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

DURHAM SCHOOL SERVICES, L.P.

And

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS LOCAL UNION NO. 991

Cases 15-CA-106217
15-CA-112948
15-CA-145094
15-CA-145797

Charles Rogers, Esq., for the General Counsel.
Charles P. Roberts, III, Esq. (Constangy, Brooks, Smith & Prophete, LLP), of Winston-Salem, North Carolina for the Respondent.
Lavon Lindsey, of Mobile Alabama, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. The case was tried in Fort Walton Beach, Florida, on August 10-12, 2015. The controversy involves an assortment of alleged unfair labor practices by Durham School Services L.P. (the Company) at its Santa Rosa County, Florida school bus facilities between February 2013 and December 2014. The root of contention begins with a contested representation election in February 2013 between the Company and Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 991 (the Union). With one exception, the complaint alleges violations of Section 8(a)(1) of the National Labor Relations Act (the Act)[1] consisting of coercive statements made by Company supervisors around the time of the election and continuing sporadically for nearly two years thereafter while the election dispute winds its way through the appellate process. The remaining charge alleges the Company violated Section 8(a)(3) of the Act by decreasing the work hours and pay of employee Diane Bence, a prominent leader of the Company's prounion contingent.

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

[1] 29 USC §§ 151–169.
[2] The General Counsel's unopposed motion to correct the record, dated September 16, 2015, is granted and received in evidence as GC Exh. 22.

FINDINGS OF FACT

I. JURISDICTION

The Company, a limited partnership, provides school bus transportation services from offices and places of business in Milton, Pace, and Navarre, Florida, where it annually derives gross revenues in excess of $250,000 and purchases and receives goods valued in excess of $5000 directly from points outside the State of Florida. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Company's Operations

The Company is in the midst of a 5-year contract providing school bus transportation services for the Santa Rosa County, Florida school district. It operates three facilities in three towns—Navarre, Milton, and Pace—from which drivers transport students to and from school.

The Company policy regarding the leave or time-off issue in this case states, in pertinent part: "in special circumstances, the Company may grant leave for personal reasons, but never for taking employment elsewhere or going into business for oneself." The Company only provides paid days of absence for bereavement leave. All other leave or time off is unpaid.[3]

B. The Union Campaign

At the time that the Company began Santa Rosa County operations in 2008, its drivers were represented by the Amalgamated Transit Union (ATU). However, the employees became dissatisfied with ATU's representation and decertified it in 2009. In November 2012, after an unsuccessful campaign to designate the United Brotherhood of Carpenters (UBC), employees initiated a campaign to bring in the Union. The Union prevailed in the election vote tally on February 22, 2013, objections to the results were overruled and, on May 9, 2014, the Board certified the Union as the Company employees' labor representative. The Company appealed and the matter is pending before the United States Court of Appeals for the D.C. Circuit.

Diane Bence, employed by the Company since 2008, has been a major cog in the Union's drive for recognition since the campaign began in October 2012. Bence, who drives her regular bus routes out of the Navarre facility, was active in the ATU decertification campaign and the unsuccessful UBC campaign. In October and November 2012, Bence informed Bauman of her intentions to bring in the Union to represent the Company's Santa Rosa County drivers. Bence's

[3] Leave and time off during the school year referred to interchangeably. In either instance, Company approval is required. (GC Exh. 5 at 56.)

open and notorious support for the Union, including the wearing of prounion shirts and pins on her work clothing, continued through the election and continues to the present.[4]

C. Company Statements During the Campaign

During the month leading up to the February 22 representation election, Bauman made several visits to the Company's Santa Rosa facilities and served as its spokesman in presenting its argument against union representation. His standard message was that the vote was secret, the Company was working to improve communications, and a union was not necessary.

Bauman was well aware of Bence's leading role in the Union's organizing campaign, as well as in previous campaigns. Indeed, Bence usually approached Bauman whenever he visited the Navarre facility to discuss work-related issues. In one instance during the week leading up to the election, he asked Bence as she entered the Navarre facility, "I can count on your support in our vote?" Bence replied "no." A few days later, as the election drew closer, Bauman asked Bence, "Isn't that vest getting a little heavy?" The vest had several prounion pins on it.[5]

Bauman's advocacy continued into the day of the election. On that day, he encountered Donna Marcus, a Milton facility driver assigned to office duty at the Navarre facility due to an injury. He asked Marcus, who was not wearing any election-related paraphernalia, "I guess we can count on you for a no vote, right?" Marcus nodded in the affirmative.[6]

D. Bence's Request For Time Off To Attend The London Meeting

Bence did not limit her advocacy on behalf of the Union to this country. In March 2013, she traveled to London, England, over the spring break to participate in a union protest at the headquarters of National Express, the Company's parent organization. The following month, she decided to return to London in May to attend the National Express' shareholders meeting and complain about Company working conditions in Santa Rosa County.

As the London meeting was scheduled during the school year, Bence submitted a time-off request on April 23 stating she would be "out of state" during the period of May 6 to 10.[7] On April 29, Bence asked Willoughby, her supervisor, about the status of the time-off request.[8] He

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[4] The extent of Bence's union activity since 2012 is not disputed. (Tr. 78–83, 108–111.)

[5] While I credit Bence's testimony over Bauman's denial that he asked if he could count on her vote and remarked about the prounion pins, I also credit his testimony that Bence frequently approached him to discuss various issues. (Tr. 84–85, 283–300.)

[6] I found Marcus' testimony credible. A former Company employee from September 2011 until February 20, 2014, she denied wearing a prounion tee shirt. (Tr. 152–154.) Bauman's assertion that Marcus wore a union shirt was premised on faulty recollection regarding the facility to which she was regularly assigned. Moreover, his denial that he even spoke with her was less than credible since he admitted approaching employees about the election during that period of time. (Tr. 288–290, 301–304.)

[7] The leave or time off form does not have a title. (GC Exh. 18; Tr. 85, 125.)

[8] In cases where employees requested an extended amount of time off, Willoughby would ask about the purpose of the leave or time off if it was not stated in the request. (Tr. 31, 155–156.) This was not the case with Bence's April 2013 time-off request. (Tr. 125, 128–129.)

did not know, but called his supervisor, Bob Downin, the area manager. Downin. This was unusual, since the Company routinely approves leave requests involving out of state travel.[9]

Downin also did not know the answer, but called back a short time later with Bauman on the line. As Bence and Willoughby listened over the speaker phone, Bauman asked Bence about the purpose of the trip, whether she was being compensated for the trip and who was paying her expenses. Bauman, already knowing the likely purpose of Bence's time off request, reminded Bence of the Company's policy against other employment while on Company leave and the prohibition against the Union compensating her for the trip. Bence replied that a Company "pension holder" asked her to attend. Bauman asked again how Bence was being compensated and who was paying her expenses. Bence reiterated her lack of knowledge on that point. Bauman concluded the conversation by asking Bence to find out and get back to him. After further discussion, Bence stated that she would call the pension holder to see if she was being compensated. This ended the conversation.[10]

The next day, April 30, Bence attempted to contact Bauman with the answer, but they did not connect until May 1, when Bauman and Downin met her at the Milton facility. In response to Bauman's question as to whether she was being compensated, Bence acknowledged that she would receive a lump-sum payment for the trip. Bauman reiterated that, in accordance with Company policy, Bence's leave request would only be approved if the Union was not compensating her for the trip. Bence replied that a shareholder was compensating her. The conversation ended with Bauman indicating that he would get back to Bence with a decision. The Company subsequently granted Bence's leave request. Although she never identified the shareholder, it was Kim Keller, a union organizer.[11]

The day after Bence's leave request was approved, Downin met Bence at her bus before her afternoon bus run. Downin asked Bence what she intended to say at the London meeting. Bence said she would speak about "issues." A few days later, Bauman met Bence around the same time and location and also asked what she intended to say at the London meeting. Bence replied that she would speak about workers' issues. Bauman told her to have a good time.[12]

E. Bence Goes To London

Bence traveled to London and attended National Express' shareholder meeting beginning on May 8. On May 9, she got the opportunity to address the shareholders and hierarchy of the

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[9] The undisputed and credible testimony of Bence and another driver, Vera Nowling-Driggers, established that, prior to April 2013, no one ever asked them about the purpose of requested leave or time off for out of state or other travel. (Tr. 104–105, 175, 183,)

[10] I find it unlikely that, in the absence of Bauman mentioning the policy, Bence volunteered to find out the source of compensation for her trip. (Tr. 85–88, 91, 125, 128.) Moreover, Bauman acknowledged he already knew the answer to his question since Bence traveled to London in March for a similar purpose. Prior to this conversation, he also consulted with counsel about the application of the Company's leave policy to the funding of Bence's trip. (Tr. 290–294, 307–309.)

[11] Neither the connection of Keller to the Santa Rosa labor dispute nor the Company source who made the final decision to approve the leave was specified. (Tr. 88–93, 98–99, 293–296, 311–312.)

[12] I based these findings on Bence's credible testimony. (Tr. 144–145, 149.) Downin did not testify, while Bauman paused before denying any further conversations with Bence about her trip (Tr. 295–296).

Company and its parent organization. Bence expressed concern about her job security because she had been given a hard time about traveling to London to attend the meeting. National Express' president, Sir John Armitt, assured Bence her job was secure, while Dean Finch, the chief executive officer, apologized for the difficulties she encountered. Bence then complained about the Company's working conditions in the United States, including passenger overcrowding and the condition of its bus fleet's tires and breaks. She spoke for about 10 to 15 minutes.[13]

After the meeting, Bence was speaking in the lobby with Latrisha Pringle, an employee at a Company facility in South Carolina facility, when David Duke approached and introduced himself as the Company's chief executive officer in the United States. After discussing his history with the Company and explaining that he mistook Pringle for someone else, Duke turned to Bence and said, in a joking manner, "I know you're really here with Teamsters." Bence laughed and Duke said, "it's okay, you can tell me, you know, it's just us . . . You can tell me that you're here with Teamsters and Teamsters paid for you." Bence replied that a shareholder paid for her trip. Duke repeated the question, but Bence repeated her answer and walked away.[14] Upon returning to work, Bence reported her conversation with Duke to numerous coworkers.

F. Alleged Reduction in Bence's Hours And Pay

Prior to December 2012, Bence picked up students and dropped them off at three locations—Woodlawn Middle School, West Navarre Intermediate School, and Holley-Navarre Middle School. In the afternoons, she picked up students at the same schools and dropped them off at home. Bence's route averaged approximately 35.24 hours per week.[15]

In December 2012, Willoughby, sought to alleviate the consistent overtime accruals of another driver, John Dore, by asking Bence to take on an additional bus route from Navarre High School to Gulf Breeze. Bence agreed and picked up the additional route through the end of the school year in June 2013. During this period, the additional route added over an hour to her average work day. Although Bence averaged 39.25 hours worked per week, it resulted in her working overtime hours during 10 weekly periods, including the final 6 weeks of the 2012–2013 school year.[16]

At the Company's start-up meeting in August, area manager Jim Bagby and routing supervisor Dangela Bryant announced drivers' bus routes for the 2013–2014 school year. The printed schedules were not yet available. As is typical at the annual start-up meeting, however, the drivers were told that most schedules would remain the same. Bence picked up her schedule

[13] Bence's testimony about her statements during the meeting are undisputed. (Tr. 94–97.)

[14] Bence's credible version of this encounter was corroborated by Pringle. (Tr. 65–69, 75, 97–98, 132–134, 147–148.) Duke did not testify.

[15] Given the regularity of Bence's schedule amounting to over 30 hours per week, weeks when she worked less than 30 hours were atypical and, thus, were not factored into the averages. (GC Exh. 16, 22.)

[16] It is undisputed that Dore was working over 8 hours a day, which resulted in overtime pay (Tr. 117.) and Bence began to accrue similar amounts of overtime pay by covering the latter part of his route in the afternoons. (GC Exh. 9(e), 16; Tr. 32–38, 117, 348, 364–366.)

two days later and noticed she was still assigned to the same routes that she covered from December 2012 to June, including the Navarre to Gulf Breeze route in the afternoon.[17]

School started the following week. On the first day of school, Willoughby informed Bence her that her schedule would revert to the one she drove prior to December 2012. As such, Bence would no longer drive the Navarre to Gulf Breeze route in the afternoon. When asked by Bence the next day why he removed that route from her schedule, Willoughby said he was the new supervisor and "was going to do things his way."[18] Although he did not mention it at the time, Willoughby was concerned about Bence's accrual of overtime pay due to her covering the additional route.[19] The Navarre to Gulf Breeze afternoon route was reassigned to John Dore, but with frequent assistance from several other drivers—none of which included Bence.[20]

The elimination of the Navarre High School to Gulf Breeze route from Bence's schedule had the effect of reducing her average weekly total to 36.74 hours per week for the period of August to December 2013.[21]

G. September 26, 2014—Pier Bar Allegations Involving Jim Bagby

Ashley Hammes and Samantha Rast were drivers in the Navarre facility. Prior to September 2014, Hammes and Rast discussed the merits of union representation with Bagby. They were clearly conflicted as to whether to support or oppose the Union. Rast, concerned about union dues, solicitation at home, and potential strike activity, even texted Bagby with such concerns. During those conversations, rather than refer Rast to the Board, Bagby urged her to contact the National Right To Work Legal Defense Foundation, an advocacy organization.[22]

By September 2014, however, Hammes and Rast resolved their conundrum and participated in a Union-coordinated practice strike at Navarre Park. During the practice strike, which lasted about an hour, about 20 employees chanted union slogans and held signs. The event

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[17] The Company made periodic changes to route schedules during the school year based on several factors, including driver performance and changes to student enrollment. (Tr. 358-361; R. Exh. 2–5.) Indeed, Bence conceded that minor changes to assigned routes occur on a regular basis, but insisted there was no mention of any assigned route changes at the meeting. (Tr. 100–101, 135–137, 139.) Marcus, Willoughby and Bagby did not recall whether changes were discussed. (Tr. 155, 318, 351.) However, Ashley Hammes, another driver called by the General Counsel, testified credibly that bus route changes were mentioned and it was typical for that to happen at the start-up meeting. As such, I based this finding on her testimony. (Tr. 221–224.)

[18] Bence provided a detailed and credible recollection of these conversations (Tr. 101–102, 136–138, 140.) Willoughby, on the other hand, simply could not recall any such conversations. (Tr. 351–352, 364.)

[19] Bence acknowledged that the Company sought to avoid overtime. (Tr. 99–100, 117.)

[20] None of the other drivers, including John Lashier, Melvin Green, and Sandra Brummette, accrued overtime while covering the Navarre to Gulf Breeze route. (R. Exh. 16–17; Tr. 31–43, 129–131, 352–357, 366–367.)

[21] Again, the hourly average does not include atypical weeks in which Bence worked less than 30 hours. (GC Exh. 16.)

[22] I credit Bagby's testimony that Rast and Hammes expressed past concerns about union solicitation and dues. (Tr. 326–332.) Rast and Hammes confirmed those conversations. (Tr. 234-238, 255–257.)

was covered by local television. In addition, a photograph of Rast holding a prounion sign appeared on social media. Bagby observed the event on television later that day.[23]

About a week earlier in September 2014, Hammes and Rast interviewed for a trainer position with safety supervisor Angie Quinn and supervisor Trish Blair. On September 26, 2014, the day following the practice strike, Hammes was notified by Blair to meet with Bagby in Willoughby's office for a second interview regarding the trainer position. After completing her morning route, Hammes went to Willoughby's office and sat in the adjacent waiting room. She sat there for several hours as Bagby went about other business. At some point, Rast stopped by to inquire about the trainer position, but left. Bagby eventually came out to meet Hammes, but due to time constraints, suggested she meet him after work for drinks at the Pier Bar. Hammes agreed. Bagby extended a similar invitation to Rast after her afternoon bus run. She also agreed to meet.[24]

Bagby was already at the Pier Bar when Hammes arrived with her young nephew. Hammes asked Bagby about a second interview. Bagby informed her that she would not get another interview since Quinn already selected someone else. He added, however, that Hammes could become a mentor. Although there would be no pay increase or change in benefits, it would help Hammes prepare for future trainer positions. Hammes agreed to become a mentor.[25]

At that point, Rast arrived. While Hammes entertained her nephew, Bagby and Rast talked. Bagby explained that she, too, would not get the trainer position, noting that she was recently involved in an accident. Bagby advised her to consider a mentor position. Rast also accepted his suggestion. At some point, they moved to a smoking table. After Bagby and Rast concluded discussion of the trainer position, the conversation turned to the Union. At some point during the conversation, Bagby responded to a question by Rast about the Union by stating that he "didn't understand why people—we would want a union when it's going to take years and years" before the Union would consummate a contract with the Company and employees would have to pay dues regardless of whether they supported or opposed the Union. Rast responded that she was neither for the Union nor for the Company, but she would listen to both sides.[26]

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[23] It is undisputed that Hammes and Rast participated in the practice strike, and I credited Bagby's testimony that he saw coverage of it on local television. (Tr. 208–213, 244–247, 259, 319–321.)

[24] Rast and Bagby provided consistent testimony regarding the time of Bagby's invitation when he stopped by the facility that afternoon. (246–250, 260–261, 322–325.) Although mistaken about Rast's whereabouts that morning, Hammes provided detailed, credible testimony about being instructed by Quinn, who did not testify, to meet with Bagby. She waited for hours to meet with him and it resulted in an invite to meet with him later at the Pier Bar. (Tr. 211–216, 219–220, 227–230.)

[25] Hammes acknowledged that Quinn informed her at the time of the interview that she had someone else in mind and Hammes was not yet ready for the trainer position. (Tr. 226-227.)

[26] Rast was credible, but conceded that she could not recall portions of the conversation. (Tr. 248–254.) Hammes seemed to recall that Rast initiated discussion about the Union and stated she did not want to pay dues if the Union was not involved at Navarre facility. Each took turns watching Hammes' nephew and did not hear everything spoken between the other and Bagby. Moreover, Rast's February 2015 Board affidavit omitted any mention of Bagby talking about union dues. In addition, Hammes testified that she did not hear Rast say anything in response to Bagby's union comments, but heard Rast ask Bagby several questions about the Union and express concerns about having to pay dues (Tr. 216–220, 230–232, 239–242, 249–250, 252–254, 258–268). In any event, I do not credit Bagby's denial that he discussed the

Bagby further stated that employees should be careful who they "danced with in the park." Rast asked if he was referring to her attending a recent Music in the Park evening concert. Bagby replied that he saw Rast during the day. Seeking clarification, Rast asked if he was referring to the practice strike. Bagby acknowledged that he was, adding that it was hard to miss Rast standing on a truck. Hammes responded to Bagby's comment by professing ignorance about, and disavowing any desire to be connected with, the Union. Bagby asked if she was "pulling his leg" because her past actions indicated otherwise.[27] The entire conversation lasted about an hour.[28]

H. Have Your Cake—Just Not Here

On special occasions or holidays, the Company has potluck lunch events in which it supplies food and employees supplement it with side dishes and desserts. Prior to December 19, 2014, there were no restrictions on the type of food brought into the facility for potluck events.[29] This included sheet cakes brought in by employees from unidentified sources.[30]

On December 19, 2014, the Company held potluck lunches at its Pace, Milton, and Navarre facilities. Sheet cakes prepared at local bakeries and inscribed with a mélange of "Merry Christmas-Happy New Year" and "Teamsters Local 991" on the side of a school bus were delivered by Union representative Clark Cameron to an employee at each facility for consumption that day.

Cameron delivered the cake for the Pace facility potluck lunch to bus driver Vera Nowling-Driggers. With the assistance of another employee in the rain, the cake was carried into the facility. After settling in, Nowling-Driggers placed the cake on the food table. Drivers Victoria Herring and Dawn Lysek were standing at the table with the cake still in the box, but the top open, when Bagby approached. Bagby asked Nowling-Driggers where the cake came from. She replied that it was brought to her by a friend from Milton Bakery. Bagby said that it did not matter and the cake would have to be removed from the facility because it was a Company function. Nowling-Driggers asked if the cake could stay if she smeared the union inscription. He

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practice strike or the Union. I do find, however, that it was in response to questions by Hammes and Rast that he stated that support for the Union would result in them paying dues for "years and years." Such a remark was consistent with the Company's prior letter to employees informing them that the issue was in litigation and could take a year to resolve. (Tr. 325, 331–332, 342.)

[27] I base this finding on the fairly credible and generally consistent testimony of Hammes and Rast. (Tr. 219-220, 246-250.) Bagby's terse denial that there was any discussion of the practice strike ("No, that was already pass") was not credible given their past discussions about the Union. (Tr. 322–325.)

[28] Rast and Hammes had vastly different estimates as to how long they discussed the Union. Rast testified that the union part of the discussion lasted only a few minutes. (Tr. 258–266.) According to Hammes, however, the Union was discussed for about 60 minutes. (Tr. 216–220.)

[29] It is undisputed that the Company does not have any policies or procedures regarding potluck events at any of its facilities.

[30] Bus driver Donna Snead's testimony regarding the Company's past tolerance for cake eating at potluck events was credible and undisputed. (Tr. 204–205, GC Exh. 4.)

acquiesced to that option, stating "if you want to." With that caveat, she smeared the Union's name and the cake remained.[31]

Bagby eventually left and went to the Milton facility's potluck lunch. That morning, Cameron also provided Donna Snead, a driver at the Milton facility, with another sheet cake from the same bakery topped with similar references to holiday cheer and the Union. Snead proceeded to take the cake into the facility and placed it on the food table. She opened the box and Shay Peek, a supervisor, was getting ready to cut it when Bagby approached and asked Snead several times where she bought the cake. Snead responded each time that she just brought it into the facility, but did not purchase it and did not know where it came from. Bagby responded that the cake could have stayed if she purchased it. However, since she did not purchase it, the cake had to be removed because he and Virginia Sutler, an operations supervisor, were sponsoring the event and it was not a union function. Bagby started to put the cake under the table, but Peek retrieved it and put it in the dispatcher's office. Later on, several drivers cut up the cake and took it home.[32]

Bagby also stopped by the Navarre facility's potluck lunch. When he arrived, he observed yet another sheet cake on the food table that contained references to the holiday season and the Union. By then, however, Bagby was done throwing union-inscribed cakes under the proverbial bus and took no action to remove it.[33]

LEGAL ANALYSIS

I. Bauman's Preelection Interrogation

The General Counsel alleges that Bauman unlawfully interrogated and/or polled Bence and Marcus about the representation election on two occasions in mid-February 2013. The Company denies that Bauman made the statements which, in any event, were not coercive under the circumstances.

Bauman's pitch to employees prior to the representation election conveyed the Company's standard message their vote was secret, the Company sought to improve communication with employees, and a union was not necessary to represent their interests. During the week leading up to the election, Bauman's approach became more intense when he asked Bence if he could "count on your support in our vote." It was a peculiar statement by Bauman since he knew of Bence's open and notorious advocacy for union representation. He

[31] It is not disputed that GC Exh. 2 fairly and accurately depicts the cake without the union inscription obliterated, while GC Exh. 3 depicts the cake after Nowling-Driggers smeared the union inscription. (Tr. 168, 170–174, 188–190, 192, 194.) Bagby conceded instructing Nowling-Driggers to remove the cake because it was a Company function. (Tr. 335–336.)

[32] The less than credible reason given by Bagby for having the cake removed–it's unknown source, even though he knew it came from a local bakery–contradicts a lengthy Company history of unrestricted employee contributions to potluck events. It also indicates that he observed the writing on the cake when Snead opened the box. (Tr. 332, 334–335.) As such, I rely on Snead's credible testimony as to what Bagby said about the sheet cake at the Milton facility. (Tr. 199–203, 376–378; GC Exhs. 2, 17.)

[33] Bagby provided no explanation for his restraint toward the cake on the Navarre facility's food table in contrast to his actions at the Pace and Milton facilities. (Tr. 337.)

could not have been surprised by Bence's negative response. A few days later, Bauman expressed his disdain for the prounion paraphernalia on Bence's work vest by sarcastically asking her if it was "getting a little heavy?"

Bauman's advocacy continued on the day of the election when he asked Donna Marcus, a driver working at the Navarre facility due to an injury, "I guess we can count on you for a no vote, right?" Marcus nodded in the affirmative.

The Board looks at the totality-of-the-circumstances to determine whether under all the circumstances the questioning at issue would reasonably tend to restrain the affected employee from engaging in protected concerted activity. The standard for assessing the lawfulness of interrogation is found in *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In conducting such analysis, it is also appropriate to consider the five factors set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) whether there is a history of employer hostility and discrimination; (2) the nature of the information sought; (3) level of the supervisor or manager; (4) place and method of the interrogation; and (5) the truthfulness of the interrogated employee's response. However, relevant factors "are not to be mechanically applied in each case." 269 NLRB at 1178 fn. 20.

Applying the *Rossmore* criteria to the instant case, Bauman, a high-level manager for the Company, communicated the Company's opposition to union representation in the weeks leading to the election. The questions suddenly posed to Bence and Marcus occurred in the open and not behind closed doors. While not directly asking how Bence and Marcus would vote, Bauman's impliedly sought to elicit their preference in the upcoming secret election. In Bence's case, Bauman conceded an awareness of her strong support for union representation, yet he still persisted in pressing her to reveal her inclination as a voter.

By asking Bauman asked Marcus whether the Company could count on her to vote "no," he was not asking how she intended to vote, Marcus was placed in the position of ignoring Bauman's question or revealing her position regarding the Union. The Board has found that such interrogation regarding union elections is coercive and violates Section 8(a)(1). *Shepherd Tissue, Inc.,* 327 NLRB 98 (1998). Bauman's statement also unlawfully polled Marcus because it suddenly placed her in a position where she reasonably felt pressured to express her voting preferences. *Space Needle, LLC,* 362 NLRB No. 11, slip op. at 4 (2015). Under the circumstances, Bauman unlawfully interrogated and polled an employee in violation of Section 8(a)(1) of the Act.

Bauman's statement to Bence, however, did not reasonably have the same effect of restraining the latter, an avid union supporter who consistently conveyed her position to Bauman and other Company managers since 2012. See, e.g., *Gardner Engineering,* 313 NLRB 755, 755 (1994), enfd. as modified on other grounds 115 F.3d 636 (9th Cir. 1997); *Blue Flash Express,* 109 NLRB 591 (1954).

The General Counsel relies on *Cardinal Home Product, Inc.,* 338 NLRB 1004, 1007 (2003), for the proposition that Bauman's statement is no less coercive because Bence was openly supportive of the Union. *Cardinal* is, however, distinguishable. In *Cardinal,* a supervisor sought to elicit information from an employee who provided the Board with an affidavit relating

to an unfair labor practice charge. In that case, the supervisor sought information relating to employee's Section 7 activity. In this case, although the question touched on Bence's right to protect the secrecy of her upcoming vote, the totality of the circumstances reveal that Bauman's inquiry was facetious because, by then, their positions were well know known to each other. In the same way that Bauman's level in the Company's supervisory structure was considered, one must also consider Bence's level of prominence in the union campaign in determining whether an atmosphere of coercion reasonably existed. Under the circumstances, it did not.

II. Bauman's Statements Regarding Bence's London Trip

The complaint further alleges that Bauman unlawfully interrogated Bence on two other occasions after the election. In the first instance, he questioned Bence after she requested leave on April 29, 2013, as to whether the Union was compensating her for attending the annual meeting of the Company's parent organization in London. In the second instance, Bauman threatened to deny Bence's leave request on May 1, 2013, if she was being compensated by the Union for the trip.

The Company acknowledges Bence's statutory right to engage in union activities, but insists Bauman's inquiry was justified because he reasonably believed she intended to travel to London for union-related business. If true, such activity amounted to other employment, which Bauman believed would violate the Company's policy prohibiting employees from taking leave to engage in other employment. As such, the Company contends that Bauman's question was narrowly focused regarding its concern as to how Bence's expenses and time were being compensated. In this regard, it refers to the Board's recent decision in *BFI Newby Island Recyclery,* 362 NLRB No. 186 (2015), which considered compensation as an indicia of employment.

Neither the lawfulness of the Company's policy against outside employment nor Bauman's suspicion as to the purpose of Bence's leave request is the determining factor. The focus is on Bauman's inquiry after Bence submitted a leave request simply stating the purpose as "out of state" travel. The Company had a custom and practice of regularly approving leave requests, but also expected employees to write the purpose of the leave or Willoughby might ask for some detail if he had staffing concerns. Here, however, there was no allegation or discernible fact to justify the questioning by Bauman, a high level manager who actively opposed the union campaign, as to the purpose of Bence's leave, much less the funding of her travel "out of state." The purpose of Bauman's questioning was unlawfully targeted at uncovering the nature of Bence's likely protected concerted activity. See *Stevens Creek Chrysler Jeep Dodge, Inc.,* 353 NLRB 1294, 1295 (2009), affd. 357 NLRB No. 57 (2011), rev, denied, enf d. 498 Fed. Appx. 45 (D.C. Cir. 2012) (questioning employees as to who paid for food at a Union meeting constituted unlawful interrogation). The coercive nature of Bauman's statement was also evident by the clear implication that Bence would violate Company policy if she accepted funding for the trip by the Union and, thus, subject to disciplinary action.

The Company, citing *Johnnie's Poultry Co.,* 146 NLRB 770, 774 (1964), enf. denied on other grounds, 344 F.2d 617 (8th Cir. 1965), contends that an employer may exercise the privilege of interrogating employees if it has a legitimate cause to inquire. See also *M-B Co.,* 290 NLRB 68, 71 (1988) (mere "recitation of a company policy" not a threat). Applicable Board law

suggests, however, that inquiring into employee's Section 7 activities is not legitimate absent the existence of allegations of misconduct. Contrary to the Company's position, the inquiry into Bence's Section 7 activity in order to determine whether such activity would be funded by the Union in violation of Company policy is distinguishable from cases in which interrogation was deemed justified based on *alleged* misconduct. Cf. *Bridgestone Firestone South Carolina,* 350 NLRB 526, 528–529 (2007) (employer lawfully questioned employee concerning his *alleged* violation of employer's no-profanity policy while engaging in union-related discussion); *Fresensius USA Mfg., Inc.,* 362 NLRB No. 130 (2015) (employer lawfully questioned employee about harassment *allegations* arising out of concerted activity). Here, there was no allegation that Bence violated the employer's outside employment prohibition.

Bauman's threat to deny Bence's leave request—if she was being compensated for her out of state travel by the Union—suffers a similar fate. That Bauman's statements related to Company policy regarding its policy against other employment or that the leave was subsequently granted, are of no consequence. The statement stemmed from Bauman's unlawful interrogation and sought to intimidate Bence from traveling to the National Express meeting in order to engage in concerted activity. Thus, the statement went beyond merely restating Company policy. See *Arkansas Grain Corp.,* 166 NLRB 111 (1967) (violation where statement was not limited merely to the Company break policy).

The Company's coercive remarks regarding Bence's leave did not cease when it approved her request. Within the days that followed, both Bauman and Downin, another higher level supervisor, approached Bence near her bus and asked what she would say at the National Express meeting. Bence told Downin she would speak about issues and responded in similar fashion to Bauman (workers issues). Again, these statements also stemmed from the initially unlawful interrogation about the purpose of Bence's leave request. Under the circumstances, the Company's continued questioning of Bence about the purpose of her London trip was clearly coercive.

Under the circumstances, the aforementioned statements by Bauman and Downin violated Section 8(a)(1) of the Act.

III. The London Interrogation

The complaint alleges that on May 8, 2013, at the National Express meeting in London, the Company's chief executive officer, David Duke, interrogated Bence regarding the source of her compensation for the trip. The Company denies the existence of Board jurisdiction over this allegation because it accrued outside of the United States. Assuming that jurisdiction exists, the Company also denies that Duke's question was coercive.

A. Jurisdiction

The Company contends that (1) federal legislation does not apply outside of the territorial jurisdiction of the United States absent a manifested contrary intent, and (2) the Act does not contain any such manifestation of intent to apply extraterritorially. The General Counsel's argues that jurisdiction under the Act applies to statements made outside of the United States if: (1) the relationship is within the United States, (2) the employee performed regular work in the United

States for an American employer, (3) the assignment abroad was temporary and brief, and the conduct causes unlawful effects in the United States.

The Board has indeed asserted the Act's jurisdiction beyond the United States' territorial boundaries in certain circumstances. In *Asplundh*, the Board upheld jurisdiction over an unfair labor practices committed in Canada. The case involved American employees regularly employed by an American employer in the United States, but who were in Canada on a brief and temporary assignment where they were supervised by an American supervisor. *Asplundh Tree Expert Co.,* 336 NLRB 1106, 1107 (2001), decision vacated, 365 F.3d 168 (3d Cir. 2004). Thus, the principal effects of the employer threatening one with layoff and subsequently laying off two of them because they engaged in protected activities were felt in the United States. 336 NLRB at 1107. The Board also clarified that there was no conflict with Canadian laws by asserting jurisdiction over this dispute, given that it affected only American employees of an American employer whom were briefly in Canada. Id. The Board concluded that "Americans whose permanent employment relationships are with American firms in the United States do not lose the protection of the Act while on temporary assignment outside of this country, particularly where extending the Act's protections would not interfere with the laws of another nation." Id. The Third Circuit subsequently disagreed and denied enforcement of the Board's order, finding no Congressional intent in the Act sufficient to overcome the presumption against extraterritorial application of Congressional statutes. *Asplundh Tree Expert Co. v. NLRB*, 365 F.3d 168, 173 (3d Cir. 2004). Nevertheless, the Board's decision remains agency precedent. See, e.g., *Pathmark Stores, Inc.*, 342 NLRB 378 n. 1 (2004); *Waco, Inc.*, 273 NLRB 746, 749 n. 14 (1984); *Los Angeles New Hospital*, 244 NLRB 960, 962 n. 4 (1979), enfd. 640 F.2d 1017 (9th Cir. 1981); and *Iowa Beef Packers*, 144 NLRB 615, 616 (1963), enfd. in part 331 F.2d 176 (8th Cir. 1964).

In *California Gas Transport*, shortly after the Third Circuit's *Asplundh* decision, the Board also asserted jurisdiction over the actions of an American employer towards its American workforce for unfair labor practices committed in Mexico. *California Gas Transport, Inc.*, 347 NLRB 1314, 1316 (2006), enfd., 507 F.3d 847 (5th Cir. 2007). Relying on *Asplundh*, the Board reasoned that jurisdiction existed because the controversy did not involve Mexican employees or implicate Mexico's laws or employment conditions, the remedial order only had effect within the United States, and asserting jurisdiction did not interfere with Mexico's ability to regulate its commercial affairs. Id. at 1316–1317. The Board also noted that actions by an American employer towards its American workforce would escape liability just because the conduct occurred across an international border. Id. The Fifth Circuit enforced the Board's order, although it relied on the employer's actions within the United States alone to justify its remedy of a bargaining order, without resolving the issue of jurisdiction. 507 F.3d 847, 854 (5th Cir. 2007).

Bence's complaints at the National Express meeting addressed working conditions involving the Company's operations within the United States. As such, the dispute involves an employment relationship between an American citizen and an American corporation. The employment at issue is performed solely within the United States. Although Bence was not on duty while briefly in London, she was informed by the Company that she was still subject to her usual terms and conditions of employment while abroad. England's ability to regulate its affairs is not affected. However, the alleged unfair labor practice continuing having an effect in the United States after Bence returned to work and told coworkers about Duke's attempt to elicit

information from her about the source of her funding for the trip. Under the circumstances, application of Board precedent in *Asplundh* and *California Gas Transport* to the aforementioned facts clearly establishes Board jurisdiction over this controversy.

B. The Coercive Nature Of Duke's Inquiry

Duke approached Bence in the lobby of the hotel on May 9, 2013, after she criticized Company working conditions in the United States and her difficulties obtaining leave. The Company insists the encounter was not coercive in nature because Duke's conversation with Bence, whose leave was approved, was pleasant and she spoke at the meeting at the invitation of a shareholder who funded her trip. In doing so, however, Bence spoke about employee working conditions at a location outside the workplace. That the location where she made such statements lies across the ocean is no more significant than if she made the statement at a restaurant across the street from her workplace. In either instance, she would be entitled to express her views about terms and conditions of employment without being interrogated by the Company's highest level manager in the United States. Duke's inquiry, like the earlier coercive statements by Bauman and Downin, were a continuation of the unlawful interrogation regarding Bence's leave request and the funding for her trip. Accordingly, Duke's question was coercive and violated Section 8(a)(1) of the Act. See *Cardinal Home Products, Inc.,* 338 NLRB at 1007.

IV. Reductions in Bence's Pay and Hours

The complaint alleges that the Company reduced Bence's hours and pay in August 2014 because she engaged in protected concerted activities earlier that year. The Company does not dispute that Bence was well known to the Company as an avid union supporter. It asserts, however, Bence did not suffer adverse action, but if so, the route change was unconnected to her union-related activities.

In determination whether adverse employment action is attributable to unlawful discrimination, the Board applies the analysis set forth in *Wright Line***,** 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The *Wright Line* framework requires proof that an employee's union or other protected activity was a motivating factor in the employer's action against the employee. 251 NLRB at 1089. The elements required to support such a showing are union or protected concerted activity, employer knowledge of that activity, and union animus on the part of the employer. *Amglo Kemlite Laboratories*, 360 NLRB No. 51, slip op. at 7 (2014); *Consolidated Bus Transit,* 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). Proof of animus and discriminatory motivation may be based on direct evidence or inferred from circumstantial evidence. *Robert Orr/Sysco Food Services,* 343 NLRB 1183, 1184 (2004); *Purolator Armored,* 764 F.2d 1423, 1428–1429 (11th Cir. 1985). Factors which may support an inference of anti-union motivation include employer hostility toward unionization, other unfair labor practices committed by the employer contemporaneous with the adverse action, the timing of the adverse action in relation to union activity, the employer's reliance on pretextual reasons to justify the adverse action, disparate treatment of employees based on union affiliation, and an employer's deviation from past practice. 764 F.2d at 1429.

If the General Counsel makes a prima facie case, the burden shifts to the employer to show that it would have taken the same adverse action even in the absence of the employee's

protected activity. 251 NLRB at 1089. If the employer shows that it would have taken the action for legitimate reasons regardless of the protected activity, the General Counsel may rebut that contention with evidence that the employer's proffered explanation is pretextual, thereby restoring the inference of unlawful motivation. *NLRB v. United Sanitation Serv.,* 737 F.2d 936, 939 (11th Cir.1984).

The Company contends there were no meaningful changes in Bence's route in August 2013 and she continued to service the same three schools she has served since 2011. Moreover, while Bence's hours and pay may have been reduced from what they were between December 2012 and June 2013, they were consistent with her historical hours and pay over the past several years. The fact remains, however, that Bence received a new schedule when she took on a portion of Dore's route in December 2013 and proceeded to accrue significant overtime pay. The schedule was preliminarily confirmed at the first staff meeting in August 2013, but was changed by Willoughby a few days later. As a result of the scheduling change, Bence's weekly work diminished by 2.51 hours (39.25 hours reduced to 36.74 hours per week). Although Bence's schedule reverted to the one she enjoyed for years until December 2012, there is no credible evidence establishing that her December—June assignment was temporary in nature. As such, the August 2013 revision to Bence's schedule constituted adverse action. Cf. *Webb v. International Business Machines Corp.,* 458 Fed. Appx. 871, 877 (2012) (failure to receive temporary assignment did not constitute adverse employment action).

Although Bence suffered adverse action, the weight of the credible evidence strongly suggests that Willoughby made the scheduling change for legitimate business and operations reasons. The timing of the change is not suspect; it was announced at the beginning of the new school year. Moreover, Bence confirmed the Company's contention that it abhors the accrual of overtime work and pay, which concern was ameliorated when the Company returned that route to Dore and /or provided route support for Dore by dividing the effort among several other employees. The legitimacy of the Company's action is not sufficiently undermined based on the Company's commission of several unfair labor practices during the year prior to August 2014, including several coercive statements made to Bence. See *FiveCAP, Inc.,* 294 F.3d 768, 781 (6th Cir. 2002) (where a legitimate reason exists for adverse action, anti-union animus cannot be simply inferred from separate acts involving other employees).

Under the circumstances, the General Counsel failed to establish that the adverse action experienced by Bence when the Company assigned her a new bus route in August 2013 was motivated by antiunion animus and the Section 8(a)(3) and (1) allegation is dismissed.

V. Bagby Statements at the Pier Bar

The complaint alleges that on September 26, 2014, at the Pier Bar in Navarre, Bagby (a) interrogated employees, (b) informed employees it would be futile to select the Union as it would take years for the Union to come in, (c) created an impression of surveillance, (d) and threatened employees that they would be required to join the Union and/or pay dues.

The record revealed a history of indecisiveness on the part of Hammes and Rast as to whether to support the Union. They previously spoke with Bagby about the Union, including dues, and were well aware of his antiunion views. On one particular day in September 2014,

however, they decided to participate in a union-sponsored practice strike at Navarre Park. Bagby observed them take part in that exercise on local television later that day. The next day, he invited Hammes and Rast to meet him at a local bar after work to discuss why they were not selected for trainer positions. Both agreed.

Bagby did not initiate discussion about the Union or the payment of union dues. As indicated from Hammes' testimony, discussion about the Union and the payment of dues came up after Bagby discussed the trainer position and his personal background. In fact, Hammes recalled that it was Rast who brought up the Union. Under the circumstances, the factual context provided does not support a conclusion that Bagby initiated an unlawful interrogation of Hammes and Rast or uttered an unsolicited threat regarding the Union's collection of dues during drawn-out litigation over representation, at the Pier Bar on September 26, 2014.

Regardless of the fact that Bagby did not initiate the discussion about the Union, he did express other unsolicited views. Three of those crossed the line. In one instance, he opined it would be "years and years" before union representation materialized. That comment, blended into a conversation by a high-level supervisor about the potential for future promotion, reasonably suggested to Hammes and Rast that it would be futile to continue supporting the Union. *Libertyville Toyota,* 360 NLRB No. 141 (2014), enfd., 801 F.3d 767 (7th Cir. 2015) (implicit threat of futility to select union).

In the second instance, Bagby diverted the discussion by implying that he observed Rast and Hammes participate at the union-sponsored practice strike in Navarre Park. He also suggested that Rast, standing on top of a vehicle holding a prounion sign during the practice, should be careful who she was dancing with in Navarre Park. Although the event was on social media and local television, Bagby simply noted that he saw her "during the day." He did not clarify, however, that his knowledge derived from television or social media, reasonably leaving them with the impression that their activities at the park were under surveillance by the Company. Under the circumstances, Hammes and Rast would have reasonably assumed from Bagby's comment that their Section 7 activities were under surveillance in violation of Section 8(a)(1). See *Woodcrest Health Care Center,* 360 NLRB No. 58 (2014), affd. in part, vacated in part, 784 F.3d 902 (3d Cir. 2015); *Golden Stevedoring Co.,* 335 NLRB 410, 416 (2001); the employees would reasonably assume from the employer's statements or conduct that their organizing activities have been placed under surveillance." *Michigan Roads Maintenance Co.,* 344 NLRB 617, 623 (2005) (unlawful interrogation where there was an "obvious connection" between the questioned activity and a contemporaneous unfair labor practice).

Responding to Bagby's coercive remark about her participation in the practice strike, Hammes equivocated, telling Bagby she was unsure about her support for the Union. Bagby responded by asking if Hammes "was pulling his leg" with her shifting allegiances. By questioning Hammes's veracity after she indicted that she was not sure about her position, Bagby interrogated her unlawfully in violation of Section 8(a)(1).

VI. The Union Cakes

The complaint alleges that on December 19, 2014, Bagby prohibited employees at the Pace and Milton facilities from eating cake topped with the Union's name. In addition, he

allegedly promulgated a rule at the Milton facility restricting the type of food that can be brought to potluck lunches. The Company does not dispute what transpired at the Milton potluck lunch, but denies the allegations regarding the Pace potluck lunch and, in both cases, insists that this issue borders on the trivial.

The parties agree that the applicable analysis is that which is applied to cases involving the wearing of union insignia. Both also agree that employees have a Section 7 right to display union insignia in the workplace, except where there are "special circumstances" justifying restrictions to the contrary. See *Republic Aviation Corp.,* 324 U.S. 793 (1945). Special circumstances exist "when their display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, or when necessary to maintain decorum and discipline among employees)." *Komatsu America Corp.,* 342 NLRB 649, 650 (2004).

Every year during the holiday season, the Company sponsored a potluck lunch at each of its Santa Rosa County facilities. The Company provided food entrees, which employees supplemented with homemade and purchased food and desserts. Their culinary contributions were neither coordinated nor restricted by supervisors or managers in any respect.

On December 19, cakes topped with buses inscribed with union insignia were brought to the Company-sponsored potluck lunches at the Milton, Pace, and Navarre facilities. The Navarre cake's presence at that event was uneventful. However, the cakes brought to the Milton and Pace facilities encountered different fates.

At the Pace facility, Bagby questioned an employee who placed the cakes on the food tables as to its origin. The employee identified the local bakery where it came from, but that explanation did not satisfy Bagby and he instructed her to remove the cake because it was a Company function. After she suggested smearing the icing on the school bus figurine so that the union insignia was no longer decipherable, Bagby relented ("if you want to") and the cake remained. Bagby made a similar inquiry about the union cake at the Milton facility. After an employee explained that she did not know where it came from, Bagby directed it be removed and added the additional impediment that it was a Company event.

Bagby offered two rationales for requiring employees to alter the cake or remove them altogether: employees failed to identify the origin of the cakes and/or it was a Company-sponsored event. The Company explains the origination factor as a common sense consideration relating to the health implications of a cake brought by an employee to a traditional potluck event. Common sense aside, there is no evidence that supervisors and managers ever concerned themselves in the past over the origin of food brought to potluck events. As such, Bagby's actions were not justified based on past practice and were obviously aimed at eliminating the promotional value that the insignia atop the cake represented to the Union. In the absence of special circumstances, it is clear that Bagby spontaneously and unlawfully created a new rule for the obvious purpose of stifling Section 7 activity in violation of Section 8(a)(1). See *Southern Monterey County Hospital,* 348 NLRB 327, 346 (2006) (employer's ban on wearing union insignia violated Section 8(a)(1) where it was not limited to patient care areas); *Lutheran Heritage Village-Livonia,* 343 NLRB 646, 647 (2004) (violation where rule was promulgated in

response to union activity, would be reasonably construed as prohibiting Section 7 activity or was applied to restrict Section 7 rights).

CONCLUSIONS OF LAW

1. The Company violated Section 8(a)(1) of the Act on February 22, 2013, when supervisor Robert Bauman interrogated and polled employee Donna Marcus as to her voting preference in the representation election held that same day.

2. The Company violated Section 8(a)(1) on April 29, 2013, when Bauman interrogated employee Diane Bence as to whether the Union would compensate her for attending a meeting of the Company's parent organization in London, England during her requested leave, and again on May 1, 2013, by threatening to deny her leave request if that was the case.

3. The Company violated Section 8(a)(1) in May 2013 when Bauman and another supervisor, Bob Downin interrogated Bence about what she intended to say at the upcoming meeting of the Company's parent organization in London, England.

4. The Company violated Section 8(a)(1) on May 9, 2013, when its chief executive officer, David Duke, interrogated Bence in London, immediately after she complained at the parent organization's about Company working conditions, as to whether the Union paid for her trip.

5. The Company violated Section 8(a)(1) on September 26, 2014, when supervisor James Bagby told employees Samantha Rast and Ashley Hammes that it is futile to choose the Union for representation because it will take years for the Union to effectuate its representation, created the impression that Rast's union activities were under surveillance by telling her to watch who she dances with in Navarre Park, and interrogated Hammes about her union sympathies.

6. The Company violated Section 8(a)(1) on December 19, 2014, when Bagby spontaneously promulgated a rule prohibiting employees Vera Nowling-Driggers at the Pace facility and Donna Snead at the Milton facility from serving cakes because they were adorned with union insignia and/or could not identify the source of the cake.

7. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

8. All other complaint allegations not specifically addressed above are dismissed.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

ORDER

The Company, Durham School Services, L.P., Santa Rosa County, Florida, its officers, agent, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating and polling any employee about union support or union activities.

(b) Threatening to deny leave time to any employee who seeks to engage in union or other protected concerted activities.

(c) Telling employees that it is futile to choose the Union for representation because it will take years for the Union to effectuate its representation

(d) Creating the impression that employee union activities are or were under surveillance.

(e) Promulgating a rule prohibiting employees from serving cakes at Company events because they display union insignia.

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

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

(a) Within 14 days after service by the Region, post at its Santa Rosa County facilities in Pace, Milton and Navarre, Florida, copies of the attached notice marked "Appendix."[35] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Company's authorized representative, shall be posted by the Company 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 an internet site, and/or other electronic means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company to ensure that the notices are not altered,

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[34] 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.

35 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."

defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since February 2013.

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

Dated, Washington, D.C. October 30, 2015

Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

The National Labor Relations Board has found that we violated 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 coercively interrogate and poll any employee about union support or union activities.

WE WILL NOT threaten to deny leave requests to any employee who seeks to engage in union or other protected concerted activities.

WE WILL NOT tell employees that it is futile to choose the Union for representation because it will take years for the Union to effectuate its representation

WE WILL NOT create the impression that employees union activities were under surveillance.

WE WILL NOT promulgate a rule prohibiting employees from displaying union insignia on cakes served at potluck events in the workplace.

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

DURHAM SCHOOL SERVICES, L.P.
(Employer)

Dated _____ By _____
(Representative) (Title)

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

600 South Maestri Place, 7th Floor, New Orleans, LA 70130-3408
(504) 589-6361, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-106217 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (504) 589-6389.