a bargaining representative by:

(i) Unlawfully granting or promising wage increases or other benefits;

(ii) Announcing wage increases or other benefits at a time which interferes with employees' free choice;

(iii) Suggesting that whether employees receive a benefit or not depends on whether or not they select a bargaining representative;

(iv) Soliciting and promising to rectify employee grievances.

(b) Interfering with the process of the National Labor Relations Board by:

(i) Informing subpoenaed employees that they are not required to appear at Board hearings;

(ii) Informing subpoenaed employees that Respondent's attendance policy will be applied to them if they attend a Board hearing.

(c) Maintaining and enforcing overly broad rules on solicitation and distribution of literature, employee access to the employer's facility and the use of employee bulletin boards, which apply to union or other protected activities.

(d) Enforcing rules on solicitation and distribution of literature, and a dress code in a discriminatory fashion.

(e) Threatening employees with adverse consequences if they select a union as their bargaining representative.

(f) Disciplining or discharging employees for engaging in union or other protected activities.

(g) Conveying to employees the impression that their union activities are under surveillance.

(h) Coercively interrogating employees about union activities.

(i) Conveying to employees the impression that selecting a union as their bargaining representative would be futile.

(j) Retaliating against employees for engaging in union or other protected activities by enforcing plant rules more strictly.

(k) forbidding discussion of unions but allowing other non work-related conversations while employees are working.

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

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

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Robert Boka and Karen Brown, and the unlawful disciplinary action taken against Bradley House, Jason Trikes, Sharon Bowlin, Arnold White, David Dunstan, Chris Duncan, Shenna Nunn, Gary Nunn and James Bates, and within 3 days thereafter notify these employees in writing that this has been done and that the discharge or discipline will not be used against them in any way.

(b) Within 14 days from the date of this Order, notify Express Personnel Services that it has no objection to the restoration of Robert Boka and Karen Brown to the positions that they occupied prior to May 11, 2000.[43]

(c) Within 14 days after service by the Region, post at its facilities in Howell, Michigan, Brighton, Michigan, Auburn Hills, Michigan, Warren, Michigan and Alto, Michigan, copies of the attached notice marked "Appendix."[44] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 5, 2000.

(d) 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.

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

---

[43] It would seem that Respondent would also be liable for any loss of pay suffered by Boka and Brown and should also be required to make them permanent employees of Magna after 90 days as temporary employees, if they desire such status. However, since the General Counsel has asked only that Respondent be required to notify Express Personnel that it doesn't object to the restoration of Boka and Brown, I feel constrained from granting any further remedy.

[44] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(f) IT IS ALSO ORDERED that Case No. 7–RC–21817 be remanded to the Regional Director to take appropriate action consistent with this decision.

Dated, Washington, D.C. March 9, 2001.

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with your free choice in deciding whether or not to select the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, or any other union as your bargaining representative.

WE WILL NOT unlawfully grant or announce wage increases or other benefits to interfere with your free choice in deciding whether or not to select a bargaining representative.

WE WILL NOT suggest that whether or not you receive wage increases or other benefits depends on whether or not you select the Union as your bargaining representative.

WE WILL NOT solicit or promise to rectify grievances in order to interfere with your free choice in this matter.

WE WILL NOT interfere with your free choice by suggesting that selecting the Union would be futile.

WE WILL NOT interfere with the National Labor Relations Board's processes by informing employees that they need not comply with NLRB subpoenas or that they will suffer any adverse consequences if they do so.

WE WILL NOT maintain and enforce overly broad rules on solicitation and the distribution of literature, employee access to our facilities and the use of employee bulletin boards.

WE WILL NOT enforce any rules regarding the aforementioned matters in a discriminatory fashion.

WE WILL NOT threaten or retaliate against you for engaging in activities protected by the National Labor Relations Act.

WE WILL NOT coercively interrogate you about such activities.

WE WILL NOT discipline or discharge you for engaging in such activities.

WE WILL NOT convey the impression that such activities are under surveillance.

WE WILL NOT forbid the discussion of the Union or other protected activities during working time while allowing the discussion of other non work-related subjects.

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

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline of Bradley House, Jason Trikes, Sharon Bowlin, Arnold White, David Dunstan, Chris Duncan, Shenna Nunn, Gary Nunn and James Bates and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discipline will not be used against them in any way.

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

WE WILL, within 14 days from the date of the Board's Order, notify Express Personnel Services that we have no objection to the restoration of Robert Boka and Karen Brown to the positions in our Auburn Hills facility, which they held prior to May 11, 2000.

MAGNA INTERNATIONAL, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

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 with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226–2569, Telephone 313–226–3244.