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

AMERICAN RED CROSS ARIZONA
BLOOD SERVICES REGION

And **Case 28-CA-23443**

LOIS HAMPTON, an Individual

Mary Davidson, Esq., and *Paul Irving, Esq.,*
Phoenix, AZ, for the General Counsel.
Howard Cole, Esq., Las Vegas, NV, *Abbe Goncharsky, Esq.,*
and *Sarah Selzer, Esq.,* Phoenix, AZ, for the Respondent.

DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. Pursuant to notice, I heard this case in Phoenix, Arizona, on September 20-23 and November 14-16, 2011. Lois Hampton, an individual (the Charging Party or Hampton), filed an unfair labor practice charge in this case on April 12, 2011.[1] Based on that charge, the Regional Director for Region 28 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing (the complaint) on June 30, 2011. The complaint alleges that American Red Cross Arizona Blood Services Region (the Respondent, the Employer, or the Red Cross) violated Section 8(a)(1) of the National Labor Relations Act (the Act).[2] The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, and my observation of the demeanor of the witnesses,[3] I now make the following findings of fact and conclusions of law.

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[1] G.C. Ex. 1(a) and 1(b) establish the filing and service of the charge as alleged in the complaint.

[2] At the hearing, the correct name of the Respondent, as reflected above, was stipulated to by the parties, and counsel for the General Counsel amended the formal papers to reflect that name.

[3] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

Findings of Fact

I. Jurisdiction

During the hearing, the parties agreed to the following jurisdictional facts as set forth in the Respondent's answer: The Respondent is a federally-charted, non-profit corporation headquartered in Washington, D.C. At all relevant times, it has had offices in Phoenix and Tucson, Arizona. Since October 12, 2010, it has been engaged in the collection, processing, and distribution of blood products in the State of Arizona.

Further, at the hearing, the Respondent admitted the allegations in the complaint that during the 12-month period ending April 12, 2011, the Respondent, in conducting its business operations, derived gross revenues in excess of $250,000; and during the same period it purchased and received at its Arizona facilities goods valued in excess of $50,000 directly from points outside the State of Arizona. In its answer, the Respondent admitted that "it falls within both the statutory and discretionary standards for exercise of jurisdiction by the Board."

Accordingly, I conclude that the Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[4]

II. Alleged Unfair Labor Practices

A. The Dispute

It is the General Counsel's contention that the Respondent discharged its employee Lois Hampton because she engaged in protected concerted activity. Allegedly, that activity included complaining to the Respondent's supervisors about working conditions, specifically the improper conduct of Hampton's immediate supervisor, Beverly Arriaga. The alleged protected concerted activity also included Hampton's conversations with other employees about this matter, and her efforts to garner support from her fellow employees. Further, the General Counsel contends that the Respondent has unlawfully maintained an allegedly overly-broad and discriminatory provision in its "Agreement and Acknowledgement of Receipt of Employee Handbook" form (the acknowledgment form), which employees are required to sign.

The Respondent denies the commission of any unfair labor practices. According to counsel for the Respondent, Hampton was fired because of her poor production and failure to achieve the blood drive goals set for her, and because she falsified information regarding those

[4] The parties could not agree on what period constituted "at all times material herein." Counsel for the Respondent offered to stipulate such material times would begin in August of 2010, which counsel argues "is the earliest named date as a relevant time in the complaint." However, counsel for the General Counsel would not agree to limit the phrase in this way. In any event, I do not believe this is a significant dispute. The Board's jurisdiction has been established, and those "times material" would include the entire period of the Charging Party's employment, during which time she is alleged to have engaged in protected concerted activity, as well as the period of time during which the Respondent is alleged in the complaint to have committed unfair labor practices. Those unfair labor practices alleged in the complaint do not run afoul of the statute of limitations under Section 10(b) of the Act. As I have so concluded, no further specific findings need be made.

drives, was deceptive and created "phantom" drives. According to the Respondent, Hampton's complaints about her supervisor's job performance or other concerted activity in which she may have engaged were unrelated to her termination. Further, counsel for the Respondent denies that the acknowledgment form, which employees were required to sign, was unlawful. In any event, the Respondent has recently changed the language on the acknowledgment form, which new language allegedly remedies any previous overly-broad and discriminatory provisions.

B. Background Facts

The Respondent is an autonomous region under the structure of the American Red Cross, a national organization that provides relief to victims of disaster, and helps individuals and organizations prepare for and respond to emergencies. The Respondent's principal office is in Tucson, Arizona, with a smaller satellite office located in Phoenix, Arizona. It provides blood services through voluntary blood donations collected at blood drives hosted by volunteer sponsor organizations held within the State of Arizona. The Respondent's Donor Recruitment Department (DRD) plans, coordinates, and implements the blood drives in Arizona, and is currently managed by Robert Meketa, who began working for the Respondent in the fall of 2009. Donor Recruitment Representatives (DRRs) recruit, retain, and manage the blood drive sponsors. Meketa has overall supervision of the DRRs, with direct supervision of those DRRs who work in Tucson, and with indirect supervision of those DRRs who work in Phoenix, where a DRR supervisor is located. The DRR supervisor in Phoenix from approximately June 2009 through March 25, 2011 was Beverly Arriaga.

Lois Hampton was first employed as a DRR in the Respondent's Phoenix office in February 2005.[5] It is uncontested that for the first three to four years of her employment, Hampton was a productive employee, with the General Counsel taking the position that she was a superior employee. The record evidence established that in January and April 2009, Hampton received two awards from the Respondent, one for "Outstanding Service 'Above & Beyond'" and the other for "Outstanding External Customer Service." (G.C. Ex. 26, 27.) Further, in May 2009, Human Resources Manager Laura Reed recognized Hampton for her "hard work and dedication during this time of transition" and awarded her an "interim hardship incentive equal to 10% of [her] current base salary." (G.C. Ex. 29.) However, it is important to note that these awards were given to Hampton just shortly prior to the time that Arriaga became her supervisor.

The DRRs are responsible for reaching specific monthly goals, measured in "blood units," for those blood drives that they arrange. According to Meketa's testimony, the basic requirement for each DRR is "roughly 500 units per month," but with that goal "fine-tuned" from month to month. He testified that such fine-tuning "has a lot to do with the account or accounts that are assigned to [each DRR]." The goals are set my management, with the supervisor in Phoenix typically making those assignments to the DRRs that she supervises. To some extent, the individual monthly goals are a product of the type of accounts assigned to each DRR. If in a given month a DRR has a drive scheduled with a particularly large account, that monthly goal would likely be in excess of the basic requirement. If the next month the DRR has only drives scheduled with small accounts, it would likely result in a monthly goal lower than the basic requirement. According to Meketa, the object is to "try to balance" each DRRs monthly goal so

[5] While counsel for the General Counsel's brief indicates that Hampton was hired in February 2006, Hampton's testimony was that she began her employment with the Respondent the previous year.

that over the course of a year the basic requirement is met. In this way, the expectation is that the region as a whole will meet the goal set for the region by the parent organization, the American Red Cross.

It appears from the testimony of the various current and former DRRs and from Meketa's own testimony that the monthly goals were somewhat fluid, and could change and be adjusted by management prior to the start of any given month, and even during a given month, if necessary. Both Meketa and the supervisor in Phoenix had the authority to change a DRR's goals if factors so warranted. Since there are frequently problems that develop in any blood drive that may serve to cause the blood collected to be lower than anticipated, the DRRs are actually expected monthly to book drives that would exceed 100% of goal, assuming all drives for the month met expectations.

Regarding the individual blood drives, each sponsoring organization would designate a blood drive coordinator (BDC) with whom a DRR would work to ensure the success of the drive. Each individual blood drive would have a goal as to a specific number of blood units expected to be collected during that drive. For sponsors that had held previous drives, the individual drive goals would usually be derived from the average of the previous three drives. However, that was not always the case, as other factors used in determining drive goals would include the date and time of the drive, and whether the employee complement had changed. The success of any particular drive was measured by the number of blood units collected. For the DRRs, their success and corresponding evaluations were measured in both their ability to meet goal each month, as well as the efficiency of each individual drive, meaning whether the individual drive met its goal.

The Respondent expects that its DRRs will book drives two or three months in advance and will remain in contact with the sponsoring organization's BDC during that period of time. It is the responsibility of the DRR to see that notices alerting employees/members of the sponsor to the location, time, and date of the drive are printed and delivered to the BDC. Further, the DRR is expected to coordinate with the BDC as to the location at which the blood will be given, and whether that will be a room made available by the sponsor, or a "bus" utilized for that purpose by the Respondent.

The Respondent's resources are obviously not unlimited. It has only a finite number of employees, equipment, and vehicles that can be devoted to the collection of blood on any given day. Accordingly, those resources must be properly allocated and shared among all the drives scheduled monthly by the DRRs. Therefore, the actual "booking" of drives by the DRRs is of critical importance to the Respondent's managers. It is the Respondent's Acquisition, Planning, and Scheduling Department that is ultimately responsible for coordination with the DRRs as to their scheduled drives and specific drive requirements, and for allocating resources to those drives.

During the hearing, a good deal of time and testimony was devoted to the mechanics of the booking process. Unfortunately, the parties disagree as to the specifics of that process. The testimony of current and former DRRs, and of Meketa, and of the Senior Manager, Acquisition, Planning, and Scheduling, Erna Goldkuhl, were somewhat at variance with each other regarding both the Respondent's stated requirements and the actual practice of booking drives. Further, the booking process has been a work in progress, with various adjustments, changes, and fine tuning to the process occurring throughout the last several years. In any event, I have attempted to reconcile the conflicting evidence to the extent possible, setting forth both the Respondent's stated position on the booking process, as well as the Charging Party's contention, shared by several other DRRs, as to how the process really worked in practice.

The Respondent's software system, known as "Hemasphere," is designed to maintain its state-wide blood drive calendar and allow the Respondent to allocate and track its drive resources. It is the Respondent's position that the Scheduling Department would not place a blood drive into Hemasphere until the DRR confirmed that the drive was an "actual drive," meaning that the DRR had already confirmed with the drive's sponsor the date, time, location, and size of the drive. However, according to the Charging Party, as well as former DRR Nikole Holverson and current DRR Christa Mitchell, in practice things were not so exact. In this regard, I credit the testimony of Mitchell, Holverson, and Hampton, as these DRRs generally supported each others testimony, and as the persons ultimately responsible for the success of the drives, they were in the best position to note how the booking system worked in practice, rather than just theoretically.

According to the testimony of the DRRs, blood drives put on the schedule were not necessarily fully confirmed. While that would have been ideal, Mitchell testified that only about "75 percent of the drives go as planned." She indicated that even after scheduling, the goal could change, or the equipment, the location, or time could change. As a preliminary step to placing a drive on Hemasphere, all the DRRs state-wide would attempt to place their drives on a master calendar. In this regard, on July 12, 2010, the Respondent held a "booking-meeting" or "booking-party," for all DRRs at its headquarters in Tucson. This was not the first such meeting of its kind, but was significant as it occurred at a time of transition for the scheduling process.

During this meeting, the DRRs were expected to place their anticipated blood drives on a master calendar, a white-board, for a three month period, indicating the date of the drive, the expected number of blood units to be collected, and whether a "bus," which was supplied by the Respondent, would be needed. Although the Respondent contends that these drives were intended to be "real" drives, the credible evidence in the form of the testimony of the DRRs indicates that these were merely anticipated or tentative drives. Meketa did clearly indicate to the DRRs that following such a meeting, they were to quickly contact their sponsor's blood drive coordinator (BDC) to confirm the date, time, place, and expected blood units of those drives placed on the master calendar. Once that was done, the DRRs were expected to submit a list of their drives to the scheduling department, which the DRRs claim was then responsible for placing the drives into Hemasphere within a few days. However, as the DRRs have noted, even after a drive was placed into Hemasphere changes could be made, and apparently the only really solid result of having a drive placing into Hemasphere was that the Respondent was committing its resources to that drive.

In any event, as noted, the booking system was a work in progress, with DRR Holverson testifying that originally it was necessary to have Hemasphere confirm that the resources were available for a drive before that drive was confirmed with the sponsor. At some point the procedure changed to more reflect that system as discussed above. But unfortunately, it is difficult to determine precisely when this change was fully implemented. Erna Goldkuhl testified that there had been a "significant disarray in booking drives," so that a new system was announced in May 2010. However, she admits that there was a "learning curve" with the new system. She acknowledges that this was apparent following the July 2010 booking meeting, when most of the drives placed on the master calendar were "holds," until such time as the DRRs could confirm the drives with their sponsors.

While I can not definitively determine to what extent the Respondent had attempted to fully implement the new booking system as of the time of the July 12 booking meeting, I do find that even as of that date the system continued to be in disarray. This leads me to conclude, based primarily on the credible testimony of the DRRs, that it was reasonable as of that date for the DRRs, including Hampton, to believe that drives placed into Hemasphere could legitimately

constitute "holds," which still needed confirmation from the sponsor, and could, therefore, be altered in Hemasphere if necessary. In fact, the Respondent utilized an "exemption" form for making changes to drives that had already been placed into Hemasphere, which form apparently was used with some regularity.

There is no question that Hampton did not get along with Beverly Arriaga who became her supervisor in the summer of 2009. All parties seem to agree that Arriaga was an abusive manager, although they may somewhat disagree as to the extent of that abuse. All the DRRs who testified provided lurid details of their abuse at the hands of Arriaga. She was a micro-manager who treated the DRRs with disrespect and used intimidation, threats, histrionics, and verbal abuse to supervise them on a daily basis. It appears that she caused a constant turnover of DRRs in the Phoenix office. In an effort to unite against her and protect each other from her abuse, the DRRs maintained a kind of code to alert each other as what type of mood Arriaga was in on any given day. Upon entering the office, the DRRs would inquire as to the weather, meaning how Arriaga was acting. A report that the weather was stormy meant that she was in a bad mood and they should take care in dealing with her.

Hampton testified that in August or September of 2009, shortly after Arriaga became the supervisor in the Phoenix office, she and Ronda Brown, another DRR, began to discuss the problems and complaints that they had with Arriaga. In the late summer and early fall that year, Hampton called the Human Resource Manager, Laura Reed, in Tucson and complained about Arriaga. However, matters got progressively worse, and later in the fall Brown and Hampton were in Tucson for a meeting and used the opportunity to talk in person with Reed about Arriaga's abusive behavior, which included threats of discharge, yelling, screaming, and an overall "hostile work environment." This testimony was unrebutted as Reed, who was no longer employed as the Respondent's Human Resource Manager in Tucson, did not testify. Conditions in the Phoenix office did not improve, and in November Brown resigned. That left only two DRRs in the Phoenix office, the Charging Party and Nikole Holverson. While the Phoenix office was designed to be a three DRR office, because of turnover, that has frequently not been the case.

In his post-hearing brief, counsel for the Respondent acknowledges that Hampton raised her concerns about Arriaga on "multiple occasions with Robert Meketa." In March 2010,[6] all the DRRs were in Tucson for a training session. Hampton used that opportunity to discuss her concerns about Arriaga with Meketa. She again expressed her complaints about Arriaga to Meketa in late June in Tucson. Additionally discussed at that time, according to both Meketa and Hampton, was Meketa's concern that the Charging Party's work's "performance was slipping," and that she was "not making goal." According to Meketa, Hampton did not really offer any excuse for her recently poor production, except perhaps the difficult work environment created by Arriaga. Meketa testified that he told Hampton that "she needed to buckle down and get the job done." At the time of the meeting, Meketa knew that Hampton was going to be placed on a Performance Improvement Plan (PIP) within the next week or two, and so was somewhat uncomfortable having this conversation with her.

It is very significant that Meketa acknowledges that during the meeting he had with Hampton in February 2010[7] where she complained about Arriaga's conduct, that he "counseled [Hampton] to take a leadership role to bring the team together." He considered Hampton to be

[6] All remaining dates are in 2010, unless otherwise indicated.

[7] While Meketa places this meeting in February, it is more likely that it occurred the following month and was the March meeting referred to by Hampton.

one of the "senior people," and told her "to try to make it a team-enhanced work environment and not to be the one constantly behind the scenes or in front of the scenes, prodding, stirring the pot or whatever." He testified that he "counseled [Hampton] on this several times."

The testimony of Hampton, Holverson, and Christa Mitchell, who was hired as a DRR in the Phoenix office in May 2010, was uncontested that Arriaga was continuing her abusive behavior, and that they would discuss on an almost daily basis what do to about their mistreatment. According to Holverson, it was Hampton who would stand up to Arriaga when the other DRRs in the office were fearful of doing so. She described Arriaga as engaging in "screaming matches" when Hampton would stand up to her. Holverson testified that she did not want to "emulate" what Hampton did because Arriaga was acting in a very negative way towards Hampton. Holverson characterized the situation as being "like the tall nail gets hammered down….It was not a good environment to question or challenge anything."

In mid-June, Arriaga gave Hampton a form to sign acknowledging the receipt of the employee handbook. A few days after receiving this "Agreement and Acknowledgement of Receipt of Employee Handbook " form, Hampton informed Arriaga that she did not agree with some of the language on the form, specifically that language listing the actions that the Respondent could unilaterally take against an "at-will" employee. She told Arriaga that she wanted a new form to sign that would show she specifically did not agree with the language to which she objected. Hampton testified that Arriaga "was agitated that [she] wanted to do this." However, Arriaga did ultimately allow Hampton to cross out the language on the form that she found offensive, and so Hampton signed a redacted copy of the form. (G.C. Ex. 37, G.C. Ex. 79, "Exhibit 2.") Hampton discussed the acknowledgement form with the other DRRs in the Phoenix office, counseling Holverson and Mitchell to be careful what they signed.

As of July 1, the Respondent placed Hampton on a 60 day Performance Improvement Plan (PIP). Hampton was so advised by Arriaga and Linda Filep,[8] Human Resource Manager, on July 6. The decision to place Hampton on this PIP was made by Meketa, with input from Arriaga, Filep, and the Respondent's CEO, Nancy Mowry. According to the memorandum placing Hampton on the PIP, the reasons for the Respondent having taken the action included: 1. a failure to meet goal 6 months out of 12 months for the fiscal year, 2. a failure to be booked out a minimum of 3 months, and 3. a failure to provide excellent customer service and timely follow up with sponsors. (G.C. Ex. 35, Res. Ex. 11.[9])

Hampton testified that Arriaga told her not to discuss her PIP with anyone as "it was personal and confidential." However, Hampton did discuss the PIP with DRRs Mitchell and Holverson, as well as with Jayne Hudson, a customer service representative in the Phoenix office. According to Hampton, during a break room conversation with her co-workers about her PIP, Hampton raised the issue of their ongoing problems with Arriaga, that matters were not improving, and the impact the stress was having on their health. Hampton testified that about

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[8] Filep had replaced Reed in that position.

[9] There are two copies of the PIP in evidence. The PIP makes reference to an "attached spreadsheet." That spreadsheet is the final page of Res. Ex. 11, while G.C. Ex. 35 does not contain the spreadsheet. During the hearing, the parties disagreed over whether the PIP document given to Hampton contained this spreadsheet. In any event, based on the record evidence and the context in which these documents were admitted into evidence, I am of the view that it is more likely than not that the PIP received by Hampton included the spreadsheet. Accordingly, I find that the PIP document received by the Charging Party did in fact include the spreadsheet, as reflected in Res. Ex. 11.

one week later she was orally reprimanded by Arriaga for "saying harassing things about her in the break room." Arriaga also complained that Hampton "was talking about her, and [Hampton] wasn't supposed to be doing that." Allegedly Arriaga also reminded Hampton that she had "told [her] not to talk about [her] PIP." As Arriaga did not testify at the hearing, the evidence of this conversation went unrebutted.

On about July 12, there was a "booking meeting" held in the Respondent's Tucson office, attended by all the DRRs, including those from Phoenix. The purpose of the meeting was to have the DRRs place their blood drives for a three month period on a master calendar white-board, also indicating the number of anticipated blood units for each drive, as well as whether the Respondent would need to provide a "bus" for any specific drive. This information would allow the Respondent to plan the allocation of its state-wide resources for those three months. Earlier in this decision I indicated at some length the parties differing positions regarding the definitive nature of the selections made by the DRRs. As noted, the Respondent takes the position that the drives listed on the calendar were expected to be "real drives," with relatively few changes occurring, while the General Counsel contends that the DRRs understood that these drives were merely "anticipated drives," which still needed sponsor confirmation and might be altered significantly, even after they were entered into Hemasphere.

The problems in the Phoenix office reached a boiling pointing in early August. Arriaga was apparently upset with a suggestion made by Hampton and Holverson as to how blood drive information was to be entered on a spreadsheet. Arriaga pounded on Hampton's desk and shouted, "Lois, you're not the manager. I want it done this way." Arriaga took Holverson into her office, from which Hampton and the other employees could hear yelling, screaming, and the pounding on desks. Subsequently, Holverson exited from Arriaga's office crying.

The three DRRs went to lunch together and talked about the situation. They decided that immediate action needed to be taken. When they returned to the office, calls were made to management in Tucson. However, there is some dispute as to exactly who made the calls.

According to Hampton, she called Meketa, spoke with him for 20 minutes, told him what had transpired, and regarding Arriaga said, "I think this woman is crazy, and I don't know what she's going to do, but she could go home and grab a gun and come back and shoot us all." Hampton claims that Meketa told her to tell "everyone to go home." However, according to Meketa, he believes it was Holverson who called him and reported the incident. He testified that she was very upset, describing a "confrontation" between Arriaga and Hampton, which "escalated to the point where people were yelling and shouting at each other." Meketa claims that he told Holverson to go home and to tell Mitchell to do the same. Meketa also sent Arriaga home, and then instructed Linda Filep to conduct an investigation of what had transpired in Phoenix. Filep testified that it was actually Arriaga who called first to tell her what had just happened in Phoenix, followed by calls from Holverson and Hampton.

In any event, Meketa and Filep were concerned enough about the incident to drive to Phoenix to speak with Arriaga and the three DRRs. The record evidence is somewhat unclear as to when the managers made this trip to Phoenix, whether it was the following day, or as late as a week later, or even whether there were actually two trips made during this time period. In any event, Meketa and Filep spoke with the three DRRs both as a group and individually. They also spoke separately with Arriaga. There is no question that the DRRs expressed their distress over the way Arriaga was managing the office and her behavior towards them. As a result of the investigation of the incident, the Respondent placed Arriaga on a PIP for poor performance as a supervisor, effective August 10. (G.C. Ex. 11.) The DRRs were told that while Arriaga was going to return to the office as their supervisor, that they were now permitted to work at home

three days a week. Presumably, this would ease the tension in the office, as they would have less contact with Arriaga.

When Holverson met with the managers she informed them that she was going to resign, making it clear that she could no longer handle the stress in the office and the way Arriaga treated the staff, creating an abusive work environment. When Hampton met with Filep and Meketa, she reminded them that she had told them for some time that things were going to escalate, and they finally had. She told them that she was "scared for her life." Clearly, Hampton was not happy with the news that Arriaga would be returning to the office. According to Hampton, Meketa reiterated that she could now work at home for part of the week, so things "will all work out." Filep allegedly added that Hampton had brought some of these problems on herself by "agitating [Arriaga,]" as Hampton had allegedly "talked back to her."

It is important to note certain comments that Meketa made while testifying under cross-examination by counsel for the General Counsel. Counsel asked him if it was true that during the 60 day period that Hampton was on her PIP that he had heard she was talking with the other DRRs about the Employer and about Arriaga. Meketa responded that he "had heard reports from different individuals that, yes, she was talking to people." He testified that he "wouldn't phrase the word talking. Inciting would be a better word. Again, stirring the pot. In other words, that she was bringing these issues up not at their request, but she was trying to cause trouble. That's the way [he] read it, interpreted the statements that [he] heard from other people." He felt that Hampton was being unprofessional and unproductive. Meketa went on to say that "there was a lot of turmoil" in the Phoenix office, that "people were going at it with each other," which he attributed to "a joint effort by Ms. Hampton and Ms. Arriaga."

Holverson gave several weeks notice to the Respondent of her resignation, during which period of time her accounts were distributed to the remaining DRRs, Mitchell, Hampton, and Arriaga. On August 24, Hampton wrote an email to Meketa, with the assistance of Holverson, complaining about the distribution of Holverson's accounts. Hampton stated in the email that she was concerned about the decision to have 175 units placed under Arriaga's name, but managed by Jayne Hudson. Hudson was the customer service representative in Phoenix, and Hampton felt that Hudson did not have adequate training as a DRR, and that both she and Arriaga were too busy to properly handle these accounts.

The following day, August 25, Arriaga presented Hampton with her yearly performance review. (G.C. Ex. 41.) Hampton received an "unsatisfactory" rating of one (on a scale of one to five) for not meeting the core competence of her monthly goals and for not meeting the core competence of booking her calendar 90 days in advance during the second half of the preceding year. Hampton's overall performance rating for the year was two (on the one to five scale), with two reflecting that "more is expected." This rating reflected the Respondent's contention that Hampton had missed reaching her performance goals for seven out of twelve months. It should be noted that under the "Ethics and Integrity" portion of the review, Arriaga wrote: "This is an area of concern because of gossip, not maintaining confidentiality and negative attitude that affects the team. This has been addressed with Lois." Hampton testified that she understood this comment to refer to the one conversation that she had with Arriaga about Hampton "gossiping" in the break room, when she was discussing Arriaga and Hampton's PIP with her coworkers, and during which Arriaga had told her that she was not supposed to discuss her PIP with anyone.

As of September 1, Hampton's PIP was extended for an additional 30 days. Arriaga presented her with the memorandum extending the PIP. (G.C. Ex. 47.) The document states that: "Although you have made strides in your bookings, not making goal for the first two months

of this FY, along with having more than 3 drives in a month (you had five) that fell below 70% of efficiency, and behavior concerns, constitute grounds to be placed on a PIP." The document showed specifically that in July only 56% of Hampton's goal was collected, but that in August 99% had been collected. It also indicated the future months where Hampton had failed to meet the minimum booking expectations, but complemented her achievement none-the-less, stating that, "You have made great progress with booking out thus far and are almost there." However, it should be noted that Arriaga also wrote, in part: "complaints from other employees continue as to your negative behavior and gossiping with several internal staff members in both Phoenix and Tucson. You have received repeated warnings about your negative attitude, unprofessional behavior with your manager and gossiping." According to Meketa, the decision to extend Hampton's PIP was made by him, with input from Arriaga, and Filep. It should also be added that at some point, although the exact date is uncertain, Meketa removed Arriaga from the PIP that she had been on since the incident occurring in the Phoenix office in early August.

Two days after having her PIP extended, on the Friday afternoon before the Labor Day weekend, Hampton sent an email to Meketa and Arriaga informing them that she was taking an indefinite medical leave of absence,[10] effective immediately. (G.C. Ex. 12.) Her first day of absence was Tuesday, September 7. At her request, Hampton's medical leave was extended a number of times, and untimely, she was off from work approximately 12 weeks.

Over the Labor Day weekend, Hampton sent emails to her managers referencing approximately 10 blood drives that she was working on, indicating the status of those drives and certain issues related to them. (G.C. Ex. 57.) Hampton testified that she also sent a long email to Meketa and Arriaga describing her upcoming drives and what still needed to be done on those drives. However, she never made a copy of this alleged email, and the Respondent's managers testified that they never received any such communication. It is undisputed that Meketa informed Hampton on approximately September 10 that she was to not perform any work for the Respondent while she was out on medical leave.

Hampton testified that she expected that while out on medical leave, her active blood drives would be assigned to other DRRs to complete, which procedure was used when DRRs were out of the office on vacation, medical, or other leave. In fact, it is the Respondent's position that Hampton's drives, those of which management was aware, were assigned to other employees in the Phoenix office who were to continue to process them. At the time that Hampton went out on medical leave the other employees in the Phoenix office who were in a position to do so were Arriaga, Christa Mitchell, and the customer service representative, Jane Hudson.

The Respondent contends that Arriaga, Mitchell, and Hudson were each allocated certain of Hampton's drives and proceeded to contact the sponsors and the blood drive coordinators (BDC) responsible for those drives. The intent was to continue those drives to completion and ensure their ultimate success. However, the Respondent also contends that in the course of doing so, the employees assigned the drives in Hampton's absence uncovered serious problems with many of the drives, which problems indicated that Hampton had at best been careless and inattentive to details in scheduling drives, and at worst she had been

[10] Although the email mentions the Family Medical Leave Act (FMLA), because of the size of the Phoenix office, it does not qualify under the FMLA. Accordingly, those employees who have medical issues are simply given a medical leave of absence.

fabricating blood drives in an effort to "fraudulently" improve her statistics. The Respondent takes the position that such conduct, along with her history of poor production, ultimately led to the decision to terminate Hampton.

According to the Respondent, it uncovered a disturbing pattern showing that Hampton had engaged in numerous efforts to artificially increase her performance data. It appears that the Respondent considered most egregious Hampton's alleged placement of multiple blood drives on the Hemasphere calendar without confirming the details of the drive, thereby committing the Respondent's limited resources without justification. Hampton denies any such conduct. The dispute is really with the parties different opinions as to what constitutes a confirmed drive. As I discussed earlier in this decision, it is the position of the Respondent that drives should not be placed into Hemasphere unless and until the DRR has confirmed with the sponsor all the various details of the drive. However, Hampton, Holverson, and Mitchell contend that the Respondent's stated position did not reflect actual practice. They testified that it was not unusual to have anticipated drives placed into Hemasphere even before the sponsor had agreed to all the details, which sometimes resulted in changes being made in Hemasphere.

The Respondent offered evidence that six different blood drives that were booked into Hemasphere by Hampton had not been confirmed by the sponsors' blood drive coordinators, specifically: JDA Software, the Knights of Columbus-Glendale, the Morristown Fire Department, Superior High School, the Outlets at Anthem, and Anthem Community. (Res. Ex. 24; 15; 16; 13; 1-2; 19.) As is reflected in the documentation, some of these sponsors' BDCs indicated that they had never even agreed to a date for the drive, let alone a time, place, or number of anticipated units of blood.

During her testimony, Hampton did not contend that she had finalized and confirmed all the details of the drives with the BDCs before having the drives placed into Hemasphere. She merely alleged that she followed the standard practice at the time and had anticipated drives placed into Hemasphere. She argued that in some cases Laura Mew, the scheduler, was late in adding these drives into Hemasphere, and so Hampton did not have an opportunity to confirm the drives with the BDCs before she left to go on medical leave. Hampton testified that she expected that in her absence, whichever DRRs were assigned to complete her drives would take care of confirming those drives with the BDCs.

It is important to note that Mitchell testified that she was not assigned to take care of Hampton's work while Hampton was on leave and was not aware of anybody being assigned to do so. However, Mitchell testified that Arriaga asked to be informed whenever Mitchell had any conversations with Hampton's BDCs. According to Mitchell, Arriaga said, "I want to know if there are any conflicts, if anything arises with Lois' accounts. I'm keeping track of this." Mitchell felt that the clear implication was that "while [Hampton] was away, Arriaga wanted to build a case against [Hampton]."

Of course, the Respondent takes the position that Hudson and Arriaga uncovered these deficiencies in Hampton's blood drives only in the course of trying to complete the work that Hampton had started. It then allegedly became apparent to management that Hampton had filled her calendar with blood drives that were not actually booked. According to the Respondent, Hampton's deceitful efforts had made it appear that her performance had improved, when actually it had not. This improvement had been the basis for the Respondent's willingness to extend Hampton's PIP (G.C. Ex. 47.), rather than to simply terminate her.

In addition to having drives placed into Hemasphere that were not fully confirmed with the BDCs, the Respondent contends that it also uncovered other deficiencies in Hampton's

work. Maricopa County was one of the Respondent's largest accounts. Hudson, who was assigned many of Hampton's drives to complete, testified that while Hampton had confirmed two separate blood drives with the Maricopa County BDC, she had never entered the information for either drive into Hemasphere. The result was that the drives could not be conducted on the dates agreed to with the BDC, as Hampton had failed to reserve the necessary resources by entering the drives into Hemasphere. Further, the Respondent discovered that in several instances Hampton had artificially increased the collection goal for drives without justification. Normally the appropriate goal for a blood drive is based on the average from the past three drives, with an increased goal approved for documented reasons. However, it is the position of the Respondent that Hampton increased certain drive goals without proper justification simply in an effort to improperly inflate her statistics. Finally, the Respondent discovered that Hampton had scheduled two blood drives at the same site within 56 days of each other, which is an improper procedure since donors are ineligible to give blood again within that limited period of time.

Based on the discoveries made during Hampton's medical leave, the Respondent concluded that she had attempted to deceive her managers into believing that her production and efficiencies were better than was truly the case. This created problems for the Respondent, the most significant of which was the commitment of resources for "phantom" drives, depriving genuine drives of those limited resources needed to successfully complete them.

On the other hand, Hampton testified, with some support from the other DRRs, that those drives that were unfinished at the time she went on medical leave required attention and continued processing. She testified that had she been at work, these problem issues would not have developed, as she would have completed the processing and brought these drives to successful conclusions. Hampton places most of the blame for these problems on the alleged failure of the Respondent to properly monitor her drives. The General Counsel contends that such inaction was deliberate, and an effort by Arriaga to make Hampton look bad, and, thus, give management a pretext for discharging her.

Meketa testified that he made the decision to terminate Hampton in consultation with, and following the approval of, Darrin Greenlee, the Respondent's CEO. In his post-hearing brief, counsel for the Respondent stresses that Arriaga did not have the authority to make that determination. Meketa instructed Arriaga to work with Linda Filep to draft Hampton's termination notice. That Notice of Termination dated November 13 charged that Hampton had failed to meet her goals, failed to have her calendar booked for future months, failed to have efficient drives, and failed to provide excellent customer service. (G.C. Ex. 13.)

Hampton was terminated the day that she returned from medical leave, on November 29. The termination notice was presented to her by Arriaga in the presence of Filep. Hampton disputed the reasons given for her termination, as is set forth above. Of course, it is the position of the General Counsel that Hampton was fired because she led the concerted efforts by the DRRs in Phoenix to have management take action against Arriaga who had created a hostile work environment in that office. Allegedly, in furtherance of the Respondent's efforts to terminate Hampton for having engaged in protected concerted activity, Arriaga had sabotaged the processing of Hampton's blood drives while she was on medical leave.

The Respondent acknowledges that Hampton and other DRRs complained about Arriaga's supervisory performance, but denies that those complaints were in any way related to Hampton's ultimate termination. The Respondent points to its having placed Arriaga on a PIP in

August as an indication that it took the complaints from the DRRs about her abusive behavior seriously, and, rather than resenting the complaints that Hampton and others raised, the Respondent relied on those complaints to take appropriate action against Arriaga.

Further, the Respondent offered evidence that when the DRRs in the Phoenix office continued to complain about Arriaga's poor performance as a supervisor, it terminated her employment effective March 25, 2011. Based on complaints that the Respondent received from Mitchell, and the new DRR in the Phoenix office, Rachael Greathouse, Meketa testified that he concluded Arriaga had reverted to the unacceptable behavior that she had exhibited in August 2010. This resulted in the decision to terminate her. (G.C. Ex. 9.) The Respondent argues that of all the DRRs who complained about Arriaga, namely Brown, Holverson, Mitchell, Hampton, and Greathouse, the only one to be terminated or otherwise disciplined was Hampton. In fact, Greathouse was ultimately promoted to supervisor, in place of the terminated Arriaga. This, the Respondent contends, is proof that Hampton's complaints about Arriaga were unrelated to Hampton's termination.

Finally, as was mentioned earlier, the General Counsel contends that the Respondent violated the Act by maintaining an allegedly overly-broad and discriminatory provision in an "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which among other matters attempts to define an "at-will" employment relationship. In that definition is contained the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way." Employees are required to sign the acknowledgement form, whereby they acknowledge receipt of the employee handbook and agree to abide by the rules set forth in the handbook. As was noted earlier, Hampton objected to signing the acknowledgement form as worded, and was reluctantly permitted by Arriaga to strike out certain language in the form, including the above referenced language, before signing the form. (G.C. Ex. 4, 37, 38.)

According to the testimony of Linda Filep, she sent to the Respondent's managers by email dated September 19, 2011, a memorandum attaching a new acknowledgement form and "updated statement" regarding at-will employment, which "**replace[d]"** the at-will employment policy set forth in the employee handbook (emphasis as is reflected in the email). Filep testified that the memorandum and form were to be distributed by the Respondent's managers to all employees, who were then to sign the acknowledgement form and return it to the human resources department. The attached new acknowledgment form did not contain the language that the General Counsel contends was unlawful. (Res. Ex. 25). The Respondent continues to deny that the cited language in the original acknowledgement form was in any way unlawful, and contends that the language was deleted merely out of "an abundance of caution." Further, counsel for the Respondent argues that as the alleged offending language has now been deleted, the allegation in the complaint dealing with this alleged unlawful language is now "moot."

III. Legal Analysis and Conclusions

A. Protected Concerted Activity

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations…and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection…." Employees are engaged in protected concerted activities when they act in concert with other employees to improve their working conditions. *Eastex, Inc. v. NLRB,* 437 U.S. 556 (1987); *NLRB v. Washington Aluminum Co.,* 370 U.S. 9, 14 (1962). An employer may not retaliate against an employee for exercising the

right to engage in protected concerted activity. *Triangle Electric Co.,* 335 NLRB 1037, 1038 (2001); *Meyers Industries,* 268 NLRB 493, 479 (1984). An employer violates Section 8(a)(1) of the Act when it discharges and employee, or takes some other adverse employment action against him, for engaging in protected concerted activity. *Rinke Pontiac Co.,* 216 NLRB 239, 241, 242 (1975).

The Board, with court approval, has construed the term "concerted activities" to include "those circumstances where individual employees seek to initiate or induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *Meyers Industries, Inc.,* 281 NLRB 882 (1986), affirmed 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988); See *Mushroom Transportation Co., v. NLRB,* 330 F.2d 683, 685 (3rd Cir. 1964) (observing that "a conversation may constitute a concerted activity although it involves only a speaker and a listener" if "it was engaged in with the object of initiating or inducing or preparing for group action or…it had some relation to group action in the interest of employees"); See also *NLRB v. City Disposal Systems, Inc.,* 465 U.S. 822, 831 (1984) (affirming the Board's power to protect certain individual activities and citing as an example "the lone employee" who "intends to induce group activity").

In the matter before me, there can be no doubt that Lois Hampton was engaged in protected concerted activity with other DRRs in the Phoenix office. The evidence is unrebutted that over an extended period of time, Hampton had numerous conversations with Brown, Holverson, and Mitchell regarding their displeasure with the manner is which Arriaga was supervising them. Hampton spoke with Brown, which conversations led to complaints made to Human Resource Manager Reed and Recruitment Manager Meketa, as well as repeated conversations with Holverson and Mitchell, which conversations led to complaints made to Human Resources Manager Filep and again with Meketa. While Hampton seemed to be the most outspoken of any of the DRRs, all the representatives shared the same general concern that Arriaga was abusive towards them, creating a hostile work environment through intimidation, threats, yelling, banging on desks, and micro-managing the staff. Obviously, such concerns involved the working conditions of the DRRs, and, as such, the most basic form of concerted activity.

The concerted activities of the DRRs did not end with merely having discussions among themselves. As noted above, they took their concerns directly to those supervisors who could most immediately resolve the problem. There is no question that Hampton, both individually and collectively with other DRRs, spoke by telephone and in person to Reed, Filep, and Meketa over a extended period of time about her concerns with Arriaga's conduct. While Hampton was still employed by the Respondent, her complaints, along with those of Mitchell and Holverson, resulted in Meketa and Filep conducting an investigation of Arriaga's conduct towards the DRRs in August 2010, and then in the placement of Arriaga on a PIP in an effort to improve her supervisory performance. In fact, so obvious were Hampton's complaints to the supervisors, that the Respondent does not deny her involvement in such protected conduct. The Respondent merely denies that Hampton's protected concerted activity was in any way involved in the decision to terminate her. That remains the gravamen of this case.

B. The Termination of Lois Hampton

In *Wright Line, A Division of Wright Line, Inc.,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of 8(a)(1) turning on employer motivation. First, the General Counsel must make a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's

decision. This showing must be by a preponderance of the evidence. Then, upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The Board's *Wright Line* test was approved by the United States Supreme Court in *NLRB v. Transportation Corp.,* 462 U.S. 393 (1983).

In the matter before me, I conclude that the General Counsel has made a *prima facie* showing that Hampton's protected concerted activity was a motivating factor in the Respondent's decision to terminate her. In *Tracker Marine, L.L.C.,* 337 NLRB 644 (2002), the Board affirmed the administrative law judge who evaluated the question of the employer's motivation under the framework established in *Wright Line.* Under the framework, the judge held that the General Counsel must establish four elements by a preponderance of evidence. First the General Counsel must show the existence of activity protected by the Act. Second, the General Counsel must prove that the Respondent was aware that the employee had engaged in such activity. Third, the General Counsel must show that the alleged discriminatee suffered an adverse employment action. Fourth, the General Counsel must establish a link, or nexus, between the employee's protected activity and the adverse employment action. In effect, proving these four elements creates a presumption that the adverse employment action violated the Act. However, more recently the Board has stated that, "Board cases typically do not include [the fourth element] as an independent element." *Wal-Mart Stores, Inc.,* 352 NLRB 815, fn.5 (2008) (citing *Gelita USA, Inc.,* 352 NLRB 406, 407, fn.2 (2008)); *SFO Good-Nite Inn, L.L.C.,* 352 NLRB 268, 269 (2008); Also see *Praxair Distribution, Inc.,* 357 NLRB No. 91, fn.2 (2011). In any event, to rebut the presumption, the Respondent bears the burden of showing that the same action would have taken place even in the absence of the protected conduct. See *Manno Electric, Inc.,* 321 NLRB 278, 280, fn.12 (1996); *Farmer Bros. Co.,* 303 NLRB 638, 649 (1991).

It is axiomatic that Section 7 of the Act gives employees the right to communicate with each other regarding their wages, hours, and working conditions. Further, the Board has consistently held that the communication between employees "for nonorganizational protected activities are entitled to the same protection and privileges as organizational activities." *Phoenix Transit Systems,* 337 NLRB 510 (2002) (citing *Container Corporation of America,* 244 NLRB 318, 322 (1979)).

As I have already found, there is no doubt that Hampton was engaged in protected concerted activity. She had numerous discussions with fellow DRRs, including Brown, Mitchell and Holverson, regarding their complaints about supervisor Arriaga. Many of these discussions occurred in the Phoenix office, specifically around their cubicles and in the break room. Arriaga was aware of these conversations, once even orally reprimanding Hampton regarding her and the other DRRs "gossiping" about Arriaga in the break room, and talking about Hampton's PIP, which Arriaga had instructed her not to do.

In addition to Arriaga, agents/supervisors Meketa, Reed, and Filep were aware of the complaints that the DRRs had with Arriaga's supervisory conduct as Hampton, and to a lesser extent Brown, Holverson, and Mitchell, had over an extended period of time spoken to them in person and by phone about this issue. On several occasions, Hampton, who clearly was the lead spokesperson for the DRRs in Phoenix, had spoken at length about Arriaga's abusive behavior. Meketa acknowledged that Hampton was the leader in this effort when he "counseled" her during a meeting that they had in February 2010 where Hampton complained about Arriaga, and he advised her "not to be the one constantly behind the scenes or in front of the scenes, prodding, stirring the pot or whatever." Further, Meketa testified that while Hampton was on her original 60 day PIP, he had heard from certain people that she was "stirring the pot,"

which he characterized as "trying to cause trouble." He felt that Hampton was being unprofessional and unproductive, and that "there was a lot of turmoil" in Phoenix, caused by the animosity between Hampton and Arriaga. Of course, Meketa and Filep were very aware of the problems that Arriaga was creating in the Phoenix office, placing her on a PIP in August 2010.

Meketa, Reed, and Filep were all admitted agents and supervisors of the Respondent. (Jt. Ex. 1.) The many conversations that Hampton had with fellow DRRs and with Meketa, Reed, and Filep regarding complaints about Arriaga, beyond question constituted protected activity. See *Champion Home Builders Co.,* 343 NLRB 671, 680 (2004). Further, supervisor Meketa, who allegedly made the decision to fire Hampton, supervisor Filep, and supervisor Arriaga herself were aware of Hampton's role in making these complaints. Accordingly, the Respondent's knowledge of Hampton's protected activity cannot be seriously denied.

Obviously, Hampton's discharge was an adverse employment action. But was the discharge retaliation for her concerted activities? As is reflected in the fact section of this decision, the Respondent had numerous stated reasons for terminating Hampton, specifically her low production and problems that developed with her blood drives while she was on medical leave. More will be said about these stated reasons for termination later in this decision. However, at this point it is very germane to the analysis to recall the testimony of Christa Mitchell. She is still employed by the Respondent as a DRR. To the extent that she testified adversely to the interests of the Respondent, her testimony is highly credible as she continues to be subject to the Respondent's evaluation of her performance.

Mitchell testified that while Hampton was on medical leave, although the only DRR left in the Phoenix office, she was not aware of anybody being assigned to take care of Hampton's work while Hampton was gone. Allegedly Hudson, although a customer service representative, under Arriaga's direction, was to process Hampton's blood drives to completion. Yet, according to Mitchell, Arriaga seemed interested not so much in completing those drives, as in building a case against Hampton. Mitchell credibly testified that Arriaga said, "I want to know if there are any conflicts, if anything arises with Lois' accounts. I'm keeping track of this." I find this statement very significant. It seems obvious to me that Arriaga was intent on finding reasons to take disciplinary action against Hampton. She knew that of all the DRR's, Hampton had taken the lead in bringing their complaints about her abusive supervisory style to management's attention. This had led to Arriaga receiving a PIP, for which she appears to have held Hampton responsible. Arriaga had earlier orally reprimand Hampton for "saying harassing things about her in the break room." She complained that Hampton "was talking about her, and [Hampton] wasn't supposed to be doing that."

I believe that the credible, probative evidence shows that Arriaga, Hampton's immediate supervisor, used the opportunity of Hampton's absence on medical leave to help build a case against her for termination. In her capacity as the DRR supervisor in Phoenix, she was in a position to either actively assist in the processing of Hampton's blood drives, or to act passively and allow some of those drives to fail to be completed. It appears to me that that is precisely what Arriaga allowed to happen. Her passive indifference to Hampton's drives resulted in some of them failing to be completed, or to cause them to need significant modification. She was, thereafter, able to use these "problem drives" to build a case for termination, which was a course of action Meketa appeared to need little encouragement to follow.

Further, I would note that Arriaga failed to testify as a witness. As Hampton's former supervisor and the person who worked closely with Meketa in placing before him those "facts" that he used to justify terminating Hampton, she should logically have been called to testify by the Respondent in order to support its defense. One would naturally assume that she would

testify favorably for the Respondent. Despite the fact that she was subsequently terminated by the Respondent and might well have been a reluctant witnesses, I shall draw an adverse inference from the Respondent's failure to call Arriaga to testify, or to offer a reason for failing to do so. I must, therefore, conclude that had Arriaga testified, her testimony would not have supported the Respondent's defense. *International Automated Machines,* 285 NLRB 1122, 1122-23 (1987), enfd. 861 F.2d 720 (6th Cir. 1988).

Finally, it is apparent to me that Meketa harbored animosity towards Hampton because she engaged in protected concerted activity. This animus was openly demonstrated when Meketa "counseled" Hampton in February 2010 that she should not constantly be "prodding, stirring the pot," and from his testimony that he believed she was "trying to cause trouble," and was "stirring the pot." He testified that he "counseled [Hampton] on this several times." Meketa's concerns about Hampton's conduct were all made in connection with her complaints about Arriaga's supervisory abuse.[11] They demonstrate that his ultimate decision to terminate Hampton was motivated, at least in part, by her protected concerted activity.

Having found that counsel for the General Counsel has offered sufficient evidence to meet her burden of establishing a *prima facie* case that the Respondent was motivated to discharge Hampton, at least in part, by her protected concerted activity, the burden now shifts to the Respondent to show that it would have taken the same action absent the protected conduct. *Senior Citizen Coordinating Counsel of Riverbay Community,* 330 NLRB 1100 (2000); *Regal Recycling, Inc.,* 329 NLRB 355 (1999). The Respondent must persuade by a preponderance of the evidence. *Peter Vitalie Company, Inc.,* 310 NLRB 865, 871 (1993). I am of the view that the Respondent has failed to meet this burden. The Respondent's reasons for terminating Hampton appear to be a pretext.

Counsel for the General Counsel issued a number of voluminous subpoenas directed to the Respondent for the production of documents. Ultimately, a veritable mountain of documents was admitted into evidence in this case. Further, throughout the course of the hearing much time was consumed by Counsel for the General Counsel arguing that the Respondent was not in compliance with the subpoena request. Following a number of rulings by the undersigned, and the production of still more documents by the Respondent, I concluded that the Respondent was in substantial compliance with the various subpoenas, and I denied counsel for the General Counsel's seemingly insatiable desire for still more documents, which I held were unnecessary for a proper adjudication of this case. In reviewing these documents, I am reminded of that well known adage from Mark Twain that, "There are three kinds of lies: lies, damned lies, and statistics." The production of so many pages of statistics concerning blood drive goals and efficiencies, reported on so many documents, with so many variables, regarding changing numbers of employees, over so many different periods of time created a mass of conflicting information. In my view, the result is that both the Respondent and the General Counsel are able to point to documents that each contends support their respective arguments.

The documents do tend to show that during the 2009-2010 fiscal year, Hampton's performance deteriorated sharply. Specifically, she missed her goal seven of those twelve months, and in those seven months, she missed her monthly goals by thirteen to forty-five percent. (G.C. 41, p. 8, the chart.) Further, as of July 2010, it appeared that she would continue to miss her goals, due to inadequate bookings, for at least two out of the next three months. (Res. Ex. 11.) However, Hampton was not the only employee with production

[11] Hampton's complaints ultimately resulted in Arriaga being place on a PIP in August 2010.

problems.

Carlos Apalategui was a DRR in the Respondent's Tucson office employed during some of the same time period as Hampton. On July 6, 2010, he was placed on a PIP by the Respondent for poor production. His PIP shows that he failed to make goal for May and June 2010, failed to book his calendar at the minimum required for July, August, and September 2010, and failed to bring his drives in at 70% or greater in May and June 2010. (G.C. Ex. 19.) Apalategui was not terminated, despite a significant period of very low production. Counsel for the General Counsel cross-examined Meketa extensively regarding why Apalategui was excused for his poor production and Hampton was not. According to Meketa, Apalategui was given a break because he was suffering from personal issues, specifically being the victim of a home invasion and beating, which were "affecting his day-to-day behavior and job performance." According to Meketa, "I took that into consideration when I wrote this [PIP]. The bottom line is, he wasn't getting the job done, but there were circumstances that I could attribute part of this happening, why he wasn't getting it done. It was something we were working through."

Meketa knew that Hampton's poor production was, at least in part, the result of the difficulty she was having with Arriaga, and due to the abusive atmosphere that Arriaga had created in the Phoenix office. However, he did not give Hampton the same consideration that he gave to Apalategui. It appears that he treated her in a disparate fashion, which I conclude was the result of Meketa's admitted feeling that Hampton was "stirring the pot." I believe that this constitutes a clear and unambiguous reference to Hampton's protected concerted activity in raising complaints with fellow-employees and managers about Arriaga's supervisory conduct.

I did not find Meketa to be a credible witness. He had difficulty recalling events, dates, who he spoke to, and what was said during certain very important conversations, including those that he had with Hampton. I found his answers to questions on cross-examination to be evasive. I did not find reasonable his attempt to distinguish Apalategui's poor production from that of Hampton. Further, he appeared to exaggerate and embellish the problems that Hampton's blood drives created during the period that Hampton was on medical leave. His suggestion that because Hampton had not fully confirmed certain of her drives that, she had engaged in stealing, cheating, and fraud was, in my view, certainly not justified and, frankly, "way over the top."

Regarding the difficulties encountered with Hampton's blood drives while she was on medical leave, I believe that some of those problems resulted from an intentional failure on the part of Arriaga to follow through and process those drives. Mitchell credibly testified that Arriaga seemed interested in building a case against Hampton. She attempted to do so by neglecting Hampton's drives. While Hampton's production was low and she certainly was not a model employee, I believe that she credibly testified that had she not been on medical leave, she would have appropriately finalized those drives and brought them to a successful conclusion.

Further, I believe that Hampton credibly testified regarding the scheduling of blood drives into the Hemasphere system. Her testimony was, for the most part, supported by the other DRRs that even after drives were placed into Hemasphere there could be significant changes made to those drives. It appears from the testimony of Erna Goldkuhl, senior manager acquisition planning and scheduling, that the entire scheduling system was in a state of flux at the time of the booking meeting in Tucson in July 2010. Her testimony that the DRRs were using the calendar to "hold" anticipated drives was very similar to the position taken by Hampton and her fellow DRRs. The issue of whether drives placed into the Hemasphere system were real drives or "phantom" drives is really just a matter of semantics. In actual practice, drives

placed into Hemasphere were subject to changes, which changes were in fact frequently made. Management understood this, and while the Respondent was attempting to institute changes to make the placement of drives into Hemasphere more definite, those changes had not yet been fully implemented.

Thus, it seems that Hampton's conduct in scheduling blood drives in July and August, prior to going on medical leave, did not deviated from the actual practice at the time. Had she not been on medical leave, she would have had the opportunity to finalize those drives, and hopefully bring them to a successful completion. Instead, she was left to rely on the Phoenix staff to process and complete her drives. Unfortunately, Arriaga was not as interested in successfully completing Hampton's drives as she was in making Hampton look bad by not processing those drives. She was then in a position to use the problems that developed in those drives as a basis for recommending that Hampton be terminated.

The credible evidence shows that Arriaga's interest in having Hampton terminated was really based on her resentment towards Hampton's effort to lead the DRRs into complaining about Arriaga's abusive conduct. As Hampton credibly testified, only shortly prior to going on medical leave, Arriaga orally reprimanded Hampton for gossiping and talking about Arriaga in the break room with the other office employees. Since Arriaga did not testify, Hampton's contention that Arriaga's animosity towards her was due to her protected concerted activity remained unrebutted. Unfortunately for Hampton, Meketa, who also harbored animus towards her protected activity, was very receptive to Arriaga's complaints about the problems that developed with Hampton's blood drives while she was on medical leave. In any event, as I have noted, I believe that the Respondent's stated reasons for Hampton's termination, as expressed by Meketa, were merely a pretext for the true reason, that being her concerted activity.

The Respondent argues that as it fired Arriaga on March 25, 2011, it must not have harbored any animosity towards Hampton for earlier making complaints about her. The Respondent points out that of all the DRRs who ever complained about Arriaga, specifically Brown, Holverson, Mitchell, Hampton and Greathouse, the only employee who was terminated was Hampton. However, I reject this rationalization.

Arriaga was by all accounts a very bad supervisor. The Respondent does not deny this. In fact, as noted above, Meketa placed Arriaga on a PIP on August 10, 2010, as a result of the events surrounding her August "blow-up." It was those same supervisory deficiencies that ultimately led to her termination. However, that does not change the fact that Meketa knew that Hampton was the leader in the effort by the DRRs to force management to do something about Arriaga's abusive behavior. His comment on several occasions that Hampton was "stirring the pot" was proof that not only did he have knowledge of her activities, but that he strongly disapproved of them. Further, it does not change the fact that Arriaga appears to have "set up" Hampton for termination by failing to properly process her blood drives while she was on medical leave. Arriaga shared Meketa's hostility towards Hampton because of her open efforts to mobilize the other DRRs and pressure management to do something about Arriaga's abusive conduct. It was that protected concerted conduct by Hampton that led Meketa to take action and terminate Hampton as she returned from medical leave. While Meketa ultimately fired Arriaga in March 2011, that was approximately four months after Meketa had relied, in part, on Arriaga's recommendation to fire Hampton.

As I find that the Respondent's defense is a pretext, it is, therefore, appropriate to infer that the Respondent's true motive in terminating Hampton was unlawful. *Williams Contracting, Inc.,* 309 NLRB 433 fn. 2 (1992); *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705

F.2d 799 (6th Cir. 1982); *Shattuck Deann Mining Corp., v. NLRB,* 326 F.2d 466, 470 (9th Cir. 1966). I find that the real motive behind the Respondent's conduct in terminating Hampton was in retaliation for her protected concerted activity in complaining to fellow employees and management about Arriaga's abusive behavior.

Accordingly, I find that the Respondent has violated Section 8(a)(1) of the Act by discharging Lois Hampton on November 29, 2010, as alleged in complaint paragraphs 4(c), (d), and 5.

C. Agreement and Acknowledgement of Receipt of Employee Handbook Form

As noted above, following their receipt of an employee handbook, the Respondent's employees were required to sign a document entitled "AGREEMENT AND ACKNOWLEDGEMENT OF RECEIPT OF EMPLOYEE HANDBOOK." By that acknowledgement form, employees acknowledge receipt of, and agree to abide by, the rules set forth in the handbook. Among other matter, the acknowledgement form attempts to define an "at-will" employment relationship. In that definition is contained the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way." (G.C. Ex. 4, 37, 38.) The General Counsel contends that the Respondent violated the Act by maintaining and requiring employees to sign an acknowledgement form containing the above cited language, which is alleged to be overly-broad and discriminatory. Counsel for the Respondent denies that the cited language is unlawful, but, in any event, argues that the matter is now moot, as the alleged unlawful language has now been removed from the acknowledgement form.

In determining whether the existence of specific work rules violates Section 8(a)(1) of the Act, the Board has held that, "the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights." *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). Further, where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement." *Id.* See also, *Blue Cross-Blue Shield of Alabama,* 225 NLRB 1217, 1220 (1976).

The Board has further refined the above standard in *Lutheran Heritage Village-Livonia,* 343 NLRB 646, 646 (2004), by creating a two-step inquiry for determining whether the maintenance of a rule violates the Act. First, if the rule expressly restricts Section 7 activity, it is clearly unlawful. If the rule does not, it will none-the-less violate the Act upon a showing that: "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *Id.* At 647; See *Northeastern Land Services, Ltd.,* 352 NLRB 744 (2009) (applying the Board's standard in *Lutheran Heritage Village, supra* at 647).

Regarding the acknowledgement form language in issue, it is somewhat questionable as to whether that language expressly restricts Section 7 activity. After all, the phrase in question does not mention union or protected concerted activity, or even the raising of complaints involving employees' wages, hours and working conditions. However, in my view there is no doubt that "employees would reasonably construe the language to prohibit Section 7 activity." (*Lutheran Heritage Village-Livonia).*

As counsel for the General Counsel correctly points out in her post-hearing brief, the signing of the acknowledgement form is essentially a waiver in which an employee agrees that his/her at-will status cannot change, thereby relinquishing his/her right to advocate concertedly,

whether represented by a union or not, to change his/her at-will status. For all practical purposes, the clause in question premises employment on an employee's agreement not to enter into any contract, to make any efforts, or to engage in conduct that could result in union representation and in a collective-bargaining agreement, which would amend, modify, or alter the at-will relationship. Clearly such a clause would reasonably chill employees who were interested in exercising their Section 7 rights.

The Respondent never really tries to justify the clause in question. In his post-hearing brief, counsel merely argues that as Hampton was permitted, upon objecting to the language, to cross-out certain language from the acknowledgement form prior to signing it, therefore, it could not have restricted her Section 7 activity. However, in my view this argument misses the point. The Board has held that the simple maintenance of such language would reasonably restrict employees in the exercise of their Section 7 rights, even absent any effort to enforce that language. *Lafayette Park Hotel, supra; Blue Cross-Blue Shield of Alabama, supra.* Accordingly, I must conclude that the above cited language in the acknowledgement form constitutes a violation of Section 8(a)(1) of the Act, as alleged in complaint paragraphs 4(a) and 5. Still, there remains the argument of counsel for the Respondent that this issue is now moot, by virtue of the Respondent having removing the offending language.

According to the testimony of Linda Filep, she sent to the Respondent's managers by email dated September 19, 2011, a memorandum attaching a new acknowledgement form and "updated statement" regarding at-will employment, which "**replace[d]**" the at-will employment policy set forth in the employee handbook. (emphasis as is reflected in the email) Filep testified that the memorandum and form were to be distributed by the Respondent's managers to all employees, who were then to sign the acknowledgement form and return it to the human resources department. The attached new acknowledgement form did not contain the language that the General Counsel contends was unlawful. (Res. Ex. 25.)

The Respondent continues to deny that the cited language in the original acknowledgement form was in any way unlawful, and contends that the language was deleted out of "an abundance of caution." In any event, counsel for the Respondent argues that as the alleged offending language has now been deleted, the allegation in the complaint dealing with this alleged unlawful language is now moot.

In "certain circumstances an employer may relieve himself of liability for unlawful conduct by repudiating the conduct." *Passavant Memorial Hospital,* 237 NLRB 138, 138 (1978). In order to be effective, the "repudiation must be 'timely,' 'unambiguous,' 'specific in nature to the coercive conduct,' and 'free from other proscribed illegal conduct.'" *Id.* (citing *Douglas Division, The Scott & Fetzer Co.,* 228 NLRB 1016 (1977), and cases cited therein at 1024). "Furthermore, there must be adequate publication of the repudiation to employees involved." *Passavant Memorial,* 237 NLRB at 138. "And finally, the Board has pointed out that such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights." *Id, a*t 138-39.

In *Passavant,* the employer published at statement in its employee newsletter to clarify unlawful threats it made to employees. *Id.,* at 138. The Board noted several reasons why the employer's newsletter publication "was ineffective to relieve [it] of liability and to obviate the need for further remedial action, including: 1) the attempted disavowal appeared only once in an employee newsletter; 2) it was uncertain that all employees were adequately informed of the retraction; and 3) the employer failed to show it made any additional efforts to communicate its disavowal. Further, the Board noted that "most importantly, [the] statement did not assure

employees that in the future [the employer] would not interfere with the exercise of their Section 7 rights by such coercive conduct." *Id.,* at 138-39.

In the matter at hand, I am of the view that the Respondent's dissemination to its employees of a "updated statement," which "replaced" the offending at-will employment language in its acknowledgement form did not relieve it of liability. It certainly was not timely. The Respondent's answer admits that since on or about October 12, 2010, the language in question has been contained in the acknowledgement form that employees are expected to sign. Yet, it was not until September 19, 2011, almost one year later, and after the issuance of the complaint, that the Respondent took efforts to remove the offending language.

Further, it does not appear that employees were given any assurances that their Section 7 rights would not be interfered with in the future, or even that they were adequately informed of the retraction. With the exception of Filep's memorandum, there is no evidence that the Respondent made any efforts to communicate its disavowal to its employees. As the Respondent has continued to insist that the original language in the acknowledgement form was not in violation of the Act, its retraction does not serve as sufficient assurance to its employees that in the future the Respondent will respect their right to engage in Section 7 activity.

The Respondent has fallen far short of meeting its burden of establishing effective repudiation of the unlawful language in the acknowledgement form. *Passavant Memorial, supra* at 138-139. Accordingly, having found that the Respondent violated Section 8(a)(1) of the Act by maintaining the unlawful language in the acknowledgement form, it must effectively remedy that violation as provided for below in the remedy and order sections of this decision.

Conclusions of Law

1. The Respondent, American Red Cross Arizona Blood Services Region, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By the following acts and conduct the Respondent has violated Section 8(a)(1) of the Act:

(a) Maintaining an overly-broad and discriminatory provision in its "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which it requires its employees to sign, and which provision contains within it the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way;" and

(b) Discharging its employee Lois Hampton because she engaged in protected concerted activity.

3. The above unfair labor practices affect commerce within the meaning of 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.

The evidence having established that the Respondent discriminatorily discharged its employee Lois Hampton, my recommended order requires the Respondent to offer her

immediate reinstatement to her former position, displacing if necessary any replacements, or if her position no longer exists, to a substantially equivalent position, without loss of seniority and other privileges previously enjoyed. My recommended order further requires that the Respondent make Hampton whole for any loss of earnings, commissions, bonuses, and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F.W. Woolworth, Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizon for the Retarded,* 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), enf. Denied on other grounds sub.nom., *Jackson Hospital Corp. v NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).[12]

The recommended order further requires the Respondent to expunge from its records any reference to the discharge of Hampton, and to provide her with written notice of such expunction, and to inform her that the unlawful conduct will not be used as a basis for further personnel actions against her. *Sterling Sugars, Inc.,* 261 NLRB 472 (1982). Further, the Respondent must not make reference to the expunged material in response to any inquiry from any employer, employment agency, unemployment insurance office or reference seeker, or use the expunged material against Hampton in any other way.

Also, having found that a provision in the Respondent's "Agreement and Acknowledgement of Receipt of Employee Handbook" form contains language that is overly-broad and discriminatory, as referenced above, the recommended order requires that the Respondent revise or rescind the unlawful language, and advise its employees in writing that said provision has been so revised or rescinded.

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physically posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* 356 NLRB No. 8 (Oct. 22, 2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, American Red Cross Arizona Blood Services Region, its officers, agents, successors, and assigns, shall

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[12] In the complaint, the General Counsel requests as part of a remedy for the Respondent's unfair labor practices "an order requiring reimbursement by the Respondent of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination and that the Respondent be required to submit the appropriate documents to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods." However, counsel for the General Counsel cites no Board authority for such an extraordinary remedy. As I am unaware of any such authority, I hereby decline to order such a remedy, or to deviate from that which is standard is such cases.

[13] 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.

1. Cease and desist from:

(a) Maintaining or enforcing an overly-broad and discriminatory provision in its "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which it requires its employees to sign, and which provision contains within it the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way;"

(b) Discharging or otherwise discriminating against any of its employees because they engaged in protected concerted activities; and

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

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

(a) Within 14 days of the Board's Order, revise or rescind its "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which it requires its employees to sign, and which has a provision containing within it the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way." To the extent that said cited language has already been removed from the provision, the Respondent shall so notify its employees;

(b) Within 14 days of the Board's Order, offer Lois Hampton full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed;

(c) Make Lois Hampton whole for any loss of earnings, commissions, bonuses, and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision;

(d) Within 14 days of the Board's Order, remove from its files any reference to the unlawful discharge of Lois Hampton, and within 3 days thereafter, notify her in writing that this has been done, and that her discharge will not be used against her as the basis of any future personnel actions, or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against her;

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

(f) Within 14 days after service by the Region, post at its facilities in Phoenix and Tucson, Arizona, copies of the attached notice marked "Appendix."[14] Copies of the notice, on

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

Continued

forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed either of the two facilities in Phoenix and Tucson, Arizona 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 October 12, 2010; and

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

Dated at Washington, D.C., February 1, 2012.

Gregory Z. Meyerson
Administrative Law Judge

National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

You have the right to join with your fellow employees in protected concerted activities. These activities include discussing working conditions among yourselves, forming a union, and making common complaints about your wages, hours, and other terms and conditions of employment, including complaints to management regarding abusive behavior by supervisors.

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce in our "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which form we require you to sign, a provision that contains within it the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way."

WE WILL NOT discharge you because you engaged in protected concerted activities, including by communicating with fellow employees concerning common complaints regarding your wages, hours, and terms and conditions of employment, which includes making complaints to management regarding abusive behavior by supervisors.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL revise or revoke from our "Agreement and Acknowledgement of Receipt of Employee Handbook" form, which form we require you to sign, a provision that contains within it the following language: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way," and WE Will furnish you with written notice that the cited language has been rescinded, and furnish you with a revised document that does not contain that cited language.

WE WILL within 14 days of the Board's Order, offer Lois Hampton full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Lois Hampton whole for any loss of earnings, wages, commissions, bonuses, and other benefits suffered as a result of the discrimination against her, less any net interim earnings, plus interest, compounded on a daily basis.

WE WILL within 14 days from the date of the Board's Order, remove from our files any and all records of the discrimination against Lois Hampton, and WE WILL within 3 days thereafter, notify Lois Hampton in writing that we have taken this action, and that the material removed will not be used as a basis for any future personnel action against her or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against her.

AMERICAN RED CROSS ARIZONA BLOOD SERVICES REGION

(Employer)

Dated _____ By _____

(Representative) (Title)

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

2600 North Central Avenue, Suite 1800

Phoenix, Arizona 85004-3099

Hours: 8:15 a.m. to 4:45 p.m.

602-640-2160.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.