

**Garda CL Great Lakes, Inc. and United Federation of
Special Police and Security Officers, Inc.** Cases
09–CA–087203 and 09–RC–085968

June 28, 2013

DECISION, ORDER, AND DIRECTION OF SECOND
ELECTION

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On March 19, 2013, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel filed an answering brief, and the Respondent filed a reply brief. The Acting General Counsel filed limited cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the Acting General Counsel filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order as modified and set forth in full below.¹

The Respondent provides armored truck and guard services nationwide. This case arises at the Respondent's Columbus, Ohio facility, where the Union seeks to represent a unit of drivers and messengers. An election was held on August 30, 2012,² and the tally of ballots shows 8 for and 26 against the Union.

We agree with the judge, for the reasons set forth in his decision, that the Respondent violated Section 8(a)(1) of the Act and engaged in objectionable conduct by granting benefits to the unit employees. In the absence of exceptions,³ we also adopt the judge's finding that the Respondent, by its Director of Risk Management Christine Bouquin, violated Section 8(a)(1) of the Act and engaged in objectionable conduct by soliciting employees' grievances and promising to remedy them.

We find merit in the Acting General Counsel's cross-exception to the judge's dismissal of the allegation that the Respondent additionally violated Section 8(a)(1) and

engaged in objectionable conduct by soliciting grievances through the actions of its safety and health manager, Webster Lubemba. The solicitation of employee grievances during an organizing campaign "raises an inference that the employer is promising to remedy the grievances," and this inference is "particularly compelling when, during a union organizational campaign, an employer that has not previously had a practice of soliciting employee grievances institutes such a practice." *Amptech, Inc.*, 342 NLRB 1131, 1137 (2004), *enfd.* 165 Fed. Appx. 435 (6th Cir. 2006). Here, Lubemba's August 7 visit to the Columbus facility, accompanied by Bouquin, was unprecedented.⁴ Employee Jeffrey Fisher gave un rebutted testimony that Lubemba asked him on that visit about the condition of the armored trucks, including whether the trucks' air-conditioning worked, and also whether the Respondent supplied water for employees. Lubemba's questions indicated management's knowledge that those concerns were in large part motivating the organizing campaign. Lubemba made a second trip to the Columbus facility on August 20, during which he spoke to 34 employees—almost the entire unit—about the suitability of their uniforms for heat conditions, as well as their safety concerns about the lack of ballistic vests. In these circumstances, the Respondent has failed to rebut the inference that Lubemba's unprecedented presence—twice—to speak to employees and solicit their grievances during the organizing campaign carried with it the implicit promise to remedy those grievances. See *id.*⁵

Accordingly, we agree with the judge that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct sufficient to warrant setting aside the election, and we shall remand this proceeding for the purpose of conducting a second election.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Garda CL Great Lakes, Inc., Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ We have modified the judge's recommended Order to conform to the Board's standard remedial language and to include a direction of second election. We have substituted a new notice to conform to the Order as modified.

² All subsequent dates are in 2012.

³ In addition, no exceptions were filed to (1) the judge's statement that there was no allegation or objection asserting that the Respondent unlawfully threatened that it would not negotiate with the Union; (2) the judge's failure to make a finding on the complaint allegation that the Respondent's grant of benefits also violated Sec. 8(a)(3); and (3) the judge's recommendation of a notice reading remedy.

⁴ We note that, during the visit, Bouquin described Lubemba and herself to at least one employee as the "fix-it people."

⁵ We find it unnecessary to pass on the judge's additional findings of unlawful solicitation of grievances by the Respondent's senior vice president, Vincent Modarelli, and Director of Labor Relations Ivelices Linares. The additional violations would be cumulative and would not affect the remedy.

(a) Making improvements in the working conditions of employees to discourage them from organizing or otherwise choosing union representation.

(b) Soliciting employee complaints and grievances and either implicitly or explicitly promising to remedy them during a union organizing campaign.

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

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

(a) Within 14 days after service by the Region, post at its Columbus, Ohio facility copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 9, 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 members 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. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 7, 2012.

(b) Within 14 days after service by the Region, hold a meeting or meetings during working time, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by a senior vice president of the Respondent, its director of labor relations, or an official of equivalent rank, or, at the Respondent's option, by a Board agent in the presence of such an official.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 9 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.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the election held on August 30, 2012, in Case 09–RC–085968 is set aside and Case 09–RC–085968 is severed and remanded to the Regional Director for Region 9 for the purpose of conducting a new election.

[Direction of Second Election omitted from Publication.]

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT make improvements in your working conditions to discourage you from organizing or otherwise choosing union representation.

WE WILL NOT solicit your complaints and grievances and either implicitly or explicitly promise to remedy them during a union organizing campaign.

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

GARDA CL GREAT LAKES, INC.

Joseph F. Tansino, Esq., for the General Counsel.

Eric Hult, Esq. (Littler Mendelson, P.C.), of Columbus Ohio, for the Respondent.

Jack Deml, of Gahanna, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Columbus, Ohio, on January 28 and 29, 2013. The Union, the United Federation of Special Police and Security Officers, filed the initial charge in this matter on August 13, 2012. The General Counsel issued the complaint on December 5, 2012. He also consolidated the complaint with the Union's August 31 objections to conduct affecting the results of the representation election. That election was held at Respondent's

Columbus, Ohio facility on August 30, 2012.¹

The General Counsel alleges that Respondent, by its director of risk management, Christine Bouquin, solicited employee complaints and grievances, promised employees increased benefits, and improved terms and conditions of employment if they refrained from union organizational activity. Without specifying any individual agents, the Union objected to the *employer's* alleged solicitation of employee grievances and complaints, and promises to remedy them during the critical period between the filing of its representation petition on July 25, 2012, and the Board's representation election on August 30, 2012. The General Counsel alleges similar violations by Respondent's safety and health manager, Webster Lubemba. The General Counsel also alleges that Respondent violated Section 8(a)(3) and (1) by providing employees with a new refrigerator and free beverages and in cleaning Respondent's Columbus garage and repairing Respondent's trucks. This allegation tracks the Union's objection to Respondent's granting improvements during the critical period, including cleaning of the garage, providing a new refrigerator stocked with free beverages, and other benefits.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, provides armored truck and guard services nationwide. At the Columbus, Ohio facility, where the alleged violations occurred, it annually purchases and receives goods and materials valued in excess of \$50,000 from outside of Ohio. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, the United Federation of Special Police and Security Officers, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent, which has its headquarters in Boca Raton, Florida, has over 200 facilities in the United States and about 4000 armored trucks. At the Columbus, Ohio branch it has between 14 and 16 armored trucks with which its employees pick up and transport cash from ATMs, banks, and similar institutions. Each truck is staffed by two driver/messengers, who trade off driving the vehicle and sitting in the back of the truck, facing the rear. The two employees are separated by a bulkhead. The employees in the truck are totally dependent on air-conditioning and/or fans for ventilation. Given the nature of their work, they cannot roll down the windows. The glass in the vehicles is 3 inches thick and the employees wear 10lb.

¹ The Union withdrew its Objection 2 and portions of Objection 3. Objection 1 and the remaining portions of Objection 3 are substantially coextensive with the allegations of the complaint. Objection 1 is that the Employer solicited employees' grievances and complaints and implicitly promised to remedy them. The remaining portion of Objection 3 is that the Employer granted improvements in working conditions and other benefits.

² Tr. 151, L. 23 should read Eric Hult, rather than Timothy Fadel.

bullet proof or resistant vests while in the truck.

The armored trucks at the Columbus facility are generally 8–10 years old. By the summer of 2012, the air-conditioning in the trucks had been failing with regularity for several years. During the summer, employees with regularity worked 12–13-hour shifts inside a truck in which the temperature exceed 105 degrees Fahrenheit. Management at the facility accorded repairs to the air-conditioning very low priority despite regular employee complaints.

Employees had been complaining to management about the lack of air-conditioning for several years. Also, on July 22, 2011, somebody, most likely an employee, complained to the Federal Occupational Safety and Health Administration (OSHA). The complainant(s) stated that the front, back, or both areas of Respondent's then 14 trucks did not have working air-conditioning and that approximately 35 employees were exposed to extreme heat since they could not roll down the windows. OSHA did not conduct an on-site investigation of these complaints. Rather the OSHA area director in Aurora, Illinois, wrote Respondent a letter requesting that it investigate the situation, make necessary corrections and advise OSHA of the results of the inspection.

On July 28, 2011, Mark Livingston, a senior vice president and general counsel of Garda, replied to OSHA. He stated that the branch manager and branch employees conducted an in route air-conditioning verification of all active routes. The response essentially stated that the air-conditioning on most trucks was in working order. Those trucks that had defects had been repaired or were being repaired (R. Exh. 3). Suffice it to say that if this was an accurate picture as of July 28, 2011, the situation had deteriorated markedly by July 2012.

Scott Jacks, the Columbus branch manager, who was terminated in mid to late August 2012, was under the impression that it was company policy not to remove trucks from service on account of nonfunctioning air-conditioning (GC Exh. 5). Between 2010 and July 2012, when employees complained to branch management about the lack of air-conditioning, they were told that Respondent was not required to provide the trucks with air-conditioning (Tr. 34).³

Conditions inside the Columbus truck terminal also left much to be desired. The floors and walls were filthy, there was oil on the floor which posed a slipping hazard and the eyewash station required by OSHA was unusable.⁴ There were also numerous electrical hazards. The restrooms were dirty and at least one did not have hot water or soap in the summer of 2012. There was no potable water in the drivers' area of the garage. There was a refrigerator from which employees could purchase water or soda. Respondent did not supply the driver/messengers with water to drink.

In the summer of 2012, Respondent's upper-level management became aware that there were heat-related issues at a number of its facilities that were producing employee com-

³ I note that all the employee testimony in this case is uncontradicted.

⁴ OSHA requires a functioning eyewash station where employees can get caustic substances in their eyes.

plaints to OSHA and union organizing drives.⁵ On June 20, 2012, Vincent Modarelli, a senior vice president based in Wilmington, Delaware, exchanged emails with Robert Larmore, the branch manager in Edison, New Jersey. These emails mentioned seven calls to OSHA regarding air-conditioning issues, one of which was at the Edison Branch. Modarelli responded, “[T]his is not a coincidence . . . 7 OSHA complaints re: A/C and then a union organization effort.get on top of this and in front of your people starting NOW!” (R. Exh. 1).⁶

Between June 21 and 28, 2012, Christine Bouquin, Garda’s newly hired director of risk management, began working on plans to address the heat-related OSHA complaints Garda had been receiving. On June 28 she emailed Modarelli and others that consideration was being given for certain branches to participate in a pilot program to test the effectiveness of cooling and rehydration devices (R. Exh. 1). There is no evidence that attention was directed to problems at the Columbus, Ohio branch until August 1, a week after the Union filed a representation petition.

On July 16, 2012, Xiomara Tennyson, who is apparently a team leader at Respondent’s Needham, Massachusetts branch, wrote to Garda Vice President Steve Morss about the air-conditioning problems at that branch. She noted that three of those branches’ trucks broke down during the previous week and that employees worked in temperatures of 115–120 degrees when the air-conditioning stopped working. Tennyson indicated that these conditions made it difficult for her to respond to employees considering union representation (GC Exh. 13).

Later in July 2012, an employee from the Grand Rapids, Michigan branch was hospitalized with a heat-related illness after the air-conditioning in his truck stopped functioning. The State of Michigan Occupational Safety and Health Administration apparently conducted an on-site inspection of the Grand Rapids facility on about July 26 (GC Exh. 19).

On July 25, 2012, the Union filed a petition with the Board to represent all full-time and regular part-time driver/messengers and vault custodians employed by Respondent’s Columbus, Ohio facility.

On or about August 1, 2012, Respondent launched a pilot program to address the air-conditioning issues at its facilities. Among the management personnel involved in planning this project were Christine Bouquin, Garda’s risk management director, her boss, Lori Brown, Respondent’s chief legal counsel and director of human resources, and Ivelices Linares, Respondent’s director of labor relations, all of whom are based in Boca Raton, Florida. In selecting branches for this pilot pro-

ject, Respondent considered complaints, citations, heat-related claims and potential union activity (GC Exh. 4). Linares specifically suggested the inclusion of the Fairfield, New Jersey branch based on an imminent union representation election,

The final list of seven branches for the pilot program appears to have been finalized on about August 5, 2012. Union activity was obviously a material factor in compiling this list. Columbus was placed at the top of the list. As there had not been any workers-compensation claims, or heat-related illness or recent OSHA complaints filed by Columbus employees, I infer that the priority given to Columbus was in large part a result of the representation petition filed on July 25. Respondent was aware of union organizing activity at three of the other six branches included in the pilot program, Edison, Fairfield, and Needham. There is no evidence as to why Stamford, Connecticut, Phoenix, Arizona, or Wilmington, Delaware (other than the fact that VP Vincent Modarelli worked there), were selected for the pilot program. There is no evidence one way or another as to whether there was any union organizing activity at those three branches or whether OSHA has expressed interest in conditions there.

Not included on the list of seven pilot facilities was Grand Rapids, Michigan, where an employee had been hospitalized earlier that summer due to nonfunctioning air-conditioning, nor the branches in California, Texas, Georgia, and Myrtle Beach, South Carolina, where OSHA complaints had been filed or OSHA had made inquires of Garda.

During the first week of August, Respondent identified seven trucks at the Columbus branch with cooling units that needed repair (GC Exh. 4).⁷ It embarked on a crash program to repair these air-conditioning units. The repairs were done either by Garda employees from other facilities or outside contractors. The Columbus branch did not have mechanics on site.

On August 7, 2012, Christine Bouquin and Webster Lubemba, Garda’s health and safety manager from Smyrna, Georgia, arrived at the Columbus facility. Neither had been to this facility previously, and Columbus was the first Garda facility visited by Bouquin outside of the State of Florida. Ivelices Linares arrived at the facility the next day to discourage the employees from selecting union representation. Linares suggested or directed that Bouquin and Lubemba visit the Columbus branch prior to Linares’ arrival at the facility. This was deemed to a sufficient priority that Garda’s rule that travel reservations be made 2 weeks in advance was ignored.

Of the seven pilot facilities, Bouquin only visited two, Columbus and Wilmington, Delaware, the branch at which Vice President Vincent Modarelli was based. Bouquin did not visit the Columbus facility after August 7–8, 2012; Lubemba made several followup visits one of which was prior to the August 30, 2012 representation election.

Bouquin found that the Columbus garage was dirty, the

⁵ Webster Lubemba testified that Garda had received correspondence from OSHA concerning insufficient air-conditioning at facilities at Edison, New Jersey, Michigan, most of Garda’s California branches, a couple of branches in Georgia, and a couple in Texas. I infer all or most were received in the summer of 2012 (Tr. 239–240), because there appears to have been no corporatwide effort to address these complaints or inquires until the summer of 2012.

⁶ At hearing Respondent moved only for the admission of p. 1 of the exhibit, which was incomplete. On January 31, I granted the General Counsel’s unopposed motion to reopen the record to receive the complete 2-page exhibit.

⁷ R. Br. at p. 7 states that “it late July, [Garda’s Risk Management Team] learned that seven of the fourteen trucks at the Columbus Facility were “down” with faulty air conditioning.” There is no evidence that the risk management team knew of this prior to August 1, 2012. It certainly became aware of this fact several days to a week after the Union’s representation petition was filed.

trucks were in disrepair, there was oil on the floor, the eyewash station was unusable, and the restroom did not have hot water. Webster Lubemba found what he considered to be many violations of OSHA and Department of Transportation regulations, including electrical hazards. Garda hired an outside cleaning company to correct some of these issues during or just after Bouquin and Lubemba's visit.

During her visit to the Columbus facility on August 7–8, Bouquin spoke to a number of employees. She asked Jason Durbin and his partner why employee morale was low and what Garda could do to improve it (Tr. 50–52). Durbin complained about the cleanliness of the bathrooms, oil on the floor, diesel soot covering the garage, and lack of functioning air-conditioning. Bouquin responded sympathetically and implicitly, if not explicitly, promised to try to remedy these complaints. She promised to provide drinking water for the drivers.

During August, in addition to correcting the heat problems in the trucks, and cleaning the garage, Respondent installed a refrigerator in the garage area from which employees could take water in their trucks without paying for it.

Garda Senior Vice President Vince Modarelli and Labor Relations Director Ivelices Linares were at the Columbus facility once or twice between August 7 and the August 30 representation election. Linares spoke at a mandatory meeting for unit employees on August 8 to persuade them to vote against union representation, while Bouquin and Lubemba were still at the Columbus facility. Respondent did not present any evidence as to what Modarelli and/or Linares said to employees when they met with them. Since the employee testimony regarding what Modarelli and/or Linares said is uncontradicted, I credit that testimony.

Modarelli told employees that if they withdrew the representation petition and gave Garda 6 months to make their working conditions better, that Modarelli would make sure that employees were all happy. If not, Modarelli told employees they could have the Union without an election (Tr. 57). On cross-examination, employee Jason Durbin testified that Linares did not say she would make things better if employees voted no in the representation election (Tr. 62). However, he made it clear that it was Modarelli who made the promises he testified to on direct, rather than Linares (Tr. 63).

Scott Hall, another driver, read from an affidavit given to the Board on August 22, 2012, about a mandatory meeting with Ivelices Linares on August 8. He did not repudiate anything in the affidavit, thus I find the facts as he stated them in the affidavit. Hall did not mention the presence of Vincent Modarelli. However, Hall testified that Linares told employees that Garda was told to terminate 17 employees in Fairfield, New Jersey, for failure to pay union dues. He also testified that:

She also told us that Garda doesn't have to negotiate with the Union, and basically that negotiations with unions were a myth and that they didn't do that at Garda, Tr. 82.

I would note that if such comments were made they would be clear violations of Section 8(a)(1) and objectionable conduct that warrant ordering a second election. However, there is no allegation regarding these speeches or conversations either in

the complaint or in the Union's objections.

During her speech, Linares told the Columbus employees that they were at the top of the list for replacement vehicles and were part of a pilot program regarding air-conditioners (Tr. 104). The day after the August 8 meeting, Garda mechanics from Louisville, Kentucky, arrived at the Columbus facility. They worked on the trucks' air-conditioning and installed 6-inch fans on the dashboards (Tr. 99).

The representation election was conducted on August 30, 2012. Of 41 eligible voters, 26 voted against union representation and 8 voted for the representation by the Charging Party Union.

ANALYSIS

This case presents two different but related issues: (1) whether Garda (not as Respondent contends, Christine Bouquin and Webster Lubemba) violated the Act and committed objectionable conduct in granting improvements to the working conditions of bargaining unit employees during the critical period between the filing of the representation petition and the election; and (2) whether the Respondent (rather than Bouquin and/or Lubemba) violated the Act in soliciting employee grievances and complaints and promising employees increased benefits and improved working conditions.

Section 8(a)(1) of the Act prohibits not only intrusive threats and promises but also conduct immediately favorable which is undertaken with the express purpose of impinging upon employees' freedom of choice for or against unionization and is reasonably calculated to have that effect, *NLRB v. Exchange Parts Co.*, 375 US 405 (1964). Justice Harlan noted in his opinion that, "the beneficence of an employer is likely to be ephemeral if prompted by a threat of unionization which is subsequently removed." That danger certainly exists in the instant case in which Respondent's heat-related issues appear to exist at many of its over 200 branches. With the specter of unionization gone, one cannot presume that the improvements made at the Columbus branch will be permanent or that conditions will not be allowed to deteriorate as they apparently did after the 2011 OSHA inquiry.

As a general rule, an employer's legal duty in deciding whether to grant improvements while a representation proceeding is pending is to decide that question as if the union were not on scene. In determining whether a grant of benefits is unlawful the Board has drawn the inference that benefits granted during the critical period are coercive, but has allowed the employer to rebut the inference by coming forward with an explanation, other than a pending election, for the *timing* of the grant or announcement of such benefits, *Niblock Excavating, Inc.*, 337 NLRB 53 (2001); *Lampe, L. L. C.*, 322 NLRB 502 (1996); *United Airlines Services Corp.*, 290 NLRB 954 (1988). If the grant of such benefits is unlawful it constitutes an unfair labor practice and objectionable conduct sufficient to order a rerun of the representation election.

The solicitation of grievances by an employer during an organizational campaign violates the Act when the employer promises to remedy those grievances. The solicitation of grievances alone is not unlawful, but it raises an inference that the employer is promising to remedy those grievances. This infer-

ence is particularly compelling when, during an organizational campaign an employer which had not previously had a past practice of soliciting grievances, institutes such a practice or significantly alters its prior manner and methods of solicitation during the campaign, *Center Service System Division*, 345 NLRB 729, 730 (2005).

Improvements in Working Conditions/Increased Benefits
(Objection 3, complaint par. 6).

The record is crystal clear that Respondent made tremendous improvements in the working conditions of unit employees during the critical period, such as repairing the air-conditioning of the trucks, providing free potable water,⁸ cleaning the garage, cleaning and repairing the restrooms, and abating numerous hazardous conditions.

It is equally clear that the timing of these improvements was in large part motivated by Respondent's desire to have the employees vote against union representation in the August 30 representation election. With regard to the air-conditioning/heat issues, it is apparent that there were serious issues at a number of Garda facilities. From this record, it appears that nothing was being done to remedy those issues until Garda received inquiries from OSHA and became aware of several union organizing drives in June and July 2012 (see, e.g., Tr. 243–245). For example, there is no indication that Respondent (or OSHA for that matter) followed up on the July 2011 complaints to determine whether the air-conditioning in the Columbus trucks was being properly maintained.

Upon receiving these complaints, Respondent initiated a project to evaluate "hot spots" within the Company. This evolved into a pilot program or "Project Cool" under the direction of Christine Bouquin, who Garda hired in late May 2012 as director of claims. In mid to late June, Bouquin's title was changed to director of risk management. She and Webster Lubemba, a health and safety manager, were given responsibility for this effort in close coordination with higher-management officials, including Senior Vice President Vincent Modarelli, Human Resources Director Lori Brown, and Labor Relations Director Ivelices Linares.

In selecting facilities for its pilot program with regard to air-conditioning and heat-related issues, Garda focused to a significant extent on the presence of union activity at the selected facilities. Of the seven facilities selected for the pilot program, there was ongoing union activity so far as this record indicates at four, Columbus, Edison, New Jersey, Fairfield, New Jersey, and Needham, Massachusetts. There is direct evidence that Fairfield was included in the list due to an imminent representation election (GC Exh. 4 p. 2). I infer the same for Columbus.

There is no evidence that anyone in the Garda hierarchy above the Columbus branch manager was aware of the 2012 air conditioning/heat issues at Columbus prior to the filing of the

⁸ Contrary to Respondent's assertion in its brief, I find that providing free drinking water in the circumstances of this case constitutes a material benefit and improvement in the working conditions of Respondent's armored truck crews.

representation petition on July 25 (see, e.g., Tr. 162).⁹ There is no evidence that anyone inquired about these matters. I infer that higher management learned that seven trucks did not have functioning air-conditioning in response to an inquiry as to why a union representation had been filed.

While it may be true that Respondent was genuinely concerned with these issues once discovered, I infer they would not have come to higher management's attention but for the filing of the Union's petition. It is also clear that the correction of the heat and other issues at Columbus was part and parcel of Garda's efforts to convince its employees to vote against union representation.

Solicitation of Grievances and Promises to Remedy Grievances
(Objection 1 and complaint par. 5)

The focus on the activities of Christine Bouquin and Webster Lubemba in the complaint and in the parties' briefs is misplaced. Bouquin and Lubemba, although agents of the Respondent, were foot soldiers in Garda's efforts to remedy problems at the Columbus facility and at the same time discourage employees from selecting union representation. It is not their motivation that matters in this case, but the motivation of Garda as a corporation.¹⁰

Respondent violated the Act by soliciting grievances and either explicitly or implicitly promising to remedy these grievances in several instances. Christine Bouquin solicited grievances and at least implicitly promised to remedy them in her conversation on August 7 with Jason Durbin and his partner. The presence of officials from outside the Columbus branch to remedy employee complaints was completely unprecedented and clearly motivated by the Union's representation petition.

Vincent Modarelli explicitly promised to remedy employee grievances if they did not choose union representation. Additionally, Ivelices Linares, in telling Columbus employees that they were at the top of the list for replacement vehicles, was also explicitly promising to remedy employee complaints about the condition of their vehicles, including but not limited to the air-conditioning. Although the complaint allegations regarding solicitation of grievances and promises to remedying them are limited to Bouquin and Lubemba, the Union's Objection 1 is phrased in terms of the Employer's conduct. I find Modarelli's and Linares' conduct constitute objectionable conduct and violations of Section 8(a)(1).

CONCLUSIONS OF LAW

1. The Respondent improved the working conditions of unit employees during the critical period between the Union's July 25, 2012 representation petition and the August 30, 2012 repre-

⁹ R. Br. at pp. 17–18 suggests this is a factor to be considered in Respondent's favor. However, the knowledge of Respondent's then branch manager, Scott Jacks, and its Assistant Manager Terry Hupp (who replaced Jacks) is imputable to Respondent. Moreover, by virtue of the 2011 OSHA inquiry, answered by corporate counsel, Garda was on notice that there were heat/air-conditioning issues at the Columbus branch. At a minimum, Respondent's oversight of Jacks and other branch managers relating to heat/air-conditioning issues was very lax or nonexistent prior to the summer of 2012.

¹⁰ Moreover, there is no evidence that Lubemba solicited anyone.

sentation election, in an effort motivated in material part to dissuade unit employees from selecting union representation.

2. The Respondent solicited employee grievances and complaints with the implicit promise to remedy them during the critical period.

3. Respondent, Garda, CL Great Lakes, Inc., has engaged in objectionable conduct necessitating the setting aside of the results of the August 30, 2012 election and the conduct of a second election. By the same conduct it has committed unfair labor practices and violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Obviously, no reasonable person would order the Respondent to rescind the improvements it made in the working conditions of unit employees. Thus, for this decision to have any impact at all, I find it necessary to order that the attached notice be read aloud to employees so that they will fully perceive that Respondent and its managers are bound by the requirements of the Act. The reading of the notice will ensure that the information in the notice is disseminated to all employees including those who do not consult Respondent's bulletin boards, *Homer D. Bronson Co.*, 349 NLRB 512, 515-516 (2007). Thus, when a rerun election is conducted the employees will have a full understanding of their statutory rights and may select or reject union representation accordingly.

[Recommended order omitted from publication.]