Greater Omaha Packing Co., Inc. *and* Heartland Workers Center. Cases 17–CA–085735, 17–CA–085736, and 17–CA–085737

March 12, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND JOHNSON

On December 27, 2012, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief, and the Respondent filed an answering brief to the General Counsel's exceptions.

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

The Board has considered the decision and the record in light of exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

The judge found that the Respondent violated Section 8(a)(1) of the Act by discharging employees Carlos Zamora, Jorge Degante Enriquez (Degante), and Susana Salgado Martinez (Salgado) for engaging in protected concerted activity. We adopt these findings. Applying *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), we find in agreement with the judge that the employees' protected concerted activities were a motivating factor in the Respondent's decision to discharge them, and the Respondent has failed to demonstrate that it would have discharged them in the absence of their protected activities.[3]

The judge dismissed allegations that the Respondent violated Section 8(a)(1) by interrogating employees about their protected concerted activities, and by creating the impression that such activities were under surveillance. The interrogation allegation concerned statements made to Zamora before he was informed of his termination, and the impression of surveillance allegations concerned comments made to Degante and Salgado when they were notified of their terminations. In dismissing these allegations, the judge reasoned that the statements at issue were integral parts of the unlawful discharges, and thus any additional findings of violations based on those statements would be duplicative. Contrary to the judge, we find that the conduct at issue in these allegations warrants consideration on the merits. First, the

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

The Respondent excepts to the judge's finding that it violated Sec. 8(a)(1) by counseling employee Carlos Zamora for leaving his work station to complain about the speed of the production line. We find merit to this exception. The consolidated complaint did not allege that this conduct violated the Act. Further, the judge's statement concerning this finding is included in his discussion of the witnesses' credibility, but is not referenced in his conclusions of law, recommended Order, or notice. We therefore disavow this finding, as it appears to have been inadvertently included in the judge's decision.

[2] We shall modify the judge's recommended Order to reflect the additional findings of violations, as explained below, and to include the Board's standard remedial language. In addition, we shall order the Respondent to compensate Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. We shall also substitute a new notice to conform to the Order as modified.

On exception, the General Counsel requests that the judge's recommended Order be modified to require that a responsible management official of the Respondent read the notice to assembled employees, or that a Board agent read the notice to the assembled employees in the presence of a responsible management official. We find that the General Counsel has not demonstrated that this measure is needed to remedy the effects of the Respondent's unfair labor practices. *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007).

[3] In finding that the General Counsel sustained his initial burden under *Wright Line*, supra, we note that the Respondent's knowledge of and animus toward the employees' protected activities (i.e., the organization of a work stoppage to protest certain terms and conditions of employment) is established by (a) the fact that the employees were simultaneously discharged on the day of the planned work stoppage, (b) the pretextual reasons given for the discharges, (c) the Respondent's statements to employees Degante and Salgado that it knew they were leaders of the planned work stoppage, and (d) the Respondent's coercive statements to Zamora, prior to his discharge, as discussed below. For the reasons set forth below in fn. 7, Member Johnson would not rely on factor (c).

Inasmuch as the Respondent proffered only pretextual reasons for the discriminatees' discharges, it has failed to meet its *Wright Line* rebuttal burden of proving that it would have terminated Zamora, Degante, and Salgado in the absence of their protected concerted activity.

Because we find, for the reasons above, that the discharges are unlawful under *Wright Line*, supra, we find it unnecessary to pass on the judge's suggestion that the Respondent discharged Zamora, Degante, and Salgado as a preemptive strike to prevent employees from engaging in future protected concerted activity. Rather, the facts establish that the discriminatees previously had engaged in protected activity and the Respondent terminated them because it perceived they would continue to do so. *Compuware Corp*., 320 NLRB 101, 102 (1995), enfd. 134 F.3d 1285 (6th Cir. 1998), cert denied 523 U.S. 1123 (1998).

Finally, we find that the judge correctly determined that when the three employees discussed a planned walkout to protest wages and the speed of the conveyor chain, both of which they had raised concertedly with the Respondent on previous occasions, they were engaged in quintessential protected concerted activity.

The Respondent argues on exception that even assuming it unlawfully terminated Zamora, he is not entitled to reinstatement because he threatened to kill Jose Samuel Correa and Correa's family upon being informed of his termination. The credited testimony does not support the Respondent's assertion.

conduct, if found unlawful, would warrant separate remedial provisions. See *Benesight, Inc.*, 337 NLRB 282, 283–284 (2001) (8(a)(1) statement was not subsumed into unlawful termination).[4] Further, to summarily disregard independently coercive statements made immediately before or after an unlawful discharge would effectively privilege unlawful statements solely on the basis of their temporal proximity to another unlawful act. See id. at 284. Accordingly, we shall consider the conduct at issue on the merits.

The Respondent's Statements to Zamora

In April 2012,[5] Carlos Zamora was 1 of 10–12 employees who participated in a brief work stoppage protesting the speed of the Respondent's production line, and other terms and conditions of their employment. On May 11, another group of employees planned to participate in a second work stoppage on May 14, as a means to raise their continued concerns.

On May 14, during the employees' morning break, one of Zamora's coworkers told him that the planned work stoppage would occur at 10 a.m. After the break, at around 9:30 a.m., Fabrication Manager Eliseo Garcia instructed Zamora's supervisor, Saturnio Mora, to send Zamora to the supervisor's office. When Zamora arrived, Plant Manager Jose Samuel Correa and Garcia were waiting. Correa asked Zamora "what it is that [Zamora] wanted." Correa added that Zamora had a good job, good insurance, and good overtime, and then repeated the inquiry. Zamora responded that he wanted "an increase," and Correa immediately informed him that he was discharged.

The complaint alleges that Correa's statements to Zamora constituted an unlawful interrogation about his protected activity. Regardless of whether Correa's statements amounted to an interrogation about Zamora's protected activity (or that of his fellow employees), we find that his statements were nonetheless coercive, as they conveyed displeasure with Zamora's protected concerted activity. As such, the statements violated the Act. Indeed, the Board has found that even a rhetorical question to an employee can be coercive, and therefore violative of Section 8(a)(1), if made in a context that conveys the employer's displeasure with the employee's protected conduct. See, e.g., *Onan*, 261 NLRB 1378, 1380 fn. 13, 1385 (1982), enfd. in pertinent part 729 F.2d 713 (11th Cir. 1984) (employer violated Sec. 8(a)(1) by rhetorically asking a prounion employee how much he was being paid by the union). See also *KSM Industries*, 336 NLRB 133, 133 (2001), motion for reconsideration granted in part on other grounds 337 NLRB 987 (2002) (employer conveyed unlawful threat of job loss when its manager stated that employees not participating in a strike had jobs and then rhetorically asked a striking employee "[w]hat are you doing for a livelihood"). Here, Correa's statements occurred just minutes before the employees' planned work stoppage was to begin, and were immediately followed by Zamora's termination for engaging in protected conduct. In these circumstances, Correa's statements coercively conveyed his displeasure with Zamora's protected conduct and, as such, were unlawful.[6]

We recognize that the complaint did not allege that Correa's statements were generally coercive, but rather alleged that they constituted an unlawful interrogation. However, "[i]t is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). See also *Mountaineer Steel, Inc.*, 326 NLRB 787, 787 fn. 4 (1998), enfd. 8 Fed. Appx. 180 (4th Cir. 2001) (unalleged impression-of-surveillance issue properly before the Board where it "was sufficiently raised by the pleadings and fully litigated at the hearing"). Both prongs of the *Pergament* test are satisfied here.

First, the violation found is closely related to the complaint's interrogation allegation, as they both concern the

[4] Member Johnson finds *Benesight* distinguishable and expresses no opinion whether it was correctly decided. He agrees that the impression of surveillance and interrogation allegations are independent of the discharge allegation and warrant consideration on their merits.

[5] All dates refer to 2012, unless otherwise noted.

[6] Member Johnson concurs in finding that, in the particular circumstances of this case, Correa's statements would reasonably be viewed as coercive expressions of antipathy towards Zamora's protected concerted activity. However, Member Johnson emphasizes the need to afford employers the legitimate opportunity to exchange views with employees on terms and conditions of employment. Not only is this zone of freedom to speak mandated by Sec. 8(c), but it is the logical and necessary corollary of the Board's recent efforts to inform unrepresented employees of their Sec. 7 rights and to encourage the exercise of these rights. In his view, nothing could be more conducive to labor peace than for an employer to ask to meet with a known employee participant in concerted protected wage complaints, on the eve of a planned walkout, in order to discuss different views as to the fairness of wages and other benefits and to ask what the employees want. That is, after all, the exchange that often takes place in 11th hour negotiations between an employer and a union collective-bargaining representative prior to a planned strike action. While the record here clearly shows Correa had no such legitimate intent when summoning Zamora to a meeting, Member Johnson believes that the Board should carefully guard against effectively creating a "gag rule" by which, once unrepresented employees engage in protected concerted protests, an employer must either agree with the employees' demands or totally refrain from discussing the merits of those demands for fear of being found to have violated the Act. Such a result would be counterproductive and undermine, rather than forward, the purposes of the Act.

same facts, and require consideration of whether, under the totality of circumstances, the statement reasonably would tend to coerce an employee in the exercise of his Section 7 rights. See *Pergament United Sales*, supra, 296 NLRB at 334–335 (close connection demonstrated where the violation found focused on the same facts relevant to the alleged violation and presented the same ultimate issue).

Second, the violation found was fully litigated. The General Counsel's theory of a violation concerning this conduct clearly alleged that Correa's comments were coercive, and thus the Respondent was on clear notice of the need to defend against that contention. Significantly, in its answering brief to the Board, the Respondent did, in fact, argue that the questioning was not coercive. These circumstances demonstrate that the issue was fully litigated and that the absence of a more specific allegation did not preclude the Respondent from "presenting exculpatory evidence or . . . alter[] the conduct of [the Respondent's] case at the hearing." *Pergament United Sales*, supra, 296 NLRB at 335. Therefore, as the finding of a violation satisfies both prongs of the *Pergament* test, we find that Correa's statements were generally coercive and, as such, violated Section 8(a)(1).

Statements Creating an Impression of Surveillance

On May 11, Jorge Degante spoke with several employees on the production line about the speed of the line, their wages, and other terms and conditions of employment. Degante met with another group of employees the next day, and discussed a plan to engage in a work stoppage at 10 a.m. on May 14. On May 14, during the employees' morning break, Degante spoke with Susana Salgado, and informed her about the planned work stoppage.

Later that day, immediately after Zamora's discharge, Supervisor Mora instructed Degante to report to the supervisor's office. Correa and Garcia were waiting. Garcia accused Degante of provoking other employees. When Degante denied the allegation, Garcia responded that someone had told him that Degante was the leader of the planned work stoppage. Degante challenged Garcia to prove his claim, but Garcia declined to identify the source of his knowledge, and he then terminated Degante.

Also on May 14, sometime after Degante's discharge, Salgado's supervisor told Salgado—who had also talked to employees about the planned work stoppage during the morning break—to report to the supervisor's office. Correa and Garcia were waiting, and Correa accused Salgado of being one of the organizers of the planned work stoppage. Salgado asked Correa whether he had any witnesses to support his assertion, but Correa refused to disclose his source and then terminated Salgado.

The complaint alleges that the Respondent's statements to Degante and Salgado created the impression of surveillance. We find that the record evidence supports the finding of this violation.

"The test for determining whether an employer has created an impression that its employees' [protected] activities have been placed under surveillance is whether the employees would reasonably assume from the employer's statements or conduct that their [protected] activities had been placed under surveillance." *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 963 (2004). When an employer tells employees that it is aware of their protected concerted activities, but fails to tell them the source of that information, it violates Section 8(a)(1) "because employees are left to speculate as to how the employer obtained the information, causing them reasonably to conclude that the information was obtained through *employer* monitoring." *McClain & Co.*, 358 NLRB 1070, 1073 (2012), quoting *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1296 (2009), affd. and incorporated by reference 357 NLRB 633 (2011), enfd. 498 Fed. Appx. 45 (D.C. Cir. 2012) (emphasis in original). As set forth above, both Degante and Salgado participated in discussions about the employees' planned work stoppage. Thereafter, in the Respondent's meetings with Degante and Salgado on May 14, Garcia told Degante that "someone" had told him that Degante was the leader of the planned work stoppage, and Correa accused Salgado of organizing the work stoppage. In these circumstances, the employees would reasonably believe that the Respondent was monitoring their protected conduct. As such, Garcia and Correa's comments violated Section 8(a)(1) by creating an impression that employees' protected activities were under surveillance.[7]

[7] Although not necessary to establish the violation, the impression of surveillance finding was further supported by Garcia and Correa's refusal to respond to the employees' requests that they identify the source of their knowledge.

In his dismissal of the impression of surveillance allegations, the judge stated that "it is problematical whether the assembly of supervisors on the catwalk, allegedly in anticipation of an employee walkout as testified to by Salgado violates the Act." Because any such assembly of supervisors is not relevant to our impression of surveillance finding, we find it unnecessary to pass on this statement by the judge.

Member Johnson would not find the impression of surveillance violations. The record shows that both Degante and Salgado had complained to their supervisors about wages and production line speeds. There were open discussions in the workplace of the planned walkout to protest these conditions, most notably on Friday, May 11, when Degante spoke to employees on two production lines and they agreed to walk off. The record also shows that by May 14, word of the walkout was spreading. During the morning break, employees told Zamora about it, and when Salgado mentioned the walk off to several cowork-

AMENDED CONCLUSIONS OF LAW

1. The Respondent 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 violated Section 8(a)(1) of the Act:

(a) Discharging Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez because they engaged in protected concerted activities.

(b) Making coercive statements to Carlos Zamora about his participation in protected concerted activities.

(c) Creating the impression that it is engaged in surveillance of its employees' protected concerted activities.

ORDER

The Respondent, Greater Omaha Packing Co., Inc., Omaha, Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities.

(b) Making coercive statements to employees about their participation in protected concerted activities.

(c) Creating the impression that it is engaged in surveillance of its employees' protected concerted activities.

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

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

(a) Within 14 days from the date of this Order, offer Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision as modified in this decision.

(c) Reimburse Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez an amount equal to the difference in taxes owed upon receipt of a lump-sum backpay payment and taxes that would have been owed had there been no discrimination against them.

(d) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez, it will be allocated to the appropriate periods.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(f) 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,

---

ers after her break, they told her that they were already aware of the plan. Finally, the record evidence shows that employees and supervisors worked in close proximity, including on the morning of May 14, when, as Degante testified, Managers Garcia and Silva worked on the same table as Degante. Thus, there is insufficient basis to find that Degante and Salgado would reasonably infer from Correa and Garcia's statements that knowledge or suspicion of their role in the protected activity resulted from management surveillance. See, e.g., *Sunshine Piping, Inc*., 350 NLRB 1186, 1194 (2007) (manager's statement that he knew that about 80 percent of the shop had signed authorization cards was not an unlawful impression of surveillance where the employees' card solicitation activities were conducted openly on the employer's premises), and *SKD Jonesville Division, LP*, 340 NLRB 101, 102 (2003) (employer did not unlawfully create the impression of surveillance when a manager told an employee that, "he heard that I was going to organize . . . that the employees wanted me to organize a union . . ." because it was reasonable to infer that the manager heard about the statement from the grapevine, particularly where the employee had been an open union supporter). In Member Johnson's view, the fact that the Respondent's officials declined to identify the "someone" who provided information does not require a different conclusion under these circumstances.

Contrary to their colleague, Chairman Pearce and Member Hirozawa find that the record fails to show that any planning of the work stoppage involved open employee conversations that could easily be observed and heard by the Respondent. Although the credited testimony shows that a few discussions about the walkout occurred on the production line and in the break room, and that supervisors would often work on the production line with employees, it does not specifically show that Degante or Salgado's discussions about the work stoppage occurred within earshot of the Respondent's supervisors. Indeed, the fact that protected activity occurred in the workplace does not, without more, establish that the activity is sufficiently open so as to preclude an impression of surveillance finding. See generally *Caribe Ford*, 348 NLRB 1108, 1116, 1123–1124 (2006) (impression of surveillance violation found where, among other things, employee spoke with coworkers at the facility about seeking out the union, and shortly thereafter was accused of being the one "trying to bring the Union [to the employer]"). Significantly, the Respondent does not even contend that Degante or Salgado's planning activity occurred in the open. See id. at 1123. In the absence of any specific evidence or argument that Degante and Salgado planned the work stoppage in the open, Chairman Pearce and Member Hirozawa find no support for their colleague's contention that these allegations should be dismissed on this basis.

necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Omaha, Nebraska facility copies of the attached notice marked "Appendix,"[8] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as 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. 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 May 14, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 17 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.

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 discharge or otherwise discriminate against you for engaging in protected concerted activities.

WE WILL NOT make coercive statements about your participation in protected concerted activities.

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

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

WE WILL, within 14 days from the date of the Board's Order, offer Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharges of Carlos Zamora, Jorge Degante Enriquez, and Susana Salgado Martinez, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

GREATER OMAHA PACKING CO., INC.

Lyn R. Buckley, Esq., for the General Counsel.
Roger J. Miller and *Ruth A Horvatich, Esqs. (McGrath, North, Mullin & Kratz, PC LLO),* of Omaha, Nebraska, for the Respondent.
James Walter Crampton, Esq., of Omaha, Nebraska, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Omaha, Nebraska, on October 31 and November 1, 2012. The Heartland Workers Center filed the initial charges in these cases on July 20, 2012, and the General Counsel issued a consolidated complaint on September 28, 2012.

Respondent terminated the employment of Jorge Degante Enriquez (Degante), its employee for 12 years; Susana Salgado Martinez (Salgado), its employee for 4 years; and Carlos Zamo-

[8] 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."

ra, its employee for 3 years, on May 14, 2012.[1] The General Counsel alleges that it did so because these three employees engaged in concerted activity protected by Section 7 of the Act and/or that Respondent believed that the employees were about to engage in such protected activity and to discourage employees from engaging in protected concerted activity. Thus, the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act in terminating the three employees. He also alleges that Respondent interrogated employees regarding their protected activities on May 14 and created the impression that Respondent was monitoring these activities.

On the entire record, 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 slaughters cattle, processes, sells, and distributes beef products from its facility in Omaha, Nebraska. It annually sells and ships goods valued in excess of $50,000 to points directly outside of Nebraska. 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.

II. ALLEGED UNFAIR LABOR PRACTICES

On April 3, 2012, the United States Department of Homeland Security sent Respondent a letter stating that pursuant to an inspection initiated on October 17, 2011, that it was unable to verify the identity and employment eligibility of 179 of Respondent's employees. About 440 employees work in the fabrication area of Respondent's facility. Within a few weeks of Respondent's receipt of this letter, agents of the Immigration and Customs Enforcement Bureau of the Department (ICE) entered Respondent's plant and arrested 15 employees. Many other employees quit their employment voluntarily.

Respondent attempted and may have been successful in replacing these employees as they left its employment. However, due the departure of many employees and their replacement by assumedly less experienced employees, a number of the remaining employees complained to Respondent about the speed of the conveyor belts on which meat came to them for processing.

Sometime in mid-April 2012, 10 to 12 employees, including alleged discriminatee Carlos Zamora, walked off the production lines at Respondent's facility and went to the plant's cafeteria.[2] Plant Manager Jose Samuel Correa met with these employees. The employees complained that the production line was too fast (Tr. 29). Correa told the employees to go back to work, but that he would meet with them at the end of the workday.

At the end of the workday, Correa met with these employees, including Zamora, again. (Tr. 29.) At this meeting Zamora and others complained about their compensation and other matters. (Tr. 30.)

The Discharge of the Three Alleged Discriminatees

In this case the legal principles are fairly straightforward. Either these discriminatees were fired in retaliation for engaging or planning to engage in protected activity in violation of the Act, or they were fired for nondiscriminatory reasons. However, determining the facts relating to the three discharges requires credibility resolutions between the diametrically different accounts of Plant Manager Correa and Eliseo Garcia, the fabrication manager, on the one hand, and the three discriminatees on the other.

Zamora's Discharge

On Monday, May 14, 2012, shortly after the employees' morning break,[3] at about 9:35 a.m., Fabrication Manager Eliseo Garcia, at Correa's direction, called Zamora's immediate supervisor, Saturnio (Tony) Mora, and instructed Mora to send Zamora to the plant supervisors' office. Zamora arrived a few minutes thereafter.

Correa testified that he summoned Zamora to counsel him because Garcia had come to him during the break and told him that during the prior week Zamora had left his workstation during worktime to speak to Garcia. (Tr. 34, 63–65.) Respondent fired Zamora on June 30, 2008, for leaving his workstation without permission. (Tr. 169.) He was rehired the next year.

Correa also testified that Garcia told him that in the incident during the week prior to May 14, 2012, Garcia immediately told Zamora to return to his workstation, that his absence presented a safety hazard, and that if Zamora wanted to speak to Garcia he could do so at the end of the day.

Garcia testified that Zamora approached him during the previous week and said he needed to talk to Garcia about the speed of the production conveyor. Garcia testified further that he told Zamora that he must speak to him after working hours.

Correa and Garcia testified that on May 14 Correa told Zamora that he must let his supervisor know that he is leaving his workstation whenever he does so.[4] Zamora immediately responded by saying that Correa and Garcia were picking on him and that they were assholes. Correa fired Zamora for being disrespectful. Afterwards, Zamora threatened to kill Correa and his family.

Zamora testified that he took his break on May 14 at 9 a.m., rather than 9:15 a.m. and that while he was on break other employees told him that they were planning to walk off the job at 10 a.m. As soon as he returned from break, his supervisor, Tony Mora, sent him to the supervisor's office. Correa and Garcia were present and Correa addressed him in Spanish.

---

[1] At the time of the discharges, Zamora had been working for Respondent continuously for about 3 years, although he had worked for Respondent prior to that.

[2] In 2008, the entire work force at the plant walked off the job and refused to return to work until addressed by Respondent's owner.

[3] Zamora testified that he took his break between 9 and 9:15 a.m., but from the record as a whole I infer that all employees took their break between 9:15 and 9:30 a.m. on May 14.

[4] Tony Mora testified that he had observed Zamora leave his workstation without permission a couple of times in the 2 months prior to his discharge. Other employees also left their workstation without permission. There is no evidence that other employees were disciplined or even counseled as a result.

According to Zamora, the conversation was very short. Garcia did not speak. Correa asked Zamora what he wanted. Zamora replied he wanted a wage increase and then Correa said "[t]hat I was fired, just to leave my stuff there because I had left my line twice." (Tr. 160.) Zamora denied that there was any effort to counsel him or that he complained of being picked on or that he called Correa and Garcia assholes. He also testified that he did not threaten anybody. He also denied leaving his workstation to talk to Garcia during the week prior to May 14. Rather, Zamora testified, he complained to his supervisor, Tony Mora, about the conveyor line speed during that week.

Correa or Garcia called the plant security office to escort Zamora out of the facility at about 9:30 a.m. Kek Malwul, a security guard, went to the plant cafeteria and waited a few minutes outside the supervisor's office. When the door to the supervisor's office opened, Zamora and Correa were shouting at each other in Spanish. Malwul stepped between them and escorted Zamora out of the plant. Malwul does not understand Spanish.

Malwul filed an incident report with his supervisor on May 15. (R. Exh. 2.) In that report he stated that he arrived at the supervisor's office at 9:37 a.m. His report states that Zamora was shouting at Correa in a threatening manner. However, there is no documentation in the report that Zamora threatened Correa. There is also no other documentary support for Correa's testimony regarding threats, such as a police report. Also, Respondent's exit interview form, filled out by Supervisor Mora, on June 1, does not mention that Zamora threatened Correa. (GC Exh. 4.)

Degante's Discharge

Almost immediately after discharging Zamora, sometime between 9:40 and 10 a.m., Correa and/or Garcia summoned Jorge Degante to the supervisor's office. Degante was working on the trim or butts line, which was adjacent to the loin line where Zamora had been working. (R. Exh. 3; Tr. 113, 197–199, 203–204, 222–223.) Tony Mora, who supervised both Degante and Zamora, told Degante to go to the supervisors' office.

Correa testified during the 9:15 to 9:30 a.m. break, Garcia told him that he had observed Degante putting on his hair net early that morning when he should already have been at his workstation. Correa testified that Garcia said that he wanted to counsel Degante. Correa and Garcia testified that they told Degante that he must get to work on time and be prompt in returning from breaks and when moving from one production line to another. Correa and Garcia testified that Correa fired Degante because Degante refused to acknowledge that he was doing anything improper.

According to Degante's immediate supervisor, Tony Mora, Degante was often late getting back from break and reporting to a supervisor when switching production lines. (Tr. 225.) Mora did not testify that Degante was late getting to his workstation at the beginning of his shift on May 14, or on any other occasion. Mora did not corroborate Correa's testimony that Garcia had told him on May 14 that Degante was late. As of June 1, 2012, Mora did not know the reasons for which Degante and Zamora were terminated.

Correa testified that Degante was late returning from his break three to four times a week. (Tr. 44–45.) Garcia testified that Degante was consistently late getting to his workstation for the 4-1/2 years Garcia had supervised Degante. Degante conceded that he had been warned on several previous occasions about taking unauthorized breaks. He also had been counseled previously about taking too long when switching between production lines. In 2012, prior to May 14, Respondent has issued Degante one written counseling or warning. (Tr. 115–116.)

Degante testified that when he entered the supervisor's office, Garcia said (in Spanish) that Degante was provoking other employees. Degante denied this and Garcia fired him. He testified that there was no discussion about his tardiness.

Prior to May 14, Degante had complained to Supervisor Roberto Silva that the production line was going too fast and that it was impossible to do a good job. He also told Silva that he should be paid an extra dollar per hour because he worked on several different production lines. (Tr. 85.) Silva told Degante that he would speak to Correa.[5]

Degante also testified that in the week prior to May 14 he talked to employees on the loin line where Zamora worked about the speed on the production line, wages, and why some employees switched lines and others did not. He testified that a group of employees agreed to strike over these issues.

On Saturday, May 12, Degante testified that a group of employees met and agreed to walk off their jobs at exactly 10 a.m. on Monday, May 14. On the morning of May 14, Degante began his shift on the rounds line. Later he was sent to the brisket line where Eliseo Garcia and Roberto Silva were working.[6] Degante testified that during his morning break he spoke with Susana Salgado and told her that a strike would begin at 10 a.m. Salgado replied that she and other employees in the packing department would walk off the job with everyone else. (Tr. 90.) After his break, Degante returned to the butts line, his regular workstation.

Salgado's Discharge

Salgado complained to her supervisor, Alejandro Varela, about the speed of the production line within about a month of her discharge.[7] (Tr. 119.) She testified that she spoke to Degante during the morning break on May 14. Further, she testified that Degante told her that employees would walk off the job at 10 a.m. According to Salgado, she mentioned the strike to several coworkers upon her return to work from her break. She said they told her that they were already aware of the plan to strike.

---

[5] Respondent, in its answer, admitted that Roberto Silva was a supervisor and an agent of Respondent within the meaning of the Act. Silva did not testify at the hearing. Therefore, Degante's testimony about his conversation with Silva is uncontradicted. I therefore credit it.

[6] Employees at Respondent's plant work in very close proximity to other employees on their production line. They are within 3 feet of their closest coworker. Supervisors often work on the production line with the rank-and-file employees. R. Exh. 4; Tr. 205, 243–244.

[7] Varela, who testified, did not contradict Salgado regarding this conversation.

Shortly after the break, between 9:30 and 10 a.m., Salgado's supervisor, Alejandro Varela, told Salgado to go the supervisors' office. After waiting for about 20–30 minutes in the cafeteria, Salgado entered the supervisor's office. [8]

According to Salgado, Plant Manager Correa accused her of being one of the organizers of the strike and fired her. Eliseo Garcia testified that he saw Salgado on the catwalk earlier on the morning of May 14, and summoned her to the supervisor's office to ask her if she had permission to go to the restroom. Garcia testified further that Salgado denied that she had done anything wrong and that every other employee used the restroom without first seeking the permission of a supervisor. Garcia and Correa testified that since Salgado would not agree to notify her supervisor whenever she left her workstation, Correa fired her. Salgado denies that leaving her workstation was discussed in this meeting.

Alejandro Varela testified that Respondent had a policy that employees must let their supervisor know when they go to the bathroom. He testified further that Salgado violated this policy on a daily basis. (Tr. 232.) However, Salgado had not been disciplined previously in her 4 years of employment.[9] (Tr. 80.) It is apparent from General Counsel's Exhibit 5 and Varela's testimony that he did not know why Salgado was terminated.

Paperwork Relating to the Discharge of Zamora, Degante, and Salgado

On June 1, 2012, Tony Mora, the immediate supervisor of Zamora and Degante, filled out an employee exit form that he received from Respondent's human resources office. The form was mostly blank except for the Fabrication Department Number, the names of the employee, and last day worked. Under the column labeled involuntary termination, there are about a dozen boxes which can be checked as the reason for termination. Eliseo Garcia instructed Mora to the check the box marked "Conduct-Behavior and/or Language" for both Zamora and Degante. He did not check any of the other potentially relevant choices; "Insubordination," or "Refusal to Follow Instruction." Mora did not write anything in the space allowed for a description of the reasons for the terminations.

On June 4, 2012, Alejandro Varela signed the same form for Salgado, checking the same box without explaining further the reasons for her termination. Respondent introduced into evidence three exit interview forms for other employees. Two of these were signed on May 30 and June 2, 2012, respectively. They differ from the forms for Zamora, Degante, and Salgado in that each contained a more detailed account of the reasons for termination and an employee warning form dated on the last day of the individual's employment. The third form, signed in January 2012, contains a one sentence description of the reasons for the discharge. Two of these individuals worked for Respondent for about 1 week and the other for about 1 month.

The Applicable Legal Principles

Section 8(a)(1) provides that it is an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. Section 7 provides that, "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.*" (Emphasis added.)

In *Myers Industries (Myers 1)*, 268 NLRB 493 (1984), and in *Myers Industries (Myers 11),* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection is as much concerted activity as is ordinary group activity.

Individual action is concerted so long as it is engaged in with the object of initiating or inducing group action, *Whittaker Corp.*, 289 NLRB 933 (1988); *Mushroom Transportation Co.*, 330 F.2d 683, 685 (3d Cir. 1964). The object of inducing group action need not be express.

Additionally, the Board held in *Amelio's*, 301 NLRB 182 (1991), that in order to present a prima facie case that an employer has discharged an employee in violation of Section 8(a)(1) the General Counsel must establish that the employer knew of the concerted nature of the activity.

Employees who strike, or plan to strike, are generally engaging in activity protected by Section 7 of the Act, *Molon Motor & Coil Corp.,* 302 NLRB 138 (1991), enfd. 965 F.2d 523 (7th Cir. 1992). An in-plant strike, however, is unprotected under certain circumstances. It is not clear from their testimony whether the discriminatees planned to leave the plant on May 14, or assemble in the cafeteria, as some employees had done previously. In *Quietflex Mfg. Co.,* 344 NLRB 1055 (2005), the Board cited 10 factors to weigh in determining whether an in-plant work stoppage is protected. Since Respondent argues that there was no plan to strike, it did not address the issue of whether a walkout, if it occurred, would have been protected—assuming the discriminatees did not leave the plant. However, since I conclude that Respondent fired the discriminatees for

[8] At hearing Salgado testified that Varela told her to go to the supervisor's office before 10 a.m. In an affidavit given to the General Counsel she stated that she was called into the office after 10 a.m. In a telephonic unemployment insurance hearing, Salgado stated she went to the office around 10:45 or 11 a.m. Correa testified that Garcia told him that he had seen Salgado away from her workstation before the morning break and that Garcia said he wanted to talk to some people, including Salgado, Tr. 48–49. I therefore conclude that the three alleged discriminatees were sent to the office one right after another. Moreover, I find that Salgado had to wait in the cafeteria because Correa was still in the meeting with Degante or busy with other matters.

[9] In light of Garcia's testimony at Tr. 80 that Salgado was a good performer with no previous incidents, I discredit the testimony of Samuel Correa at Tr. 54–55 that Salgado's supervisor, Alejandro Varela, had talked to Garcia previously about Salgado's failure to acknowledge directions. Even assuming that Varela's testimony at Tr. 232–233 is truthful, there is no evidence that he spoke to Garcia about Salgado leaving her workstation without permission or any other disciplinary problem regarding Salgado.

In fact, from the fact that Varela had never counseled Salgado about going to the bathroom without permission, I conclude that Respondent did not have a policy requiring an employee to do so. There is no evidence that any other employee was ever counseled or disciplined for violating such a policy. Further, there is no documentation that such a policy existed.

planning to refuse to work and not for any other reason, it does not matter whether the discriminatees planned to assemble inside or outside of the plant, *Molon Motor & Coil Corp,* supra. Respondent violated Section 8(a)(1) in terminating the discriminatees for planning to refuse to work.

Burden of Proof

In order to establish that an employer violated Section 8(a)(1) in discharging or disciplining an employee, the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. The discharge of an employee or employees to prevent them from engaging in activity protected by Section 7 ("a preemptive strike") violates the Act, *Parexel International, LLC,* 356 NLRB 516 (2011).

Once the General Counsel has made an initial showing of discrimination, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (lst Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399–403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002). Unlawful motivation and animus are often established by indirect or circumstantial evidence.

In the instant case whether the General Counsel established a violation or even made an initial showing of discrimination depends on whether I credit the testimony of Correa and Garcia on the one hand, or the testimony of Zamora, Degante, and Salgado on the other. This is somewhat difficult in that there isn't any documentary support or disinterested corroboration for the self-serving testimony of either the alleged discriminatees or the management witnesses.

Credibility Resolutions

I find no basis for resolving the credibility of the witnesses by virtue of their demeanor when testifying. Thus, I base these determinations on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole, *Daikichi Sushi,* 335 NLRB 622 (2001). As explained below, I find the discriminatees' accounts of what transpired on May 14 to be far more credible than that of Correa and Garcia.

It is undisputed that Zamora engaged in protected concerted activity in mid-April 2012 when he walked off his job with other employees to protest the speed of the product line. It is also undisputed that Respondent and specifically Plant Manager Correa were aware of this protected activity. It is also undisputed that later that day Zamora and others complained about their compensation.

The incident for which Zamora was called to the supervisor's office, according to Respondent, constituted protected concerted activity. According to Garcia, on that occasion, a week prior to May 14, Zamora approached Garcia by the loin line, which was Zamora's workstation. Zamora complained to Garcia about the speed of the conveyor chain. (Tr. 210.) This was a concern which had been raised concertedly to Respondent previously. Thus, under *Myers II*, Zamora's conduct was protected. Therefore, by calling Zamora to the office to counsel him for this complaint, Respondent violated Section 8(a)(1).

More importantly, however, I discredit Respondent's testimony that it called Zamora into the supervisor's office to counsel him for leaving his workstation. There wasn't any reason for Correa to call Zamora in for counseling. According to Garcia, he had already done so.[10] (Tr. 210–211.) On the contrary I credit Zamora's testimony that Respondent fired him without attempting to counsel him.

Degante's testimony that he complained to Supervisor Roberto Silva about the speed of the production line and his compensation is uncontradicted. It is also uncontradicted that Silva promised Degante to talk to Correa about these concerns. Thus, at a minimum Respondent was aware of Degante's protected activity in this regard.[11] As discussed more fully herein, I credit Degante's testimony about his conversation with Correa and Garcia on May 14. Correa and Garcia knew about the planned strike and knew or suspected that Degante was behind it.

Salgado also engaged in protected activity in complaining to her supervisor, Alejandro Varela, about the speed of the production line. From the circumstances surrounding her discharge, and from her testimony, which I credit, I conclude that Respondent suspected her of playing a significant role in the plan for employees to walk off the job. I also conclude based on her testimony that this is the reason for her discharge.

I credit the testimony of Zamora, Degante, and Salgado that a group of employees had discussed a plan to walk off the job at 10 a.m. on May 14, 2012. As Respondent's brief emphasizes, the weakest link in the General Counsel's case is the fact that no walkout occurred at 10 a.m. on May 14, and that there is no corroboration for the discriminatees' testimony. However, the fact that no strike or walkoff occurred does not establish that one was not planned, as the discriminatees testified.

I infer that by 10 a.m. the employees who planned to strike were worried about retaliation if they did so. Due to the close proximity in which employees worked, those working with Zamora and Degante would have noticed that their supervisor, Tony Mora, had sent Zamora and Degante to the office and that by 10 a.m. they had not returned. Degante worked at a table with just six other employees. (Tr. 113.) Garcia's testimony (Tr. 65–66, 210) establishes that the absence of Zamora and Degante from their production lines would have immediately made the job of other employees on their line more difficult and indeed more hazardous. They could hardly have not been aware of the extended absence of both. Since Degante was a leader of the planned strike, the fact that he was missing from the line at 10 a.m. likely dissuaded other employees from walking off the job.[12]

[10] Zamora testified that this conversation occurred between himself and Tony Mora; not Garcia, Tr. 151–152.

[11] This activity is protected because it concerned a matter which Respondent knew, from Correa's April meeting with employees, was an issue with a number of employees, not only Degante, *JMC Transport,* 272 NLRB 545 fn. 2 (1984), enfd. 776 F.2d 612 (6th Cir. 1985).

[12] I credit Degante's testimony that Garcia told Correa that Degante was the leader of the planned strike, Tr. 93.

Respondent argues that since employees are routinely called to the supervisors' office, they would not have attached any significance to the absence of Zamora and Degante from their production lines on May 14. This is not true if employees working in close proximity to Degante believed that he was a leader of a planned walkout, and/or was aware of Zamora's role in the prior walkout.

Packing employees who were planning to strike would have noticed that nobody from the cutting floor was walking off the job from the fact that the production line did not stop. (Tr. 121.) Since the production line continued to run, it would have been difficult for these employees to leave their workstation even if they had been planning on it.

Respondent's account of what occurred on May 14, 2012, is extremely implausible. It is particularly implausible that Degante and Salgado when faced with a demand from the plant manager that they abide by plant rules, would simply dig in their heels.

Correa did not warn Salgado that if she didn't change her behavior she'd be fired. He testified that simply discharged her without warning because she defended her conduct. Assuming that Salgado violated a company policy, given her spotless disciplinary record (Tr. 80) her precipitous discharge strongly suggests discriminatory motive. Respondent did not consider giving her a lesser form of discipline, such as a warning likes the one given earlier in 2012 to Degante. This disparate treatment is another factor leading me to discredit Respondent's witnesses, credit the discriminatees and conclude that their terminations were discriminatory. Moreover, as stated previously in footnote 9, I conclude that Respondent did not have a policy requiring employees to ask permission prior to using the restroom.

To summarize, I draw the inference that the plan for a strike existed, that Respondent knew of it, bore animus towards the employees involved and fired the three discriminatees to prevent the strike from the following factors:

(1) The virtually simultaneous discharge of three employees for ostensibly unrelated reasons; *Abbey's Transportation Services,* 284 NLRB 698, 700–701, (1987), enfd. 837 F.2d 575 (2d Cir. 1988); *Knoxville Distribution Co.,* 298 NLRB 688 fn. 1, 696 (1990) enfd. 919 F.2d 141 (6th Cir. 1990).

(2) The implausibility of Respondent's testimony about the May 14 meetings.

(3) The fact that according to Respondent, Degante and Salgado had been continuously violating the policies (or alleged policies in Salgado's case) for which they had been fired for years—without being previously discharged. The fact that Respondent suddenly found Degante's tardiness and Salgado leaving her workstation to be grounds for discharge on May 14 is evidence that these reasons are pretextual, *Churchill's Supermarkets,* 285 NLRB 138, 156 (1987); *Trader Horn of New Jersey, Inc.,* 316 NLRB 194, 198 (1995); *CWI of Maryland, Inc.,* 321 NLRB 698, 707 (1996) enfd. 127 F.3d 319 (4th Cir. 1997); *Triangle Tool & Engineering,* 226 NLRB 1354 (1976); *G&J Co.,* 146 NLRB 1151, 1153 (1964).

(4) The precipitous discharge and disparate treatment of Salgado, who had not been previously disciplined in four years of employment. *Acme Bus Corp.,* 357 NLRB 902, 904 (2011); *Norton Audubon Hospital,* 341 NLRB 143 (2004).

(5) Security guard Kek Malwul's testimony and written report also provides circumstantial support for the accounts of the discriminatees.[13] Malwul testified (Tr. 181–182) that he was called to the supervisor's office at 9:30 a.m., which indicates that Respondent had decided to fire Zamora before Correa and Garcia met with Zamora. It took a few minutes for Malwul to walk from his office to the cafeteria. He then waited a few minutes in the cafeteria before going to the supervisor's office. [Tr. 182–184, 192.] Malwul's written report states, "At 9:37 a.m. on May 14, 2012, I arrived at the Supervisor's office on the main floor for a termination escort." Respondent had already decided to terminate Zamora when it called security, which I infer was before Correa met with Zamora.

I rely on the pretextual nature of Respondent's proffered reasons for the discharge both in concluding that the General Counsel made his initial showing of discrimination and in concluding that Respondent did not meet its burden of proving that it fired Zamora, Degante, and Salgado for nondiscriminatory reasons. As to the latter, I simply discredit the testimony of Correa and Garcia. It is extremely unlikely that Respondent discharged the three employees simultaneously for nondiscriminatory reasons in light of the fact that Respondent's testimony indicates that Degante and Salgado had been routinely violating the policies for which they were allegedly discharged for years.

The disparate nature of discharges of the three short-term employees, whose exit forms were introduced by Respondent, also supports a finding that Zamora, Degante, and Salgado were discriminatorily discharged. All three of these forms contains an explanation for the discharge and the two issued close in time to that of discriminatees is accompanied by a warning signed on the last day of employment. Supervisor Mora indicated (Tr. 225–226) that he generally will issue written discipline to employees who do not follow Respondent's rules. Respondent has not proffered an explanation as to why there is no discipline form regarding Degante's alleged tardiness on May 14.

CONCLUSION OF LAW

Respondent violated Section 8(a)(1) of the Act in discharging Carlos Zamora, Jorge Degante, and Susana Salgado on May 14, 2012.[14]

---

[13] Degante and Salgado were also escorted out of the plant by security, Tr. 94, 242–243, 248–250. Degante testified that he was escorted out by two security guards, one of whom was Malwul. Malwul testified that Zamora was the only person he escorted out of the plant on May 14, Tr. 185.

[14] I conclude that the General Counsel did not prove illegal interrogations and/or surveillance as alleged in par. 4 of the complaint. Moreover, the alleged violative statements were integral parts of the conversations in which Respondent terminated the discriminatees. Violations, if any, would thus be duplicative of the discharges. Also, it is problem-

REMEDY

The Respondent, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth C*o., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

[Recommended Order omitted from publication.]

atical whether the assembly of supervisors on the catwalk, allegedly in anticipation of an employee walkout, as testified to by Salgado, violates the Act.