

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

DTE ENERGY COMPANY

and

Case 07-CA-129514

JUANITA JACKSON

*Kelly A. Temple, Esq.*, for the General Counsel.

*Ben K. Frimpong, Esq. (DTE Energy Office of the General Counsel)*,  
of Detroit, Michigan, for the Respondent.

DECISION

CHARLES J. MUHL, Administrative Law Judge. This case involves the balancing of an employer's legitimate interest in investigating harassment complaints filed by employees and the National Labor Relations Act's prohibition on the interrogation of employees concerning their union and protected concerted activities. Here, the General Counsel alleges that the Respondent unlawfully interrogated employee Juanita Jackson about her protected concerted activities during a May 15, 2014 meeting called to investigate a harassment complaint filed by another employee against Jackson. The Respondent denies that its questioning of Jackson was unlawful, arguing that the inquiry was necessary to investigate the harassment complaint properly and that its investigation was limited to the four corners of that harassment complaint. After evaluating the totality of the circumstances surrounding the questioning of Jackson, I find that the Respondent narrowly tailored its questions to the investigation of the harassment complaint. The Respondent did not pry into Jackson's union views, her motive for engaging in protected concerted activity, or her sentiments beyond the harassment complaint. The Respondent's investigation was consistent with its policies regarding harassment and investigations. In these circumstances, a reasonable employee would recognize that the Respondent's questioning was for the purpose of gaining a full picture of the events as part of its harassment investigation. Accordingly, I find that the Respondent's questioning of Jackson did not constitute an unlawful interrogation.

STATEMENT OF THE CASE

On May 28, 2014, Juanita Jackson filed an unfair labor practice charge alleging that DTE Energy Company violated Section 8(a)(1) of the National Labor Relations Act (the Act). Region 7 of the National Labor Relations Board (the Board) docketed this charge as Case 07-CA-129514. Following an investigation into the charge, the Board's General Counsel, through the

Acting Regional Director for Region 7, issued a complaint on August 12, 2014, alleging that the Respondent violated the Act by interrogating employees about their protected concerted activities. The Respondent filed an answer to the complaint on August 22, 2014, denying the allegation and asserting multiple affirmative defenses to it.

I conducted a trial on the complaint on October 2, 2014, in Detroit, Michigan. Counsel for the parties filed posthearing briefs in support of their positions on November 6, 2014, which I have considered. On the entire record, including my observation of the demeanor of witnesses, I make the following findings of fact and conclusion of law.

## FINDINGS OF FACT

### I. Jurisdiction

The Respondent is an electricity provider with offices, including the Trombly Service Center (the Trombly facility), in Detroit, Michigan. In conducting its business operations in the 12 months ending December 31, 2013, the Respondent derived gross revenues in excess of \$250,000 and received at its Trombly facility products, goods, and materials valued in excess of \$5,000 from points outside the State of Michigan. Accordingly, and at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is subject to the Board's jurisdiction, as the Company admits in its answer.

### II. Alleged Unfair Labor Practices

Juanita Jackson has worked for the Respondent for 13 years and, at times material to this case, was employed as a cable warehouse supply person at the Trombly facility. The Respondent and Local 223 of the Utility Workers of America (the Union) have a current collective-bargaining agreement covering certain of the Respondent's employees, including Jackson. She served as a union steward for several years until May 19, 2014.

#### A. *The Harassment Complaint Against Juanita Jackson*

At an unspecified time prior to April 21, 2014,<sup>1</sup> Jackson and the Union's chief steward of the storage division, Marshall Watkins, filed a grievance alleging that a different bargaining unit employee, Jeffrey Burss, was not performing the same work that other employees were performing.<sup>2</sup> At all material times, Burss, a 28-year employee, worked as a supply person, leader, cable electrical, also at the Trombly facility. He is a member of the same bargaining unit as Jackson.

<sup>1</sup> All dates hereinafter are in 2014, unless otherwise specified.

<sup>2</sup> A copy of the grievance was not introduced into evidence at the hearing and Jackson's testimony regarding the substance of the grievance was inconsistent and unclear. (Tr. 17-18, 21-22, 24-25, 32-34.) However, she stated her grievance against Burss involved two parts. The first was that Burss was not working the same overtime hours that other employees were required to work. (Tr. 33.) The second was that Burss did not perform all of the same work that other leaders performed. (Tr. 34.) The record evidence suggests, but does not definitively establish, that the two parts were intertwined, i.e., that Burss was not doing certain types of work performed during overtime hours.

Jackson testified that, on April 21, she walked into a conversation between fellow employees Kurt Danowski and Franz Sanchez in a conference room at the Trombly facility.<sup>3</sup> Danowski stated that he did not understand why they were having problems “back there.”<sup>4</sup> He continued that, when he and Jackson’s husband previously worked there and Jackson’s husband was the leader, leaders performed the same work as other employees. Danowski volunteered to provide Jackson with a written statement detailing what work he had observed leaders doing in the past. He provided the statement to Jackson later that same day.

However, shortly thereafter, Danowski had second thoughts about providing Jackson with the statement. Burss testified that, at some point between April 21 and 24, Danowski told Burss that Jackson had approached him about signing some sort of document as to what job duties leaders had and what work they had done in years past. Danowski told Burss it bothered him all night, so he came to tell Burss what he had done.

Following his conversation with Danowski, Burss filed a harassment complaint against Jackson on April 24. Burss made the harassment complaint via telephone to a third-party contractor, EthicsPoint, whom the Respondent utilizes to take complaints from employees. Based on information provided by Burss, the contractor prepared and submitted to the Respondent a one-page report, which stated that the “Primary Issue” was “Harassment” and provided the following “Summary” of Burss’ harassment complaint:

Reporter alleges he is being harassed by a co-worker. Examples being the co-worker getting a signature from an employee in another area of the company to sign a letter referring to the work that he used to to [sic] when in the reporters current position. Another being making phone calls to different areas of the company to determine if there [sic] work lead has a locked office. Also, email being sent to leaders and union officials reporting that the reporter left work 15 minutes early.

This identical language appeared two additional times in the report under the headings “What is the general nature of this matter?” and “Details.” However, beyond the quoted text above, the report contained no additional information regarding the substance of Burss’ harassment complaint. It did identify Jackson as the person who engaged in the alleged harassing behavior and indicated that the alleged harassment had been going on for “[m]ore than a year.”

#### *B. The Respondent’s Investigation of the Harassment Complaint*

The “DTE Energy Way Code of Conduct” contains the Respondent’s “Harassment” policy, which prohibits “[c]onduct that creates an abusive or hostile working environment” and provides as an example of such conduct “derogatory comments, name-calling or continual taunting based on a protected group.” The Respondent also maintains “Standards of Conduct” which list harassment as one specific example of unacceptable conduct. Harassment is defined

<sup>3</sup> Neither Danowski nor Sanchez testified at the hearing.

<sup>4</sup> The record does not establish definitively what specific location Danowski was referring to as “back there,” but it appears to be the cable plant where Jackson and Burss were employed.

in the Standards of Conduct to include “sexual harassment; verbal abuse; threatening others; acts of aggression; or deliberately making false reports.” The Standards of Conduct also note that harassment “can take many forms in words or actions that are either implied or clear and direct.” Finally, the collective-bargaining agreement between the Respondent and the Union covering Jackson, Burss, and other employees states that the parties “are committed to eliminating discrimination/harassment in all forms in the workplace.”

The Respondent’s Code of Conduct also contains its policy on “Investigations.” The policy states that “DTE Energy investigates all reported allegations of harassment, discrimination, or retaliation.” It prohibits retaliation against any individual who reports harassment or participates in an investigation of such reports. The policy also states that the Respondent expects “individuals involved in these investigations to provide their full cooperation,” as well as that the Respondent “maintains confidentiality throughout the investigation process to the extent possible and consistent with the company’s need to responsibly address these types of allegations and take corrective action.”

Burss’ April 24 harassment complaint was assigned for investigation to James Bielaniec, the Respondent’s senior employee relations specialist. Bielaniec is not a supervisor<sup>5</sup> and is not stationed at the Trombly facility. Bielaniec began his investigation by reviewing the EthicsPoint report, in part to determine which individuals he needed to interview. He then began the interview process by meeting with Burss on May 6. Both Bielaniec and Burss testified, as confirmed by Bielaniec’s notes of the meeting, that Burss told Bielaniec each of the allegations as described in the EthicsPoint report was a fair representation of his concerns. He also told Bielaniec that Danowski was another individual with information on the harassment complaint, in particular about the document that was floating around. Burss stated to Bielaniec that he thought this was harassment and expected Bielaniec to investigate it thoroughly.<sup>6</sup>

After talking to Burss, Bielaniec then met with Danowski later on May 6. He began by asking Danowski if he had been involved in the procurement of a document or had been asked to sign a document by Jackson in relation to Burss. He also asked Danowski what that document might have contained. Danowski told him that he could not recall the specifics of what the document said, he did not have a copy of the document, and he could not recall if he or Jackson authored the document. He also told Bielaniec that he had not been in the cable plant for 14 to 15 years. He apologized to Bielaniec for getting involved and also told him he had apologized to

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<sup>5</sup> Respondent admitted Bielaniec’s Section 2(13) agent status in its answer. The General Counsel did not present evidence at the hearing, and does not argue, that Bielaniec is a Section 2(11) supervisor.

<sup>6</sup> I credit the testimony of both Bielaniec and Burss regarding what occurred during their meeting, except for Bielaniec’s contention that Burss also told him that he was concerned about the contents of the document, that he thought there might be some information in the document that would be disparaging or threatening to him, and that there might be inappropriate language directed towards him and the work he was doing as a leader. (Tr. 60, 74.) Neither Burss’ testimony nor Bielaniec’s notes corroborate this part of Bielaniec’s testimony. If Burss had stated this, I think that Bielaniec would have documented the concern in his notes of the meeting. In addition, Bielaniec’s other testimony was more generalized and lacking in the specificity and length of this statement. I also find it unlikely in light of the testimony Burss did provide at the hearing that he would use the legalese included in the alleged statement.

Burss. Bielaniec testified credibly at the hearing that, following his meeting with Danowski, he had “no idea” what the document contained.<sup>7</sup> (Tr. 62.)

5 On May 15, an unidentified individual advised Jackson that “legal” was coming to meet  
 with her. As a result, she sought out Union Representatives Watkins and Debra Drake and asked  
 them to attend any meeting with her. Later, Jackson’s supervisor approached her on the  
 workroom floor and advised her that she had a meeting up front. He did not accompany her or  
 attend the meeting. Rather, Jackson met with Bielaniec and Renee Dudek, a human resources  
 10 consultant for the Respondent, as well as Watkins and Drake. The meeting took place in a 10-15  
 person conference room at the Trombly facility that was near the offices of supervisors and that  
 previously had been used by both management and employees. The meeting began with  
 introductions and pleasantries. Although Jackson was not sure what role Bielaniec had in the  
 Company, she had talked to him before this meeting. Bielaniec advised Jackson that she had  
 been charged with harassment and went over the specifics of the harassment complaint as  
 15 detailed in the EthicsPoint summary. Bielaniec did not identify the person who had made the  
 harassment complaint. Bielaniec then asked Jackson a number of questions. He asked Jackson  
 if she went around with a paper asking people to sign, which Jackson denied. He questioned  
 Jackson again as to whether she had asked anyone to sign anything, and Jackson again said no.  
 Bielaniec then asked Jackson if she asked Kurt Danowski to sign anything. Jackson denied  
 20 asking him to sign something, saying instead that Danowski had volunteered to sign something.  
 Bielaniec then asked Jackson what Danowski had signed. Jackson responded that Danowski  
 signed a statement that he wrote out himself about what people used to do in the cable plant  
 when he worked there. Bielaniec then asked if he could have a copy of the statement, saying he  
 needed it for his investigation. Jackson responded that she would have to seek the advice of her  
 25 union board on that. At some point in this interaction, Jackson also told Bielaniec that Danowski  
 “would help me with a statement,” which Bielaniec took to mean that Danowski’s assistance  
 would be a help to Jackson as she moved forward. (Tr. 69; Jt. Exh. 2.)

30 Bielaniec also asked Jackson about the remaining two allegations contained in Burss’  
 harassment complaint. First, Bielaniec questioned Jackson as to whether she had mentioned  
 anything about someone leaving work 15 minutes early. Jackson denied doing so and added that  
 she did not care about someone leaving work 15 minutes early. Bielaniec then said a supervisor  
 had told him that the supervisor gave the “okay” for someone to leave 15 minutes early. Jackson  
 again stated that 15 minutes did not matter to her. Finally, Bielaniec asked Jackson if she  
 35 confronted someone about having a locked door. Jackson denied doing so, told Bielaniec it was  
 someone else, and that she had an email to prove it. Bielaniec asked if he could obtain a copy of  
 the email, and Jackson again stated she would have to seek the advice of her union board before  
 providing it. At the end of the meeting, Bielaniec told Jackson he would give all the

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<sup>7</sup> This account of the meeting between Bielaniec and Danowski is based upon Bielaniec’s testimony, which I credit. Danowski did not testify at the hearing and thus Bielaniec’s testimony is uncontroverted. In any event, Bielaniec’s notes of this meeting by and large corroborate his testimony, while indicating that Danowski provided additional, vague details about the document. Those notes indicate that Danowski stated the document was “something about” leaders in the “Stores” group cutting cable. (Jt. Exh. 1, p. 2.) The notes further indicate that Danowski stated Jackson and Sanchez asked him to sign the document, which he did, but that he did not get a copy of it. The notes also state that Jackson and Sanchez asked Danowski if he remembered whether previous leaders cut cable. The remainder of the notes details Danowski’s denials to Bielaniec of any contemporaneous knowledge of what leaders did.

information to human resources.<sup>8</sup>

5 Later that same day, Jackson called Bielaniec and asked him if he could identify the author of the EthicsPoint harassment complaint. Bielaniec responded that he would not do so due to confidentiality concerns.

Bielaniec never obtained a copy of Danowski's written statement.

10 Several days later, Bielaniec reviewed the information he had obtained during the investigation and came to the conclusion that Burss' harassment complaint had not been substantiated. He met with Burss and Union Representative John Holmes, advising Burss that he could not substantiate any wrongdoing on Jackson's part. The Respondent did not issue any discipline to Jackson as a result of the harassment complaint filed by Burss.

## 15 ANALYSIS

### I. Legal Framework

20 An unlawful interrogation is one which reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act, under the totality of the circumstances. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985). The test is an objective one that does not rely on the subjective aspect of whether the employee was, in fact, intimidated. *Multi-Ad Services*, 331 NLRB 1226, 1227-1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001). In cases involving investigations, the Act generally prohibits employers from questioning employees about their protected concerted activity. However, the Board has recognized that, as part of a full and fair investigation, it may be appropriate for an employer to question employees about facially valid claims of harassment and threats, even if that conduct took place during the employees' exercise of Section 7 rights. In conducting this balancing of interests, critical factors identified by the Board have included whether the employer narrowly tailors its questioning of employees to the investigation of the harassment complaint itself; whether the employer asks

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<sup>8</sup> This account of the May 15 meeting is based upon Jackson's testimony, which I find credible, as supplemented by portions of the testimony from Bielaniec and Watkins which were not contradicted by Jackson or by Bielaniec's notes. Of the three witnesses who attended this meeting, Jackson provided the most detailed account of the conversation that occurred, with specific and confident testimony regarding what was asked and how she responded. (Tr. 19-23.) Bielaniec's notes of the meeting are limited, but either corroborate or do not contradict Jackson's testimony. The level of detail provided by Jackson contrasts with the more general testimony provided by both Bielaniec and Watkins. In any event, their testimony does not contradict Jackson's testimony in any meaningful way. Bielaniec testified that he was not able to remember what he specifically asked Jackson, but that he questioned her about each of the three allegations that were detailed in Burss' harassment complaint. Watkins confirmed that Bielaniec told Jackson he was there to investigate potential harassment by Jackson and what had taken place to prompt the complaint. Watkins also confirmed that Bielaniec asked if Jackson had solicited any documents. Watkins further stated that, when Bielaniec asked for a copy of the document, Bielaniec advised Jackson that he needed to look at it for his investigation and see if there was anything valid in it. I credit Watkins' specific testimony in that regard, as nothing in Jackson's or Bielaniec's testimony contradicts the statement. Moreover, although Watkins generally displayed very limited recall of what was said in that meeting, his testimony regarding this particular statement was detailed and believable.

questions prying into an employee's union views, motives, or sentiments beyond the harassment complaint; whether the employer's investigation is consistent with any policy it has related to the harassment complaint; and whether the employees are given assurances during the investigation regarding its limitations and that they are protected from retaliation. *Fresh & Easy*

5 *Neighborhood Market*, 361 NLRB No. 12, slip op. at 9 (2014); *Bridgestone Firestone South Carolina*, 350 NLRB 526, 528-529 (2007).

10 In this and other contexts, the Board also has relied upon the *Bourne* factors to determine if questioning is coercive. *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964). Those factors include the truthfulness of the replies from the employee being questioned; the nature of the information sought, i.e., whether the questioner sought information upon which to base taking action against individual employees; the identity of the questioner, i.e., how high up the questioner was in the company hierarchy; the place and method of interrogation, i.e., whether the employee was called from work to a supervisor's office and whether there was an atmosphere of unnatural formality; 15 and the background between the employer and union, i.e., whether a history of employer hostility and discrimination exists. *Fresh & Easy Neighborhood Market*, supra, slip op. at 9; *Bourne v. NLRB*, supra at 48.

20 None of these factors are to be mechanically applied in each case. Rather, they represent areas of inquiry which may be considered in applying the test to determine whether, under all of the circumstances, the interrogation tends to restrain, coerce, or interfere with rights guaranteed under the Act. *Rossmore House*, supra, at 1178 fn. 20.

## 25 II. Discussion

### A. Preliminary Matters

Before evaluating the totality of the circumstances surrounding the alleged unlawful interrogation, two preliminary matters bear addressing.

30 First, Jackson's April 24 conversation with Danowski and Sanchez constituted protected concerted activity under the Act. Watkins and Jackson filed a grievance seeking the equitable distribution of work assignments and overtime. The conversation between Jackson, Danowski, and Sanchez addressed that issue, specifically that leaders in the past had done the same work as other employees. Jackson obtained a signed statement from Danowski to that effect, which was 35 designed to support the grievance. Jackson's conduct in discussing this workplace concern with her coworkers and obtaining Danowski's signed statement to assist her grievance is concerted activity. *Fresh & Easy Neighborhood Market*, supra, slip op. at 3-4. Moreover, her conduct was for the purpose of mutual aid and protection. The filing and processing of grievances by employees long has been recognized as protected conduct. *Allied Aviation Fueling of Dallas, LP*, 347 NLRB 248, 252-253 (2006). Jackson obtained Danowski's signed statement for the 40 purpose of supporting her grievance. In addition, even though it appears Jackson was motivated by her own personal interest regarding overtime in pursuing the grievance, her conduct nonetheless was for mutual aid and protection, because the equitable distribution of work assignments and overtime is a concern to all employees. *Rock Valley Trucking Co.*, 350 NLRB 45 69 (2007) (truckdriver who raised concern about his low mileage compared with other drivers was engaged in protected conduct when he raised the issue with his coworkers, because

discussion was designed, at least in part, to change a flawed assignment process that could affect all employees); *Circle K Corp.*, 305 NLRB 932 (1991) (employee who sought signatures of other workers on document expressing the employee's workplace concerns was engaged in activity for mutual aid and protection, since issues stated in document were of concern to all employees).

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Second, the complaint in this case does not allege, and the General Counsel does not contend, that the Respondent's investigation of Burss' harassment complaint was unlawful. Rather, the General Counsel concedes that Bielaniec had a legitimate basis for investigating Jackson's alleged misconduct. (Tr. 11; GC Br. p. 7.) Accordingly, the harassment complaint filed by Burss against Jackson, as reflected in the EthicsPoint report, is a facially valid complaint of employee misconduct, which the Respondent had a legitimate business interest in investigating. *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000), *enfd.* 263 F.3d 345 (4th Cir. 2001). Bielaniec's questioning of Jackson occurred during that legitimate investigation.

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### *B. The Alleged Unlawful Interrogation*

Turning to the alleged unlawful interrogation, Bielaniec's questioning during the May 15 meeting did not coerce Jackson or interfere with her protected concerted activity. The questions he asked dealt with Burss' harassment complaint and only peripherally touched on Jackson's protected conduct.

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As to the harassment investigation factors, Bielaniec's questioning was narrowly and specifically tailored to the three examples included in Burss' harassment complaint. Bielaniec simply went through and asked questions concerning each of the three allegations in the EthicsPoint report. Bielaniec did not question Jackson concerning her union views, motives, or sentiments beyond the harassment complaint. He did not even ask Jackson what her motive was in having Danowski sign the written statement, even though the statement actually was a part of the harassment complaint. Bielaniec's investigation, including his meeting with Jackson, was consistent with the Respondent's policies on Harassment and Investigations, which prohibited all forms of harassment and called for the investigation of all harassment complaints. Bielaniec stated at the start of the meeting that he was there to investigate a harassment complaint against Jackson, thereby delineating the specific limitations of his investigation. Although he did not tell Jackson she was protected from retaliation for participating in the investigation, it follows that Bielaniec would not do so given that Jackson was the alleged harasser. As detailed in the Respondent's Investigations policy, such assurances are designed to protect employees who report harassment or who participate in the investigation of a harassment complaint as neutral witnesses. In sum, none of these factors provide any support for finding a violation.

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Evaluation of the *Bourne* factors returns the same conclusion. The most enlightening of these factors is the truthfulness of Jackson's responses to Bielaniec's questions. Jackson was quite technical in response to the questions concerning Danowski's statement, repeatedly denying that she asked anyone to sign anything before ultimately stating that, in fact, Danowski had volunteered to sign the statement. She even refused repeatedly to provide copies of any documents until she could discuss the matter with her union board, and Bielaniec did not press the issue further once she responded in that manner. With respect to the parties' background, the record is devoid of any evidence of a history of employer hostility and discrimination towards its unionized employees. The nature of the information sought, as noted above, was limited to the

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three allegations Burss made in his harassment complaint. Although Bielaniec certainly was seeking information which ultimately could have formed the basis of discipline against Jackson, he did so only with respect to her alleged harassment. None of the questions asked of Jackson in that meeting were designed to elicit information to take action against her, Danowski, or any other employee for their protected concerted activities. Regarding the place and method of interrogation, the meeting was conducted in a conference room, not a supervisor's office, without Jackson's direct supervisor present. The conference room was one that employees sometimes used for their own purposes. In addition, Jackson had two union representatives there with her during the questioning. While there certainly was an air of formality to the meeting given that Bielaniec did not work at the Trombly facility and Jackson was called out from work by her supervisor to attend, that formality resulted from the fact that Bielaniec was questioning Jackson as an accused harasser. Finally, with respect to the identity of the questioner, Bielaniec was not a high level company official or even a supervisor, but rather a senior professional in charge of investigating employee complaints. In balancing the totality of the circumstances, the weight of these factors overwhelmingly supports finding no violation.

That conclusion is further solidified by the Board's recent decision in *Fresh & Easy Neighborhood Market*, supra. In that case, an employee, Margaret Elias, filed a sexual harassment complaint with her employer when a posted whiteboard message of hers was altered to include the word "TITS" and a picture of a worm or peanut urinating on her name. Elias hand copied the whiteboard picture and altered message to a piece of paper, then asked for and obtained the signatures of her team leader and two coworkers on the document. Subsequent to this, one of the signors made a formal complaint against Elias for "bullying" her into signing the document. The employer then conducted an investigation into the entire incident, which included interviewing Elias about the bullying complaint made against her. During that interview, the employer's representative asked Elias why she felt that she had to obtain her coworkers' signatures on the document and also instructed her not to obtain any additional statements from employees. The Board concluded that the employer's questioning of Elias did not constitute an unlawful interrogation, relying principally on the showing that the questioning was focused and narrowly tailored to enable the employer to conduct a legitimate investigation into the bullying complaint filed against Elias. The Board also noted that, while the representative did ask about Elias' motive in securing signatures on the document, the record contained no evidence that the representative was attempting to delve into her sentiments beyond that. As a result, the Board concluded a reasonable employee would recognize that the representative was trying to gain a full picture of the events as part of the investigation.

Likewise in this case, Bielaniec narrowly tailored his questions to the three allegations contained in Burss' harassment complaint and did not delve into Jackson's union or protected concerted activities beyond that. In fact, Bielaniec did not even go as far as the employer representative did in *Fresh & Easy Neighborhood Market*. Bielaniec did not ask Jackson any questions concerning why she obtained Danowski's signature on the document describing what work leaders had done in the past. Although he did ask for a copy of the document, that request was a necessary part to obtaining a "full picture" of the events which Burss alleged were harassing. In particular, Bielaniec needed the document to determine whether its contents provided any basis for substantiating the harassment complaint. Accordingly, the Respondent did not violate Section 8(a)(1) by questioning Jackson regarding each of the three harassment allegations Burss made against her. *Bridgestone Firestone South Carolina*, supra, 350 NLRB at

528-529 (employer lawfully questioned a union supporter about alleged vulgar language and threatening behavior when making pro-union remarks, where investigation was consistent with the employer's policy against "profane, threatening or indecent language" and the employer made reasonable efforts to limit its questioning to the matter at issue and not pry into the employee's union views); *DaimlerChrysler Corp.*, 344 NLRB 1324, 1327-1328 (2005) (questioning of union steward during investigatory meeting about a document, including whether it had been copied, distributed, or circulated in any way, did not constitute an unlawful interrogation, where employer limited its questions to the portion of the document, an information request, which used offensive language in seeking information concerning a supervisor's medical history).

A final critical factor in balancing the totality of the circumstances here is that Bielaniec exonerated Jackson, concluding based upon his investigation that Burss' harassment complaint had not been substantiated. The Respondent did not issue any discipline to Jackson following the investigation, either for harassment or for engaging in protected concerted activity. Bielaniec's conclusion was based, at least in part, on learning that Danowski's statement dealt solely with the issue of what job assignments employees in the cable plant had performed in the past. He needed that information to evaluate Burss' harassment allegations.

The General Counsel argues that Bielaniec crossed the line and violated the Act by asking Jackson questions concerning Danowski's statement and the discussions around the statement, as well as requesting a copy of the statement. (Tr. 11-12.) In effect, the General Counsel is contending that, even though Bielaniec had a facially valid harassment complaint to investigate, he should not have asked Jackson any questions about Danowski's statement. However, the Board does not prohibit questioning which touches upon an employee's protected conduct if, as here, the alleged harassment occurred as part of that conduct. Rather, Bielaniec was required to narrowly tailor his questions and not pry into Jackson's protected activity beyond what was needed to fully and fairly investigate the harassment complaint. That is exactly what he did. Bielaniec limited his questioning to the three allegations contained in Burss' harassment complaint. He did not question Jackson about any protected activities beyond those involved with the statement, one of the alleged examples of harassment. His investigation and his interviews of employees were focused on determining if Burss' harassment complaint could be substantiated, and only peripherally touched on Jackson's protected conduct.

Because the Board does not prohibit questioning which involves an employee's protected conduct, it also is irrelevant whether Bielaniec knew, prior to questioning Jackson, that she was engaged in protected concerted activity in seeking Danowski's statement. (GC Br. p. 6.) Even if Bielaniec was aware that Jackson's conduct was protected by the Act, that knowledge would not, as a matter of law, prohibit Bielaniec from asking Jackson any questions concerning the activity. In any event, the General Counsel's contention that Bielaniec knew or should have known Jackson was engaged in protected conduct prior to interviewing her on May 15 does not withstand close scrutiny. Prior to Jackson's interview, the information Bielaniec had obtained about the harassment complaint was from the EthicsPoint report and his interviews of Burss and Danowski. The text of the EthicsPoint report does not, on its face, implicate protected concerted activity to the exclusion of other possible explanations, including ones that would violate the Respondent's harassment policy, for Jackson seeking a statement from Danowski. The entirety of the text concerning the statement was that Jackson had gotten "an employee in another area of

the company to sign a letter referring to the work that he used to [do] when in [Burss'] current position.” The text itself does not provide any clarity on what purpose the statement served. In particular, no mention is made of the statement supporting a union grievance or Jackson needing the statement to advance her claims that Burss was not performing all the job duties that previous  
 5 leaders had and was not working the same overtime that other employees were. None of the information that Bielaniec received during his interviews with Burss and Danowski suggested Jackson was engaged in protected concerted activity either. Burss simply reiterated the same three allegations contained in the EthicsPoint report and emphasized he thought that conduct constituted harassment and he expected a thorough investigation. Danowski provided even less  
 10 information, saying he could not remember what the document said, did not have a copy of it, and could not remember if he or Jackson signed it.

With that background, it is understandable that Bielaniec had “no idea” what was in the document when he interviewed Jackson and requested a copy of it. Because Bielaniec was  
 15 unaware of the contents of Danowski’s statement, he had to ask Jackson in their May 15 meeting what the document contained. He would not have conducted a proper investigation into that aspect of the harassment complaint unless he did so.<sup>9</sup> The first concrete hint, although a limited one, that the document was involved in protected conduct came when Jackson stated to Bielaniec during the May 15 meeting that she would have to consult with her union board before providing  
 20 him with a copy of it. Bielaniec then immediately moved on from the discussion of Danowski’s statement. He did not make further efforts to obtain the statement after the meeting. Under the totality of these circumstances, Bielaniec’s questioning of Jackson was not coercive.

Finally, the cases relied upon by the General Counsel to support finding a violation here  
 25 are distinguishable from this case. *Norton Healthcare, Inc.*, 338 NLRB 320 (2002), *Cumberland Farms, Inc.*, 307 NLRB 1479 (1992), and *Raytheon Co.*, 279 NLRB 245 (1986), all involved situations where supervisors repeatedly asked employees questions concerning other employees’ union support or attendance at union meetings. In this case, Bielaniec did not ask Jackson questions designed to elicit the names of other employees engaged in protected concerted  
 30 activity. Bielaniec was not aware at the time of questioning Jackson that Danowski’s statement was designed to support a grievance. Thus, his questions about who signed the statement could not have been for the purpose of learning which employees supported the grievance or assisted Jackson with it. Moreover, Bielaniec ceased questioning Jackson about Danowski’s statement at the first hint it was related to union activity. *Consolidated Diesel Co.*, 332 NLRB 1019 (2000),  
 35 involved an employer who subjected two employees to a second stage of its investigatory process in response to harassment complaints, even though the employer’s initial investigation established the two workers were engaged solely in the protected conduct of distributing union newsletters. In this case, Bielaniec did not subject Jackson to further investigation after his initial meeting, where he learned for the first time of the possibility that her conduct in seeking  
 40 Danowski’s statement was protected. *Arcata Graphics*, 304 NLRB 541 (1991), and *Bank of St. Louis*, 191 NLRB 669 (1971), each dealt with situations where an employer distributed a letter to

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<sup>9</sup> Accordingly, it is irrelevant to the outcome of this case whether Burss told Bielaniec in their May 6 meeting that there might be some information in the document that would be disparaging or threatening to Burss, and that there might be inappropriate language directed towards Burss and his work. Even if Burss did not say this, Bielaniec needed further information about the contents of Danowski’s statement in order to determine whether Burss’ harassment complaint was substantiated.

employees asking them to report any threatening behavior by union supporters when they sought signatures on authorization cards. Similarly, *Greenfield Die & Mfg. Corp.*, 327 NLRB 237 (1998), involved an employer sending a letter to a union suggesting that one of the union's employee supporters be instructed to "cease . . . threatening and coercing employees who have clearly indicated . . . that they do not wish to participate in the organizing campaign" and indicating that the employee was subject to discipline, including termination, for continuing to do so. In contrast here, the Respondent did not issue any letters to employees or to the Union after learning of Jackson's protected conduct in an effort to get her to cease that conduct. Finally, *Handicabs, Inc.*, 318 NLRB 890 (1995), addressed provisions in an employer's handbook which prohibited employees from "discussing complaints or problems about the company with our clients" or putting passengers in "a threatening or uncomfortable position by discussing any personal or company-related problems that may make them feel coerced or obligated to act upon or react to." In this case, the Respondent's policies are not alleged to be unlawful, nor do they require employees to report their coworkers' protected conduct. Thus, none of the cited cases provide support for finding a violation here.

In sum, the record evidence and totality of the circumstances in this case establish that a reasonable employee should have concluded Bielaniec's questioning was in support of conducting a full and fair investigation of a harassment complaint. No part of that questioning constituted a threat or coercion designed to dissuade Jackson from engaging in protected concerted activity.

#### CONCLUSION OF LAW

The Respondent did not unlawfully interrogate Juanita Jackson concerning her protected concerted activities while questioning Jackson during the May 15 meeting to investigate the harassment complaint filed by employee Jeff Burss against Jackson.

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended<sup>10</sup>

#### ORDER

The complaint is dismissed.

Dated, Washington, D.C., January 7, 2015

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Charles J. Muhl  
Administrative Law Judge

<sup>10</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.