

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

**GOODWILL CENTRAL COAST, a California Non-  
Profit Public Benefit Corporation**

**and**

**Case: 32-CA-172761**

**32-CA-172762**

**MARTIN BARRERA, an Individual,**

**and**

**JESUS FERNANDEZ, an Individual.**

*Brenda Rosales and Angela Hollowell-Fuentes,*

for the General Counsel.

*Rona P. Layton, (Layton Law Firm),*

for the Respondent.

*Gretchen Regenhardt (California Rural Legal Assistance),*

for the Charging Parties.

**DECISION**

**STATEMENT OF THE CASE**

GERALD M. ETCHINGHAM, Administrative Law Judge. Martin Barrera, an individual, (Barrera), filed the original charge in Case 32-CA-172761 on March 29, 2016. Jesus Fernandez, an individual (Fernandez), filed the original charge in Case 32-CA-172762, also on March 29, 2016. Barrera and Fernandez are collectively known as the Charging Parties. The General Counsel issued the consolidated complaint on June 30, 2016 (complaint), and the Respondent Goodwill Central Coast (Respondent or Employer) answered the complaint on July 9, 2016, generally denying the critical allegations of the complaint.

This case involves the Respondent's sudden discharge of the Charging Parties on October 2, 2015,<sup>1</sup> soon after protected concerted discussions amongst the Charging Parties and their coworkers were reported up Respondent's management chain concerning one of Respondent's supervisor's continuing harassment of Respondent's dockworker employees including the Charging Parties. The Respondent denies that these employee discussions had anything to do

---

<sup>1</sup> All dates in 2015 unless otherwise indicated.

with its discharge of the Charging Parties and that the two discharges while immediately close in time to the protected concerted activities were mere coincidence and that for a number of differing reasons, the Charging Parties were slated by Respondent's upper management for discharge despite over 10 years of uninterrupted employment at Respondent with no formal discipline directed at the Charging Parties.

This case was tried in Oakland, California on October 12, 2016. Closing briefs were submitted by the General Counsel, the Respondent, and the Charging Parties on November 16, 2016. On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Parties, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a California non-profit public benefit corporation with an offices and places of business in the Central Coast of California including the counties of San Luis Obispo, Monterey, and Santa Cruz, and a warehouse and thrift store in Santa Cruz, California, has been engaged in the business of collecting, sorting, and reselling donated goods in order to fund vocational training programs. The Respondent admits, and I find, that in conducting its operations during the 12-month period ending June 30, 2016, Respondent derived gross revenues in excess of \$500,000 and purchased and received at its California facilities goods and materials valued in excess of \$5000 directly from points located outside the State of California, and that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exhs. 1(e) 2-3, 1(g) 1.)<sup>3</sup>

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. The Respondent's Operations*

Respondent accepts donated personal property of all sorts from the general public and sorts it at its three warehouses in Santa Cruz, Monterey, and San Luis Obispo Counties for resale as secondhand goods primarily including furniture, household items, electronic, and clothing and various retail stores along the central coast of California.

Respondent's Santa Cruz facility has approximately 200 employees and Respondent has a little less than 600 employees in all 3 counties in its Central Coast, California organization. (Tr. 76.)

---

<sup>2</sup> The transcript in this case is mostly accurate, but I correct the transcript (Tr.) as follows: Tr. 32, line (l.) 23: "did" should be "made;" Tr. 39: l. 1: "since" should be "sense;" Tr. 49, l. 13: "work" should be "wear;" Tr. 158, ll. 14 and 15: "'Okay,' but he said that" should be "'Okay, but he said that;'" Tr. 207, l. 21: "closing" should be "closer;" Tr. 209, lls 17-19: "At the time ..." should be "'At the time ...';" and Tr. 214, lls 5 and 7: "moral" should be "morale."

<sup>3</sup> Abbreviations used in this decision are as follows: "Tr." for transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "Jt. Exh." for joint exhibits, "GC Br." for the General Counsel's brief, "R. Br." for the Respondent's brief, and "CP. Br." for the Charging Parties' brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

Since 2009, Carlos Navarro (Navarro) was the immediate supervisor for all dockworkers in Respondent's dock area including electric forklift drivers Fernandez and Barrera. (Tr. 24-25, 44, 50, 181.) There were a total of approximately 10-13 workers in Respondent's dock department. (Tr. 25, 50, 181.) Dockworkers basically unload donated goods from trucks that arrived at Respondent's Santa Cruz Warehouse facility, separated the goods, and distributed them around the facility to the ready-to-wear and wares production departments, and the Barn store. (Tr. 131.) Only Navarro, Fernandez, and Barrera drove forklifts in the dock department. (Tr. 192.)

Also in 2015, Alfredo Ybarra (Ybarra) was the immediate supervisor to employees working in Respondent's Wares Department. (Tr. 25, 40, 49, 122-123.) Ybarra started working at Respondent in April 2014. (Tr. 122-123.) Wares Department employees sort through donations, determine what has retail quality and price the goods and send them out to Goodwill retail stores. (Tr. 123.)

In addition, for part of 2015, Daniel Rocha (Rocha) was the immediate supervisor to employees working in Respondent's clothing department otherwise known as the ready-to-wear department. (Tr. 25, 40, 49, 184.) Rocha also drove a forklift so he would do work that other forklift drivers like Navarro, Barrera, and Fernandez had been asked to do over the years. (Tr. 184, 193.)

In 2015, Kellie Barton (Barton) was a manager at Respondent's bargain barn department otherwise known as the outlet store. (Tr. 41, 49, 167.) Barton has been working at Respondent for 20 years and the last 12 years she has been a manager supervising three employees in that department. (Tr. 167-168, 178.) Clothing is sold by the pound and not on the rack at the Bargain Barn as it is more of a warehouse setting with clothing being forklifted in from time to time. (Tr. 167.) Barton and another employee also drove forklifts in her department and the Bargain Barn opens later in the morning than the dock and is a little bit separate from the main three departments (dock, wares, and ready-to-wear) at the Santa Cruz warehouse facility. (Tr. 139, 175, 193.)

In 2015, each of the different department immediate supervisors (Navarro, Ybarra, and Rocha) reported directly to the Supervisors' Manager Anthony Olmeda (Olmeda), when they needed something, for reporting, or authority to act. (Tr. 25, 50, 123, 144-145.) Manager Olmeda also interacts with Respondent's employees on a daily basis as well. (Tr. 144.) Olmeda would interact with Barrera and Fernandez at least once a day when their shifts overlapped for a decade until Barrera and Fernandez were discharged in October 2015. (Tr. 146.)

Manager Olmeda has worked at Respondent for 17 years, the last 11 years as warehouse manager reporting to Director Thomas High (High). (Tr. 142-144.) Olmeda is responsible for overseeing Respondent's Santa Cruz warehouse facility to ensure that things that arrive at the facility are properly sorted and shipped out in a timely manner. (Tr. 143-144.)

Dockworkers like Barrera and Fernandez received daily assignments from their immediate supervisor, Guerrero until he was later replaced by Supervisor Navarro. (Tr. 26.) Each immediate supervisor supervised employees in their own department. Id.

In 2015, Director High had worked for Respondent for more than 4 years out of its San Luis Obispo and Santa Cruz locations as director of production and logistics being in charge of

transportation, donations, processing of goods, and picking them up from the stores. (Tr. 106.) Director High reported to Jim Burke (Burke) the vice president of operations and retail. Director High is the manager for all 3 of Respondent's warehouses in Santa Cruz, Monterrey, and San Luis Obispo Counties. High splits his time between San Luis Obispo and Santa Cruz working parts of his workweek in each location. (Tr. 88, 116.)

Beginning February 17, 2015, Jaime Reynolds (Reynolds) has worked at Respondent as its director of human resources and administration and as its vice president of human resources and administration. (Tr. 70, 93-94.) Director Reynolds reports directly to Respondent's president, Ed Durkee (Durkee). Id. Reynolds is a human resources generalist who hires, fires, trains, and is also involved with Respondent's benefits, workers' compensation and safety. Id. Reynolds is also familiar with the progressive disciplinary procedures that Respondent uses at its Santa Cruz facility. (Tr. 71-72.)

### *B. Respondent's Progressive Discipline Policy in 2015*

In September 2015, Respondent continued following a progressive discipline policy with its employees where Reynolds explains: "We try to give people a verbal warning, a written warning, [a suspension], and then termination." (Tr. 72, 200.) Supervisor Navarro explained that in all the years he worked at Respondent, he disciplined one of his 12-13 dockworkers just one time that he could recall for insubordination and not following orders as the employee just ignored Navarro and went home instead of cleaning. (Tr. 194-195.) This dockworker employee that Navarro spoke of received a written warning from Supervisor Navarro as a result of his bad conduct. Id.

Manager Olmeda explains that Respondent has issued written warning discipline to employees during his 17 years with Respondent. (Tr. 142-143, 160.) In fact, Manager Olmeda has personally issued written suspensions to his warehouse employees over his many years of working at Respondent. (Tr. 160.) Olmeda also explained that he is aware of other disciplinary procedures at Respondent where an employee gets demoted from a lead position to a nonlead position as a result of the employee being caught stealing merchandise. (Tr. 160-161.)

Manager Barton has issued discipline to the three employees she manages including for tardiness, insubordination, and termination for being out-of-line. (Tr. 179.) Manager Barton has also issued written warnings and suspensions to employees at Respondent. Id.

In addition, Reynolds says that Respondent had written policies formalized in a handbook as of September 19, 2015, that contained language that Respondent's employees are "at-will" employees who Respondent could let go at any time and the handbook contained rules of conduct advising against "insubordination;" "improper behavior;" and unsafe work performance." (Tr. 201-202; Jt. Exh 1 at 17 and 19.)

Since February 2015, Reynolds keeps a personal log when supervisors and managers complain about employees at Respondent. (Tr. 72.) Reynolds says she tries to look at the severity of the complaints and logs them so there is a recollection in her mind if the same complaint comes up again. Id. Later Reynolds says that if an employee quits their job with Respondent because they do not like their boss, this would be an item raising a red flag that warrants entry in Reynolds' log. (Tr. 76-77.) Reynolds also says she insists that these complaints be made in person to her. (Tr. 73.)

In addition, Reynolds says that she interviews all parties to a complaint as part of her investigation and then comes up with a determination. (Tr. 73.) Reynolds adds that she puts the results of her investigations on her log. Id. Next, Reynolds says that the log is just her notes of what people said so she doesn't them out of context. Id.

5 Reynolds also tries to record her log close in time to the complaint made but sometimes if she can't do so she tries to do so within a few days of the complaint. (Tr. 73.) Reynolds also says that she sends a template form for supervisors to fill out and send back to her to enter in her log when they have a complaint "so they are keeping a record so that if this [complaint] reoccurs we can look back to it." (Tr. 74.) Reynolds described how supervisors will send her an email saying,  
10 for example, they have a complaint about somebody and Reynolds will talk about it and then the supervisor will log it and then they'll send it to Reynolds. (Tr. 74-75.)

At the end of an investigation, Reynolds says that she verbally reports back her determination to supervisors unless the complaint is reversed and the complaint originates with the employee. (Tr. 75.) In this situation, Reynolds talks with the employees to make sure that  
15 everything has been resolved. Id. Reynolds also lets the supervisors know if it's not done in confidence. Id.

*C. The 11-Year Employment of Barrera and Fernandez as Dockworkers at Respondent*

1. Barrera

20 Barrera began his work at Respondent in Santa Cruz, California in 2004 and worked there as a dockworker and lead electric forklift driver for approximately 11 years without incident resulting in written discipline until October 2, 2015. (Tr. 24, 40, 44; GC Exh. 3.) In 2015, Barrera's hours were usually from 6a.m. to 2:30 p.m. at Respondent. (Tr. 44.)

Barrera's primary language is Spanish and he used an interpreter to testify at hearing as  
25 he speaks very little English. (Tr. 27, 158.)

Barrera's day-to-day duties included driving a forklift, taking out trash, unloading trucks, unloading metals and dumping books. (Tr. 25.) When deliveries arrive at Respondent, Barrera would frequently unload them and distribute them to the different departments depending on the nature of the load. (Tr. 26.) For example, he would deliver clothing to the clothing department,  
30 or items such as electronics, toys, washing machines, couches, tables, etc. to the Wares Department. Id. Occasionally Barrera would deliver clothing to Manager Barton at the Bargain Barn. (Tr. 41.)

In 2015, Barrera was earning \$11.90 per hour as a dockworker forklift driver. (Tr. 25.)

Barrera's final performance evaluation was issued by Respondent effective January 4,  
35 2015 and signed by Supervisor Navarro and Director High. (Tr. 117, 191-192; GC Exh. 3.) The evaluation is typical of all of Barrera's evaluations and does not contain any negative comments or ratings and includes meeting or exceeding all rating categories possible for Barrera's work performance through January 4, 2015. Id. Supervisor Navarro, Manager Olmeda and Director High either participated, reviewed, and/or signed off the evaluation and all others for more than  
40 the past few years. (Tr. 117146-117150; GC Exh. 3.) Barrera received a 3-percent pay raise after

this evaluation. Id.<sup>4</sup> Respondent's handbook provides that pay raises are discretionary and not automatic. (Tr. 221; Jt. Exh. 1 at 14.)

## 2. Fernandez

5 Like Barrera, Fernandez worked at Respondent for almost 11 years from November 1, 2004 to October 2, 2015. (Tr. 49-50.) Fernandez was promoted to the position of staff leader or dock lead worker amongst the dockworkers reporting to Navarro in 2015. (Tr. 49-50, 159-160.)

10 Also like Barrera, Fernandez' job duties included unloading trucks with donations and distributing them to Respondent's different departments. (Tr. 49.) As lead dockworker, Fernandez also was required to communicate Supervisor Navarro's assignments to the other dockworkers. (Tr. 50.)

15 Former Supervisor Guerrero also instructed Fernandez to report to Guerrero only and Fernandez did not recall Guerrero telling Fernandez to follow orders of any other supervisors. (Tr. 51.) Fernandez recalled Guerrero getting upset if another supervisor would come over to the dock and take dockworkers away from the dock to do other jobs as Guerrero only wanted dockworkers to report to him. (Tr. 51.)

In 2015, Fernandez was earning \$13 per hour as a lead dockworker forklift driver. (Tr. 50.)

20 Fernandez' final performance evaluation was issued by Respondent dated June 21, 2015, 2014 and signed by Supervisor Navarro, Manager Olmeda, and Director High. (191-192; GC Exh. 4.) The evaluation is typical of Fernandez' evaluations over the years and does not contain any negative comments or ratings and includes meeting or exceeding all ratings possible for Fernandez' work performance through June 21, 2015. Id. Manager Olmeda agrees that he gave Fernandez a raise and a good evaluation in June 2015. (Tr. 156-157.) Supervisor Navarro, Manager Olmeda, Director High, Reynolds and President Burke signed off the evaluation and 25 Manager Olmeda either reviewed and/or approved other Fernandez evaluations for 10 years. (Tr. 117, 146-150; GC Exh. 4.) Fernandez received a 3-percent pay raise after this evaluation. Id.

30 Fernandez recalled that as recently as in the middle of September 2015, Supervisor Navarro approached him and said: "you [Fernandez] always do a good job, no matter who the supervisor is, you always get the job done, you're a good worker." (Tr. 62-63.) Supervisor Navarro did not deny this opinion.

### *D. Respondent's Shortage Of Forklift Drivers and Complaints by Other Supervisors About Barrera and Fernandez in 2014 and 2015*

35 Supervisor Navarro, Barrera and Fernandez, and other dockworkers would occasionally help other departments beyond Supervisor Navarro's dock and work with other supervisors when they had a chance to help but sometimes when very busy, Barrera, Fernandez, and their co-workers did not have time to help other departments at Respondent. (Tr. 41.) Barrera mentioned occasionally helping Manager Barton move or bring things to her department and also being too

---

<sup>4</sup> Director High mentioned that Barrera's immediate supervisors Navarro and Olmeda recommended an even higher pay increase than 3 percent for Barrera as of January 2015 but Director High overruled these supervisors to keep Barrera's pay raise at the normal 3 percent. (Tr. 118, 146.)

busy with his assignments from Supervisor Navarro to have time to help Manager Barton. (Tr. 43.)

5 Barrera convincingly recalled problems that he and his co-workers experienced at the docks with Supervisor Ybarra when Ybarra would ask a dockworker such as Barrera to do something and while a job was being performed for Ybarra, Dockworker Supervisor Navarro would approach the dockworker questioning why they were not working at the dock and who moved them to a different location. (Tr. 42.)

10 Also like Barrera, Fernandez described conflicting job assignments he would receive in 2015 from Supervisor Navarro and other supervisors from other departments. (Tr. 57-58.) Fernandez explained that sometimes despite specific orders from Supervisor Navarro to do something, other supervisors would throw out hoppers of merchandise when Supervisor Navarro left the dock area which contradicted Navarro's earlier orders to dockworkers by assigning new work to Fernandez, Barrera, and other dockworkers.

15 Supervisor Navarro opined that Barrera and Fernandez should follow all orders from other supervisors. (Tr. 182.) However, Supervisor Navarro would return to the dock and see his dockworker employees not performing the tasks he had ordered and Supervisor Navarro would approach lead dockworker Fernandez and angrily ask him why his orders were not being followed. (Tr. 41-42, 57-58.)

20 Frequently, due to the high demand for forklift driver tasks in 2014-2015, Supervisor Navarro would do some tasks for Barrera and Fernandez that other supervisors asked them to do. (Tr. 173, 176, 181-183.) This would lead to Supervisor Navarro questioning Barrera and Fernandez why they could not better resolve conflicting work assignments. (Tr. 181.)

25 Manager Barton opined that her working relationships with Barrera and Fernandez was both "really good" and "sometimes it was really hard." (Tr. 168.) Barton says she complained about problems she had working with Barrera and Fernandez in 2015 to Manager Olmeda who would instruct Barton to call Supervisor Navarro as Barrera's and Fernandez' boss to correct any problems. (Tr. 169, 177.) I find these complaints less than credible as Manager Olmeda made no mention of Barton's complaints in 2015 and Fernandez' June 2015 performance evaluation makes no mention of any complaints raised by Manager Barton or anyone else. Also, Barrera denied ever refusing to do move items for Manager Barton. (Tr. 43.)

30 Barton also complained at hearing that Barrera yelled a lot but according to Barton, Manager Olmeda simply responded: "That's the way he talks" with no discipline or followup. (Tr. 170.)

35 In addition, only Barton believed that Barrera and Fernandez were scheduled to work with her from 8:30 - 10 a.m. each day. But Barton had her own two forklifts and according to Ybarra, Respondent was shorthanded on forklift drivers and her department was too far removed from where Barrera and Fernandez were expected to work the docks taking orders from Supervisor Navarro, Manager Olmeda, and occasionally Supervisors Ybarra and Rocha. (Tr. 133, 139, 171.) Barton concedes that with an ongoing forklift shortage, "eventually, we just kind of gave up and started doing stuff ourself [siq.] and not even asking [for help from the dock

workers or their supervisor or manager].” (Tr. 172.) Manager Barton admits that she never made any written complaints about Fernandez or Barrera before they were terminated. (Tr. 178.)

Supervisor Navarro further opined that Manager Barton asked for forklift help usually in the morning and he explained that Manager Barton drove her own forklift and could do the same work herself that she was asking help from the dock. (Tr. 183–184, 193–194.) Many times Supervisor Navarro would help Manager Barton as did Barrera and Fernandez. Id. Supervisor Navarro further explains that sometimes Barrera and/or Fernandez would be busy doing other jobs when Manager Barton asked for their forklift help and sometimes she complained that Barrera and Fernandez were not helping her. Id.

Barrera recalled just once hearing a complaint from Supervisor Ybarra that Barrera was not wearing his seatbelt on his forklift and Barrera put it on right away after Manager Olmeda instructed him to wear it after Ybarra complained. (Tr. 43, 139, 152–153.) Barrera was never disciplined in writing for not wearing his seatbelt and no one at Respondent other than Ybarra or Olmeda ever spoke to Barrera about not wearing his seatbelt. (Tr. 47, 139, 152–154.) Ybarra admits that after this one complaint, he did not follow-up with any further complaints about Barrera’s or Fernandez’ work behavior and Ybarra “left that [complaints] in my manager’s [Manager Olmeda’s] hands.” (Tr. 139.)

Manager Olmeda recalled verbally warning Barrera and Fernandez just once or twice over 10 years about them not wanting to do something or having a bad attitude at work. (Tr. 152–154.) Manager Olmeda explained that he never reported any of these few verbal warnings incidents to Director Reynolds or anyone else in HR. (Tr. 155.)

Navarro opined that Supervisor Rocha<sup>5</sup> complained to Navarro about Barrera and Fernandez not completing work for him in the ready-to-wear department “just a few times” over a decade. (Tr. 184.) Supervisor Navarro admitted that he never observed Barrera’s or Fernandez’ interactions with other supervisors where Barrera and Fernandez ever refused to do work for them. (Tr. 184.)

In 2015, Supervisor Navarro opined that Barrera and Fernandez did better work before new Respondent management arrived despite the fact that Barrera and Fernandez received unchecked personnel evaluations consistently throughout their 10 years at Respondent. (Tr. 182; GC Exhs. 3 and 4.) Supervisor Navarro did not know exactly when that was but only that new management came in when the new president was hired at Respondent. (Tr. 188.) Supervisor Navarro further explained that over the years he did not get after Barrera and Fernandez to help other departments all the time but only when another supervisor would complain to him about them and then he would talk to them. (Tr. 184.)

---

<sup>5</sup> Daniel Rocha and Prieto/Sanchez did not testify at hearing. I draw adverse inferences from this as “when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue.” *International Automated Machines*, 285 NLRB 1122, 1123 (1987) (internal citations omitted), *enfd.* 861 F.2d 720 (6th Cir. 1988). The Respondent offered no evidence to show that it sought to procure either Rocha’s or Prieto/Sanchez’ presence as a witness, by subpoena if necessary, and I draw the appropriate adverse inferences that if Rocha or Prieto/Sanchez had been called, each of them would have further undermined the Respondent’s claim that Barrera and Fernandez acted so out of line in 2015 that each of them warranted termination of their 11-year employment at Respondent.



Supervisor Ybarra admits that in September 2015, Respondent did not have enough forklift drivers on hand and Respondent was down to only three to six forklift drivers. (Tr. 139.) Ybarra also complained to Navarro about not having enough forklift help from Barrera and Fernandez telling Navarro that he would ask them to help and they would ignore him. (Tr. 184.)

5 Supervisor Navarro also admitted that all of the dockworkers in addition to Barrera and Fernandez had problems following orders from the supervisors from other departments rather than directly from Navarro and that Supervisor Navarro was trying to change this when the new management came in. (Tr. 188-189.) All of his dockworkers were used to just taking job assignments directly from Supervisor Navarro and no one else. Id.

10 Fernandez recalled Manager Olmeda telling Barrera, other dockworkers, and him that they were instructed to follow directions of the other supervisors when they needed help. (Tr. 67-68.) “But we had to take care of our [dock] responsibilities because we had to load and unload trucks. So we had to first do that and then help out [other supervisors].” Id.

15 In early to mid-September 2015, Respondent investigated theft allegations against Gerry Guzman and Sarah Guzman in the ready-to-wear department and Neri Gomez Sanchez in the dock department. (Tr. 94, 103-105, 121; GC Exh. 5 at 1.) Barrera and Fernandez, however, were never accused by Respondent of stealing any of its merchandise.

*E. Ybarra’s September 29, 2015 Harassment of Charging Party Barrera*

20 On September 29, 2015, Barrera was approached by Ybarra after Barrera had already completed his shift and punched off the clock at the end of Barrera’s workday at the dock.<sup>6</sup> (Tr. 26-27, 38-39.) The conversation took place in both English and Spanish and lasted approximately 10 minutes according to Barrera. (Tr. 27-28.) Barrera speaks only broken English and Ybarra understands quite a bit of Spanish. (Tr. 135.) No one else was present. Id.

25 Ybarra started the conversation and told Barrera in Spanish: “There’s a new delivery, you have to unload it.” (Tr. 27, 38-39, 45, 135.) Barrera responded to Ybarra in broken English saying: “I can’t, I’ve already clocked out, I’m leaving.” Id.

30 Ybarra next tells Barrera also in Spanish: “You have to [unload the new delivery.]” (Tr. 27, 38-39.) Ybarra admits that he had “a little bit of an argument” with Barrera about the new delivery. (Tr. 134.) Next, Ybarra admits that he ordered Barrera around insisting: “you’re going to unload this.” Id.

Next, Barrera goes over to his forklift and Ybarra gives Barrera the delivery sheet for the new delivery and Ybarra, walking beside Barrera who was driving his forklift, tells Barrera 2-3 times in English that he is going to kill Barrera. (Tr. 27, 28-39, 44-45.) Specifically, Barrera hears Ybarra tell him: “I kill you—Martin [Barrera].” Id.

---

<sup>6</sup> Barrera denies that this incident took place on September 23. Tr. 44. Barrera’s description of the chronology for the September 29 incident followed by his next day’s conversations with Supervisor Navarro, Fernandez, and other dockworkers and the October 2 termination is more credible than Barrera waiting 7 days to mention the incident to Supervisor Navarro and others. As discussed below in the credibility section I. of this decision, Ybarra’s testimony placing the event on September 23 is rejected as untrue.

Barrera proceeds to unload 4 pallets of the new delivery and he responds to Ybarra and asks: “So you’re going to kill me?” (Tr. 27, 38–39.) In response to this, Ybarra just laughs. Id.

Barrera convincingly opined that he was scared when he was threatened by Ybarra on September 29 and Barrera believed Ybarra meant what he said since Ybarra is a supervisor and not Barrera’s immediate supervisor. (Tr. 40.)

Barrera then finishes unloading the new delivery and Ybarra snatches the delivery paper from Barrera that contains all the delivery information. (Tr. 27–28.) Barrera then parks his forklift and leaves Respondent for the workday and goes home scared from Ybarra’s earlier threat. (Tr. 27–28, 45.)

*F. The September 30, 2015 Dockworkers’ Safety Meeting and Group Complaints Regarding Supervisor Ybarra and His Harassing Nature*

Barrera returned to work the next day on September 30 and around 8:30 a.m. Barrera has a 5-minute conversation with Supervisor Navarro in the yard with no one else present. (Tr. 28.)

Barrera initiated the conversation with Supervisor Navarro and said in Spanish: “Carlos [Navarro] yesterday Alfredo Ybarra threatened to kill me.” (Tr. 28, 185.) “You have to do something, you’re the supervisor, so you have to do something about it.” (Tr. 28–29.) Barrera continued and told Supervisor Navarro that if Supervisor Navarro didn’t do anything, Barrera was going to report the incident to Navarro’s supervisor, Manager Olmeda, or someone in Respondent’s HR department. (Tr. 29.)

Navarro responded telling Barrera that he would follow up and talk to Manager Olmeda about Ybarra’s threat to Barrera. (Tr. 29, 185–186.) Barrera responded to Supervisor Navarro telling him: “That was fine.” Id.

Later on September 30 before 9 a.m., Fernandez runs into Manager Olmeda who informs Fernandez that he has heard from Ybarra that the day before, Barrera refused to unload an afternoon delivery truck but Olmeda does not mention Ybarra’s threat to Barrera as part of the same incident. (Tr. 30.)

Still later on September 30 in the yard by the dock, Barrera also informs his co-worker Fernandez about Ybarra’s September 29 threat. (Tr. 30, 51–52, 64–65.) Specifically, Barrera tells Fernandez that: “Yesterday, Alfredo Ybarra threatened to kill me.” Id.

Fernandez responds to Barrera with surprise about hearing of a threat and tells Barrera that this is a serious incident and you have to report it to Supervisor Navarro. (Tr. 30, 52.)

Fernandez also tells Barrera that there would be some problems because Ybarra had talked to Manager Olmeda and Ybarra already told Olmeda that Barrera did not unload a truck. Id. Barrera next responded to this by telling Fernandez that this is not true and that he [Barrera] actually finished unloading the truck on September 29. Id.

Fernandez also recalls Barrera saying to him that he was going to report what Ybarra did because what Ybarra was doing by threatening Barrera just was not right. (Tr. 52.)

Next, Fernandez leaves Barrera and finds Supervisor Navarro. (Tr. 52-53, 65.) Fernandez also tells Supervisor Navarro about Supervisor Ybarra's September 29 threat to Barrera and Fernandez instructs Supervisor Navarro that as a supervisor, he had to do something about the threat. (Tr. 53.) Supervisor Navarro responds saying that he had already made the report and had let his supervisor Olmeda know about the September 29 incident. Id.

Fernandez goes on to mention to Supervisor Navarro that if Navarro didn't do anything, "we [the dockworkers as a group] would go speak to HR [human resources] because we [the dockworkers] were already tired that we would complain about supervisor [Ybarra] and he [Navarro] wouldn't do anything about it. (Tr. 53.)

Navarro responded to Fernandez and said that he had already done everything that he could do, that he couldn't do anything else. (Tr. 53.) The conversation ended with Fernandez repeating to Supervisor Navarro that as a supervisor, Navarro had to do something about Supervisor Ybarra's harassing behavior. (Tr. 53-54.)

Supervisor Navarro did not recall that Fernandez spoke to him on September 30 about Ybarra's September 29 threat to Barrera and I reject this as untrue as Supervisor Navarro communicated the dockworkers' complaint about Ybarra's continuing harassing behavior against them to Manager Olmeda and Ybarra later on September 30. (Tr. 157, 185-187.)

After leaving his conversation with Navarro, Fernandez returned to the dock and found 4 of his co-workers who he informed about what had happened to Barrera on September 29, that Supervisor Ybarra had threatened to kill Barrera, and the group responded saying that this conduct by Ybarra was not right. (Tr. 53-54, 65.) Jose Portillo, one of dockworkers who worked with Fernandez and Barrera, commented that the dockworkers were really sick and tired that Supervisor Ybarra was always harassing them and that their Supervisor Navarro didn't do anything to change the harassing conduct. (Tr. 54.)

Julio Martinez, another fellow dockworker, said that when Ybarra came around the dock and asked the dockworkers to do something he would act like he owned Respondent and assumed that each dockworker had to do whatever he ordered. (Tr. 54-55.) The five dockworkers group agreed that if Supervisor Navarro didn't do anything about Supervisor Ybarra's harassment, the group would go to the human resources department to report Ybarra because one person would be afraid to go alone to HR and report such conduct and they felt safer to do so as a group. (Tr. 55.)

Later that morning, Supervisor Navarro instructed Fernandez to gather his fellow dockworkers because there was going to be a dock safety meeting. At approximately 9:30 - 10:30 a.m. on September 30, Supervisor Navarro leads a monthly safety meeting with his group of 7-10 dockworkers at the dock. (Tr. 31, 55-56, 65.) Barrera identifies most of the dockworkers present at the meeting including Supervisor Navarro. Id. The meeting lasted approximately 30 minutes. (Tr. 31-32, 55-56.) This type of safety meeting usually occurred during the last week of the month throughout Barrera's entire 11 years of employment at Respondent. Id.

As usual, at the end of this meeting on September 30, Navarro asks his dockworkers whether any of the dockworkers had any questions for the group? (Tr. 32.) In response to this,

Barrera raised his hand and asked: “Did you talk to Alfredo Ybarra, did you talk about the threat that he made to me?” Id.

5 Supervisor Navarro responded to Barrera at the end of the group safety meeting saying that “he [Navarro] already spoke with him [Ybarra].” (Tr. 32.) Barrera also told his coworkers that Ybarra had threatened him on September 29. Id. In addition, Barrera’s co-workers, including  
10 Fernandez, Julio Martinez, and several others, responded saying that if Navarro did not do anything about Ybarra’s threat, “then we’re going to go talk to Anthony [Olmeda] or with human resources because, as supervisor you [Navarro] are supposed to do something, so we’re going to talk with Anthony [Manager Olmeda] because [being threatened by Ybarra] that’s not right.” (Tr. 32–34, 54–56, 66.) Fernandez also recommended that Barrera report Ybarra’s threat to HR first before going to the police to see what HR could do first. (Tr. 66.)

15 Also on September 30 in Supervisor Navarro’s presence, Jose Portillo spoke up and Barrera’s coworkers appeared angry at Supervisor Ybarra because he was going to them a lot and asking them to do things even though Ybarra was not their immediate supervisor like  
20 Navarro and Ybarra was from another department separate from the dock. (Tr. 34–35, 56.) Portillo added that we’re “really tired that Alfredo [Ybarra] was always harassing us and he was always after us and that if he [Supervisor Navarro] didn’t do anything about it that we [the dockworkers] would go to talk about it at HR [human resources].” (Tr. 56.) In addition, Barrera and his fellow dockworkers believed that Ybarra would harass Barrera and his co-workers on the  
25 dock to do work for Ybarra and the Wares Department when Supervisor Navarro was the only supervisor with authority to give direct orders to the dockworkers. (Tr. 34–35, 56–57.)

At this point of the September 30 safety meeting, Supervisor Navarro responded telling the dockworkers that he had already done what he had to do in response to their harassment  
30 complaints against Ybarra, he had already made his report and that he couldn’t do anything more. (Tr. 56–57.) The dockworkers’ September 30 complaints of Ybarra’s continuing harassment of them including the most recent September 29 threat by Ybarra against Barrera are also known in this case and used interchangeably as the dockworkers’ harassment complaints.

Supervisor Navarro then told the dockworkers that when any supervisor gives you orders, you have to follow them and if you don’t you may be fired. (Tr. 35, 57–58.) Fernandez  
35 responded to this by telling Supervisor Navarro in front of the group: “Carlos [Supervisor Navarro], you are our supervisor, we follow your orders.” (Tr. 57.) Barrera and his coworkers also responded to Supervisor Navarro saying: “but we are focused on doing our jobs.” (Tr. 35.)

35 Fernandez next reminded Supervisor Navarro why he did not want to follow orders from other supervisors because, as referred to above, Fernandez and other dockworkers would receive conflicting assignments from both Navarro and other supervisors and these assignments were confusing and to avoid confusion Supervisor Navarro had to come in and say which assignments were to be completed. (Tr. 58.) Supervisor Navarro did not deny attending the safety meeting with his dockworkers on September 30.

40 Supervisor Navarro soon thereafter reports Ybarra’s reported harassment of dockworkers including the September 29 threat to Manager Olmeda and Supervisor Ybarra, at a supervisors’ meeting on September 30. (Tr. 157, 185–186.) Ybarra denied threatening Barrera on September 29 saying “he didn’t do it” and Ybarra laughed it off and did not take it seriously, and Navarro

says that Ybarra told him that if he really believes that Ybarra threatened Barrera, Navarro should go to Human Resources with this story. (Tr. 125, 137, 185–186.) Supervisor Navarro later told Supervisor Ybarra to “go to HR and find out, because you need to find out what’s going on, because he’s [Barrera is] going to go to HR.” (Tr. 186.)

5           Navarro then does not recall whether he told Supervisor Ybarra to go to HR. (Tr. 186.) Supervisor Navarro then follows this line of responses saying that he thinks he might have referred Ybarra to HR on September 30 “because, you know . . . because I would tell my people [the dockworkers], if you have been threatened or not treated right, you can go to HR, you know.” Id. I find that on September 30 Navarro instructed Ybarra to report to Respondent’s  
10 human resources department regarding Ybarra’s September 29 threat incident.

          Later in the day on September 30, Fernandez met with Supervisor Navarro in the office where Fernandez helped Navarro input the information into the computer for the trucks unloaded that day and Fernandez repeated and emphasized to Supervisor Navarro that as a supervisor, Navarro had to do something about Supervisor Ybarra’s harassing behavior and if he did not, the  
15 dockworkers would go to the HR department. (Tr. 59, 66.) Fernandez was concerned about Barrera’s safety. Ybarra’s threat to Barrera was something serious, something that shouldn’t be done. (Tr. 66.)

          Supervisor Navarro responded again to Fernandez saying that he already made his written report about Ybarra’s September 29 threat and that Navarro could not do anything else, it was  
20 somebody else’s job to rectify and it was in their hands. (Tr. 59, 187.) Navarro admits, however, that he never spoke to Director Reynolds about Ybarra’s September 29 threat to Barrera. (Tr. 187.)

          Manager Olmeda recalled meeting with Barrera on September 30 and asking him in Spanish why he was saying that Ybarra was going to kill him. (Tr. 157–158.) Barrera responded  
25 to Olmeda saying that he thought Ybarra actually threatened him by saying “kill you” and Manager Olmeda acknowledges that Barrera doesn’t understand or speak English very well. (Tr. 158.) Next, Olmeda asks Barrera why Ybarra would threaten Barrera and Barrera responds “I don’t know.” Id. Barrera then repeats that: “I’m going to kill you” is what Barrera thought he heard Ybarra say. Id.

30           Manager Olmeda next tells Barrera: “Well according to Alfredo [Ybarra], I talked to him, and he did not say that.” (Tr. 158.) Barrera responds to Olmeda at this point unchanged in his understanding of what he heard saying: “Okay, but he [Ybarra] said that [I’m going to kill you].” Id.<sup>7</sup>

          Later on September 30, Supervisor Navarro or Manager Olmeda tell Ybarra that Barrera  
35 had just told a group of employees that Ybarra had threatened to kill Barrera on September 29 and they instruct Ybarra to report this to Reynolds and Ybarra finally took this seriously and goes to HR to report it to Director Reynolds. (Tr. 125, 137, 157–158, 161.)

---

<sup>7</sup> Manager Olmeda opined that he thought the September 29 alleged threat incident between Barrera and Ybarra “was a miscommunication because there was always miscommunication with English and Spanish, and Alfredo Ybarra doesn’t speak any Spanish.” (Tr. 158–159.)

Prior to reporting this dockworkers' harassment complaints including Barrera's September 29 threat incident to Director Reynolds on September 30, Ybarra admits that he did not make any complaints about Barrera or Fernandez to Director Reynolds at any time. (Tr. 136, 138.) Ybarra does not recall telling Olmeda that Barrera was insubordinate or refused to unload a pallet for him. (Tr. 136.) Ybarra also did not recall specific dates when Fernandez would refuse to help the wares department but Ybarra thinks it occurred once in 2015. (Tr. 140.)

Later on September 30, Ybarra goes to meet with Director Reynolds and he tells her that Barrera was telling dockworkers and Supervisor Navarro earlier that day that Ybarra had threatened him on September 29 and because "it was serious," Ybarra was reporting it to Director Reynolds. (Tr. 137, 207.) I further find that either through Navarro's written report to Reynolds or through Olmeda and/or Ybarra conversations with Director Reynolds on September 30, she was also informed about the dockworkers' harassment complaints about Ybarra on September 30, 2015. (Tr. 32, 56-57, 125, 137, 157-158, 161.)

In response to hearing the report, Director Reynolds instructed Ybarra to write a statement about the September 29 incident. (Tr. 125-126, 137; GC Exh. 5 at 1; GC Exh. 8.) This was Ybarra's only meeting with Director Reynolds about Barrera's death threat accusation of Ybarra. (Tr. 128.) At no time during his September 30 meeting with Director Reynolds did Ybarra speak to her about insubordination of Barrera or Fernandez nor did Director Reynolds ever give Ybarra the indication that she would terminate Barrera or Fernandez. (Tr. 129-130, 138.)

Ybarra sent Reynolds the statement via email on September 30. (Tr. 126-127; GC Exh. 5 at 1; GC Exh. 7.) In his emailed statement, however, Ybarra makes reference to Barrera's threat incident occurring the previous Wednesday on September 23 which I reject as the overwhelming evidence has the threat incident occurring on September 29—the day immediately before Barrera openly accused Ybarra of threatening him and the day before Ybarra went to Director Reynolds to report the incident and Barrera's disclosure of it to employees and supervisors. The email to Reynolds also provides that Barrera refused to unload a FedEx truck because his shift had ended and Respondent refused to pay Barrera overtime. (Tr. 127-128; GC Exh. 7.) Ybarra further admits, however, that Barrera actually unloaded the FedEx truck when it arrived at the end of his shift. (Tr. 128.)

Ybarra says as a supervisor he maintains a log as part of his job duties and the alleged threat incident was added to the log by Ybarra on September 30 when he first heard about the incident. (Tr. 126-127; GC Exh. 8.) Ybarra says that Respondent upper management has computer access to Ybarra's log of certain events. *Id.*

*G. Respondent's October 1 Decision to Terminate Barrera and Fernandez*

Fernandez was off work the next day on October 1. (Tr. 67.)

Reynolds called Ybarra into another meeting with her and Kai Dreschler and Frank Ortiz on Thursday, October 1 and during this meeting Ybarra was asked about his interactions with Barrera and Fernandez. (Tr. 128-129.) Ybarra does not recall being asked anything about Barrera's accusation that Ybarra had made a death threat at any time during this October 1 meeting. (Tr. 129.) At no time during this October 1 meeting between Director Reynolds,

Ybarra, Dreschler, and Ortiz did Director Reynolds give Ybarra the indication that she would terminate Barrera or Fernandez. (Tr. 130.) In addition, Ybarra denies that he ever spoke to Director Reynolds about insubordination by Barrera or Fernandez. (Tr. 138.)

5 Also on Thursday, October 1 at approximately 10:30—11 a.m., Reynolds telephones Director High who was in San Luis Obispo at the time and says to him: “We have an issue, I [Reynolds] need you to come back up [to Santa Cruz].” (Tr. 116–117, 120.) In response, Director High drove the 3.5–4 hours back to Santa Cruz from San Luis Obispo to meet Reynolds in the HR hallway at approximately 3–3:30 p.m. on October 1. (Tr. 117, 120.)

10 Reynolds admits that the same day that she decided to terminate Barrera and Fernandez, she met with Director High and Kai Drechsler<sup>8</sup> in the HR hallway. (Tr. 88.)<sup>9</sup> Director High credibly testified that he met alone with Reynolds on October 1, 2015 in the same HR hallway mentioned above but after he drove to Santa Cruz from San Luis Obispo, and that was the first time he heard that Reynolds had decided to terminate Barrera and Fernandez for insubordination. (Tr. 111–115, 197.) Director High agreed with Director Reynolds’ determination to terminate  
15 Barrera and Fernandez and signed the related paperwork. (Tr. 115; Jt. Exhs. 2 and 3.)

Ybarra was surprised when he learned that Barrera and Fernandez had been terminated by Director Reynolds as Ybarra thought they would only be disciplined but not terminated. (Tr. 130.)

20 Reynolds and Director High prepared the personnel action forms on October 1 to give to the finance department documenting her termination of Barrera and Fernandez. (Tr. 95, 119; Jt. Exhs. 2 and 3.)

#### *H. Respondent’s October 2, 2015 Termination of Charging Parties’ Barrera and Fernandez and Respondent’s Changing Explanations for the Two Discharges*

##### 1. The October 2, 2015 termination of Charging Party Barrera

25 On Friday, October 2, Director High, Darren, and Reynolds arrived at Respondent before 8 a.m. before the finance department was open for Reynolds to retrieve Barrera and Fernandez’

---

<sup>8</sup> Kai Dreschler did not testify at hearing to confirm that Reynolds told him on September 29 that she was terminating Barrera and Fernandez. I draw an adverse inference from this as “when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue.” *International Automated Machines*, 285 NLRB 1122, 1123 (1987) (internal citations omitted), *enfd.* 861 F.2d 720 (6th Cir. 1988). The Respondent offered no evidence to show that it sought to procure Dreschler’s presence as a witness, by subpoena if necessary, and I draw the appropriate adverse inferences. Thus, I infer that if Dreschler had been called, he would have further undermined the Respondent’s claim that Reynolds decided to terminate Barrera and Fernandez as early as September 29 and were discharged for a nondiscriminatory reason. In addition, Director High’s more reliable testimony was that he and Reynolds met alone in the HR hallway on October 1 and Kai Dreschler was not present. I further find that Dreschler was only involved with terminating the two employees accused of stealing merchandise and not the termination of Barrera or Fernandez.

<sup>9</sup> Although Reynolds thought this date was September 29, Director High convincingly recalled that it was actually October 1, 2015. (Tr. 116–117, 120.) Also, Director High did not recall talking about terminating Barrera or Fernandez earlier in the week before October 1 when he met with Reynolds and Dreschler, Respondent’s loss prevention person, about theft of Respondent’s merchandise and cutting of fences. (Tr. 121.)

final paychecks. (Tr. 92-93.) Director Reynolds commented that it was a “big” or “huge” deal for her to be letting go of four people at Respondent on October 2. (Tr. 92–93.) These four employees (two for stealing merchandise and Barrera and Fernandez for insubordination) were the very first employees Director Reynolds was terminating at Respondent. (Tr. 94.)

5 On October 2, Barrera goes to work and when he gets there, there was a lot of security, a lot more people than usual. (Tr. 35.)

Around 9 a.m., Barrera went to ask for help to load a truck and Manager Olmeda was at the dock. Id. Manager Olmeda told Barrera that Tom [Director High] was calling for Barrera. (Tr. 35–36.) Barrera only knew that “Tom” was new to Respondent and Barrera did not know  
10 who Director High was or his last name. (Tr. 36.)

Director High called Barrera over and told him that he just wanted to ask Barrera some questions. (Tr. 36.) Director High took Barrera over to an office and Director Reynolds was also there. Id.

Director High next told Barrera on October 2: “Sorry, we’re going to fire you.” (Tr. 36.)

15 Barrera responded: “I don’t understand English” so Director Reynolds called for an interpreter who said in Spanish to Barrera: “We’re very sorry, we’re going to fire you and these are you final paychecks.” (Tr. 36.) Reynolds says she was directly involved in the termination of Barrera and made the decision to terminate him. (Tr. 79.)

Director Reynolds also told Barrera that he can get unemployment. (Tr. 36.)

20 Barrera next responded pointing out that he had been working at Respondent for 11 years. Id. Barrera also remarked that he was going to sue Respondent “because Alfredo Ybarra threatened to kill me,” and Director Reynolds said in response to Barrera: “That’s fine.” (Tr. 36, 45–46.)

25 Directors Reynolds and High next asked for and collected Barrera’s photo id and a security guard walked Barrera to his car making Barrera feel like a criminal. (Tr. 37.) Barrera did not ask the 2 directors why he was being fired because he was so surprised and afraid. Id. Neither High nor Reynolds mentioned to Barrera that he was being terminated for not wearing a seatbelt or for any complaint Manager Barton had with Barrera. (Tr. 47.)

30 Prior to this October 2 termination, Barrera had never received any written discipline from Respondent in his 11 years of employment for any behavior issue including insubordination or for a bad attitude or for not cooperating at work or for not following orders from supervisors. (Tr. 37, 152–154, 190.) In addition, no supervisor or human resources person at Respondent spoke to Barrera about being insubordinate, having a bad attitude, not cooperating, or not following orders from supervisors prior to his October 2 termination other than Manager Olmeda  
35 who recalled once or twice over 10 years verbally warning Barrera about not completing a task or having a bad attitude. Also, no supervisor or HR person at Respondent asked Barrera about Barrera refusing to unload a truck on September 29. (Tr. 38.)



2. The October 2, 2015 termination of Charging Party Fernandez

Also on October 2, Fernandez received a telephone call from Director Reynolds around 8:30 a.m. (Tr. 59.) Reynolds asked Fernandez to come over to meet her in HR for 5-10 minutes. (Tr. 60.) Fernandez responded: “yes, that was fine if it was for hours of overtime, that’s fine.” Id. Reynolds next asked Fernandez how long it would take him to get to her office and he said around 30 minutes and Reynolds responded asking him to see her when he got to Respondent. Id.

Fernandez arrived at the office and went to the break room for coffee because he did not know what was happening. (Tr. 60.) Fernandez drank his coffee and went down and asked for Reynolds and told the receptionist he was there to see Reynolds who was then called and came out. Id.

Reynolds next invites Fernandez into her office to sit down and she also asks whether he needs an interpreter to communicate what she was going to say. (Tr. 60.) Fernandez responded that he would like an interpreter. Id.

Director High was also present in Reynolds’ office with her, the interpreter and Fernandez. (Tr. 62.) Fernandez sat down and Reynolds went to get his paychecks and she said: “Here are your paychecks, we’re going to let you go.” (Tr. 60-62.)

Fernandez responded asking Reynolds to tell him why Respondent was letting him go. (Tr. 61.)

Reynolds said that just the same way Respondent hired people, they could also let them go. (Tr. 61.) Reynolds further tells Fernandez that he is an “at-will” employee and as such, Respondent could terminate him at any time. (Tr. 204-205.) “But Jesus [Fernandez], you can get unemployment because the company has nothing against you. If you call unemployment you can get it because the company doesn’t have anything against you.” Id.

Fernandez responded by asking” “If the company has nothing against me, then why are you firing me?” (Tr. 61.)

Reynolds again responds that the same way the Company hired employees, they could also let them go. (Tr. 61-62.) Reynolds says she was directly involved in the termination of Fernandez and made the decision to terminate him. (Tr. 79, 86-87.)

Fernandez once again asks why he is being fired after working at Respondent for 11 years - this alone should give him the right to know why he was being let go? (Tr. 62.)

Prior to this October 2 termination, Fernandez had never received any written discipline from Respondent in his 11 years of employment for insubordination or for a bad attitude or for not cooperating at work or for not following orders from supervisors. (Tr. 62, 152-155, 190.) In addition, no supervisor or human resources person at Respondent spoke to Fernandez about being insubordinate, having a bad attitude, not cooperating, or not following orders from supervisors prior to his October 2 termination other than Manager Olmeda who recalled once or twice over 10 years verbally warning Fernandez about not completing a task or having a bad attitude.

Two other employees who were stealing merchandise from Respondent were also terminated at the same time as Barrera and Fernandez on October 2, 2105. Director Reynolds had her assistant interview employees who reported stolen merchandise at Respondent and references about complaints by other employees and supervisors including Rocha, Ybarra, and Barton about the two employees who stole merchandise are contained in Reynolds' log in September 2015. (Tr. 103-105; GC Exh. 5; GC Exh. 9.) There was no similar investigation of any complaints about Barrera or Fernandez prior to September 30 and their reporting Ybarra's continuing harassment of dockworkers in 2015.

## Analysis

### I. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622.

Barrera and Fernandez testified convincingly by remaining consistent throughout their testimony which raise no doubts in my mind as to the events that occurred particularly on September 29 and 30, 2015, and once new management and Director Reynolds began working at Respondent. In addition, neither Barrera's nor Fernandez' testimony waived on cross-examination.

I also find Director High to be a believable witness who appeared very professional and testified consistently without hesitation and took his testimony seriously. Manager Olmeda also testified in a straight-forward manner without pause throughout most of his testimony.

Director Reynolds, on the other hand, was the least credible witness at hearing as her testimony contradicted not only her sworn affidavit but also conflicted with her own testimony and other more reliable evidence like her own personal log which materially starts on September 30, 2015, with Ybarra's reporting to her of his September 29 threat to Barrera. Also, Reynolds says that she keeps a personal log when supervisors and managers complain about employees at Respondent and that she interviews all parties to a complaint as part of her investigation methodology and then comes up with a determination. Contrary to her own policy, Director Reynolds did not interview Employees Barrera or Fernandez about the dockworkers' harassment complaint against Ybarra including Ybarra's September 29 threat to Barrera despite the fact that they are critical witnesses to the events on September 29 and 30.

Further undermining her credibility, Reynolds' personal log does not reflect that she ever interviewed Barrera or Fernandez or their immediate supervisors, Manager Olmeda or Supervisor Navarro about bad conduct complaints but, instead, relied almost exclusively on Ybarra and Barton's September 30 and October complaints of Barrera and Fernandez. In addition, Ybarra denies that he ever spoke to Reynolds about insubordination by Barrera or

Fernandez. (Tr. 136, 138.) As a result, I reject Reynolds' log (GC Exh. 5) as unreliable and made up by her subsequent to Barrera's and Fernandez' protected concerted disclosures of Ybarra's continuing harassment as nothing but an improper attempt by Reynolds to justify her termination of Barrera and Fernandez. Even if Reynolds terminated Barrera and Fernandez based on  
 5 complaints made by Barton and Ybarra, she violated her own investigation methodology by not interviewing Supervisor Navarro, Barrera, or Fernandez to get their sides of the story in response to Barton, Prieto/Sanchez<sup>10</sup>, Rocha's hearsay, and Ybarra. (Tr. 214-215.) Reynolds testified that she puts the results of her investigations on her log. There are no references in her log that she interviewed Navarro, Barrera or Fernandez. (GC Exh. 5.)

10 I reject as false Reynolds' statement that she decided to terminate Barrera and Fernandez on September 29. (Tr. 88.) Reynolds admits that the same day that she decided to terminate Barrera and Fernandez, she met with Director High and Kai Drechsler in the Human Resources hallway. Id.<sup>11</sup> Director High credibly testified that he met with Reynolds on October 1, 2015, and that was the first time he heard that Reynolds had decided to terminate Barrera and Fernandez.  
 15 (Tr. 111-115, 197.) Consequently, I reject Reynolds conflicting testimony that she spoke to Director High again on the telephone on September 30 and told him that she was terminating employees and that Director High needed to come to Santa Cruz on October 2 when she would announce and do the actual terminations. (Tr. 88-92.) I also reject as untrue Reynolds' testimony that she spoke to Director High in the HR hallway on September 29 about terminating Barrera and Fernandez. (Tr. 88-89, 217.) I find that this conversation between Reynolds and High in the  
 20 HR hallway took place on October 1, 2015 as Director High admitted. (Tr. 111-115.) Consequently, the two conversations that Reynolds admits having with High about terminating Barrera and Fernandez occurred on October 1 and October 2, 2015. (Tr. 113-115.)

25 Reynolds makes a September 28 entry in her log (GC Exh. 5 at 1) where she notes that Ybarra came to her office to complain about Barrera and Fernandez but Ybarra denies ever complaining to Reynolds about anything but Barrera's complaint that Ybarra threatened him on September 29 that Ybarra reported to Reynolds on September 30. (Tr. 136, 138.) Consequently I reject Reynolds log entries as unreliable, made up and incorrectly dated wholly to fabricate the reasons Barrera and Fernandez were discharged on October 2, 2015. Similarly, I further find that  
 30 Reynolds' entries for complaints from Ybarra, Prieto/Sanchez, Barton and Rocha dated September 30, October 1 and 2, 2015, and October 5, 2016, are also rejected and made up after-the-fact that Barrera and Fernandez had earlier been terminated by Reynolds for Barrera and Fernandez communicating Ybarra's September 29 threat to Barrera the very next morning on September 30 to other employees, supervisors, and managers at Respondent.

35 Reynolds also testified that Barton, Ybarra, Rocha, Safari, and Prieto/Sanchez all prepared handwritten complaints delivered to Reynolds but Respondent did not produce any of

---

<sup>10</sup> Reynolds admits that Cesar Prieto is also known as Angel Sanchez so I'll refer to him as Prieto/Sanchez going forward. (Tr. 199.) Reynolds says that Prieto/Sanchez worked in Rocha's ready-to-wear department and came into HR to complain about wanting more pay. Id.

<sup>11</sup> Although Reynolds thought this date was September 29, Director High convincingly recalled that it was actually October 1, 2015. (Tr. 111-115, 197.) I find that Reynolds met with Dreschler and High before October 1 when the the topic of two employees stealing merchandise from Respondent was discussed. High testified that the meeting he had with Dreschler and Reynolds shortly before Barrera's and Fernandez' terminations had "nothing to do with terminations" and that Barrera 's and Fernandez' names did not come up at all. (Tr. 121.)

these alleged handwritten complaints in response to the General Counsel's subpoena request for these documents. (See Tr. 8-11; GC Exh. 2.) I further find that there are no handwritten complaints and they never existed. If they existed and because they were not produced, I further find there is an adverse inference to be made that these complaints were created after Barrera and Fernandez were terminated in Respondent's improper attempt to create documented bad work behavior by Barrera and Fernandez. (Tr. 84-85.) Reynolds was investigating theft allegations in September 2015 and none of the theft allegations involved Barrera or Fernandez. (See GC Exh. 5 at 1.)

I also reject Reynolds' testimony that Barton came to complain to her about Barrera and Fernandez on several occasions in early September 2015. (Tr. 79-80.) There are no log entries to verify these alleged visits. (GC Exh. 5.) All complaints about Barrera and Fernandez do not correctly begin until Ybarra complains on September 30 in Reynolds' log *after* Barrera's and Fernandez' protected concerted activities reporting Ybarra's September 29 threat to other employees and supervisors. As a result, I find that the log entries beginning with Ybarra's description of the September 29 event when he asked Barrera to unload a truck after hours without overtime which is wrongly dated as September 28 in the log should be September 30 when Ybarra actually met with Reynolds and reported the September 29 event and Barrera's interpretation of the event including Ybarra's threat to him. (Tr. 103-105; GC Exh. 5.) Director Reynolds' log entries from September 28 through October 5, 2016 are made up, self-serving to Reynolds and Respondent, and I reject this testimony as made up and false.

I also reject for the same reasons that Reynolds met with Barton, Rocha, and Prieto/Sanchez, all in the "middle of September" 2015 to listen to complaints about Fernandez and Barrera as these alleged complaints are not contained in Reynolds' log prior to September 30 or in October. (Tr. 79-81, 85-87, 102-105; GC Exh. 5.) Only Reynolds' meeting with Ybarra on September 30 is believable and logged by Reynolds to reference Ybarra's report to Reynolds that Barrera was telling other employees and supervisors about Ybarra's threat to kill or harass Barrera on September 29. (Tr. 81, 103-105; GC Exh. 5.) Ybarra did not report anything else to Reynolds on September 30 other than Barrera's claim that Ybarra had threatened him and that Barrera and Fernandez disclosed Ybarra's threat to other employees and Respondent's supervisors and management. (Tr. 136, 138.)

In addition, Barton admitted that she spoke to Reynolds at the end of September which is consistent to a September 30 entry in Reynolds' log and contradicts Reynolds saying that she met with Barton at the beginning or mid-September to hear Barton's complaints of Barrera and Fernandez and decided to terminate Barrera and Fernandez on September 29 based on complaints from Barton. (Tr. 173-174.) I further find that Reynolds' log was created by her *after* the decision to terminate Barrera and Fernandez was made on October 1 and that the Reynolds' log contains misdated entries or made up entries to cover up after-the-fact that Barrera and Fernandez were terminated due to Barrera's, Fernandez', and the dockworkers' reporting to Navarro, who later reported to Ybarra, Olmeda, and Reynolds, Ybarra's harassing behavior against the dockworkers including his September 29 threat to Barrera. Later on September 30, Supervisor Navarro or Manager Olmeda instruct Ybarra that Barrera had just told a group of employees that Ybarra had threatened to kill Barrera on September 29 and the dockworkers, in Navarro's presence, say they will go to HR if Navarro doesn't do something to stop Ybarra's continuing harassing behavior against them. Ybarra finally takes this harassment complaint

seriously and went to HR to report it to Reynolds. (Tr. 125, 137, 157–158.) Reynolds’ notes of this September 30 conversation with Ybarra don’t make her log until September 30 (GC Exh. 5 at 1) so I find that it is not true that Ybarra’s threat incident occurred on September 23 as Ybarra and Reynolds say.

5 Reynolds also tried to justify terminating Barrera and Fernandez when she said she fired Barrera and Fernandez on October 2 because so many employees were complaining about them and to avoid losing other employees, she fired Barrera and Fernandez. In other words, according to Reynolds, because Barrera and Fernandez were directly responsible for many employees  
10 leaving Respondent in September 2015 and creating high employee turnover, Reynolds terminated Barrera and Fernandez. (Tr. 201.) This unsupported, unconfirmed, and undocumented excuse for terminating Barrera and Fernandez is rejected as being false.

I further reject Reynolds’ testimony where Reynolds puts forth, without any confirming evidence or supporting detail, that Respondent’s risk management department believed that Barrera and Fernandez belonged to local street gangs and because of this she deliberately left out  
15 the insubordination details to Barrera and Fernandez when they were fired on October 2 for her own fear of gang retaliation.<sup>12</sup> I further reject as untrue Reynolds’ testimony that she chose not to interview Supervisor Navarro or Manager Olmeda and allow them to be part of the termination process that one would normally expect of immediate supervisors because of this same undocumented and unsupported fear of gang retaliation by Barrera and Fernandez.<sup>13</sup> (Tr. 203,  
20 205, 216–217; GC Exh. 5 at 2 [October 5, 2016 entry].) Reynolds herself admits that there was not a single substantiated allegation of gang affiliation against Barrera or Fernandez. (Tr. 216.) Finally, Reynolds’ discredited testimony and Ybarra’s own discredited recordkeeping and testimony are further evidence that key portions of Reynolds’ and Ybarra’s testimony must be rejected as untrue. (i.e. Tr. 197–203, 205, 207, 209, 211–213, 215–218.)

25 Ybarra’s testimony was not completely truthful. I reject the dates referenced in Ybarra’s September 30 email to Reynolds other than the date he sent the email. I further reject his testimony that the FedEx delivery event took place on September 23 (Tr. 135–137; GC Exh. 7) because Barrera, Fernandez, Navarro, and to some extent Director High and Reynolds, testified that September 30, 2015, a Wednesday, is the day and date that Barrera and other dockworkers  
30 disclosed Ybarra’s harassment of dockworkers including Ybarra’s September 29 threat to Supervisor Navarro who communicated this to Olmeda and Ybarra and eventually Director Reynolds all on Wednesday, September 30, the very next day after Ybarra’s September 29 threat to Barrera. Also, it is undisputed that Reynolds and Ybarra first and only meeting to discuss the threat occurred on Wednesday, September 30. Ybarra in GC Exh. 7 falsely states: “On Friday at  
35 the Supervisor’s me[e]ting I learned from Carlos [Navarro] that Martin [Barrera] said I [Ybarra] threatened to kill him.” I find that the overwhelming evidence in this case shows that this supervisor’s meeting Ybarra references took place instead on Wednesday morning, September 30, consistent with the factual chronology above. I further find that General Counsel’s Exhibit 7

---

<sup>12</sup> As stated above, Kai Dreschler from Respondent’s risk management department did not testify at hearing to possibly corroborate Reynolds’ unsupported statements. I make the same adverse inference here with Dreschler not testifying as I did above in fn. 8 that his testimony would not support Reynold’s testimony.

<sup>13</sup> Reynolds admits that she never investigated or looked into substantiating any rumors that Barrera or Fernandez belonged to a dangerous retaliatory gang. (Tr. 216.) Barrera and Fernandez did not flash gang signs, act or appear as gangsters at hearing.

also misstates that the alleged threat incident involving Barrera and Ybarra occurred Wednesday, September 23, as stated by Ybarra in his email to Reynolds when, in fact, the alleged threat occurred on Tuesday, September 29 and Barrera reported it *immediately* the very next morning on September 30.<sup>14</sup> Because the September 30 email from Ybarra to Reynolds was generated after they met and discussed Ybarra's alleged threat to Barrera on September 29, I further find that the misstatements reference above were intentionally made by Respondent through Reynolds and Ybarra.

Barton's testimony about her complaints about Barrera and Fernandez is inconsistent with their performance evaluations and the total lack of discipline from their supervisors had her complaints actually been true and had required actual discipline against Barrera and Fernandez. Her testimony at hearing approximately one year after their terminations, like Reynolds' log, is made up and rejected as false where Barton testifies that Reynolds finally did something about Barrera's and Fernandez' bad work behavior and fired them. (Tr. 172.) Barton goes on to add further unsupported new reasons for their terminations saying that: "Morale was down [because of Barrera and Fernandez]." (Tr. 172.) Also, Barton "guessed" that she may have told Director Reynolds in about late September 2015, but admitted that she "might be way off" and further testified that she "can't remember anything." (Tr. 174, 180.)

Supervisor Navarro was very vague and evasive for most of his testimony and he could not estimate with specific time periods for much of his testimony about his two employees, Barrera and Fernandez, and he did not explain being interviewed by Reynolds as part of her investigation into complaints against Barrera and Fernandez on or after September 30. Navarro went so far as to flippantly say: "I don't know what I did yesterday, you know." (Tr. 190.) In addition, while Supervisor Navarro opined that Barrera and Fernandez did better work before new Respondent management arrived in 2014 and 2015, the fact remains that Barrera and Fernandez received consistently unblemished personnel evaluations throughout their time at Respondent including on June 12, 2015 for Fernandez and January 4, 2015 for Barrera. (Tr. 182; GC Exhs. 3 and 4.) Later, Supervisor Navarro adds that he recalls receiving complaints about Barrera and Fernandez, but he doesn't know when. (Tr. 189-190.)

Supervisor Navarro reports Ybarra's September 29 threat to Supervisor Ybarra, at a supervisors' meeting on September 30. (Tr. 185-186.) Ybarra denied threatening Barrera on September 29 saying "he didn't do it", and Navarro says that Ybarra told Supervisor Navarro that if he really believes that Ybarra threatened Barrera, Navarro should go to Human Resources with this story. *Id.* Supervisor Navarro later recalled that he told Supervisor Ybarra to "go to HR and find out, because you need to find out what's going on, because he's [Barrera is] going to go to HR." (Tr. 186.) Navarro then does not recall whether he told Supervisor Ybarra to go to HR. *Id.* Supervisor Navarro then follows this line of responses saying that he thinks he might have referred Ybarra to HR on September 30 "because, you know . . . because I would tell my people [the dockworkers], if you have been threatened or not treated right, you can go to HR, you know." *Id.*

---

<sup>14</sup> In his email to Director Reynolds dated September 30 at 1 p.m., Ybarra specifically says: "Carlos [Navarro] the dock supervisor told me [Ybarra] that Martin [Barrera] repeated the accusation in a meeting he just held." (GC Exh. 7.)

Supervisor Navarro did not recall attending the safety meeting with his dockworkers on September 30 where Barrera talked about being threatened by Supervisor Ybarra the day before. (Tr. 187.) This is completely contradicted by Barrera's and Fernandez' persuasive testimony to the contrary and Ybarra's threat to Barrera was discussed with Supervisor Navarro amongst all the dockworkers on September 30.

## II. The Unlawful Discharge of the Charging Parties

### A. The Charging Parties' Protected Concerted Activities and Respondent's Knowledge of Them

Complaint paragraphs 5-7 allege that about September 30, 2015, during a safety meeting, Respondent's employees Barrera and Fernandez concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees by protesting the conduct of wares department Supervisor Ybarra, including that Supervisor Ybarra had threatened Barrera on September 29, and by protesting other terms and conditions of employment and on October 2, 2015, Respondent discharged employees Barrera and Fernandez because Barrera and Fernandez engaged in the protected concerted activities on September 30 described above, and to discourage employees from engaging in these or other concerted activities. The complaint further alleges that by the conduct described above, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act and that the unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As further explained below, I further find that based on the entire record, Barrera and Fernandez were terminated by Director Reynolds and Respondent on October 2 because they communicated to Supervisor Navarro the dockworkers' complaints of Ybarra's continuing harassment of them at work including Ybarra's September 29 threat to Barrera.

Inasmuch as this case turns on Respondent's motive, a *Wright Line* analysis is appropriate and I find that the Respondent violated Section 8(a)(1) of the Act when it terminated Barrera and Fernandez on October 2, 2015. In determining whether an employee's discharge is unlawful, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* on other grounds 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Hawaiian Dredging Construction Co.*, 362 NLRB No. 10, slip op. at 3 (2015).

Under *Wright Line*, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected conduct was a motivating factor in an employer's adverse action. The General Counsel satisfies her initial burden by showing (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) the employer's animus. If the General Counsel meets her initial burden, the burden shifts to the employer to prove that it would have taken the adverse action even absent the employee's protected activity. See, e.g., *Mesker Door*, 357 NLRB 591, 592 (2011); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004).

Section 7 of the Act gives employees the right to engage in “concerted activities” for “mutual aid and protection.” The Board will find conduct to be concerted when it is “engaged in with or on the authority of other employees,” or when an employee seeks “to initiate or to induce or to prepare for group action” or to bring group complaints to an employer’s attention.

5 *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3 (2014) (quoting *Meyers Industries, Inc. (Meyers II)*, 281 NLRB 882, 885, 887 (1986), enfd. sub nom., *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988)).

When an employee raises a group concern at a meeting in the presence of other employees, the Board has found that such activity amounted to concerted activity because the public airing of such concerns in front of other employees, on its own, amounts to a call to group action. See, e.g., *Winston-Salem Journal*, 341 NLRB 124, 125 (2004), enf. denied 394 F.3d 207 (4th Cir. 2005); *Whittaker Corp.*, 289 NLRB 933, 934 (1988).

10

Here, the overwhelming evidence shows that on September 30, Barrera, Fernandez and other dockworkers raised a group concern at a safety meeting with Supervisor Navarro alerting him of Supervisor Ybarra’s continuing harassment of dockworkers at Respondent including the latest incident involving Ybarra’s September 29 threat to Barrera. I find that this activity is a concerted activity because this public airing of such concerns amongst the group of dockworkers, on its own, amounts to a call for group action and in this case the dockworkers gave Supervisor Navarro an ultimatum – either you report Ybarra’s continuing harassment activities to Respondent’s Manager Olmeda or Director Reynolds or the dockworkers as a group would report it. Supervisor Navarro told them in response, do not worry about it, I will report it to management and he did later on September 30.

15

20

Even when a concern an employee is raising is a personal, individual concern, the Board will find the employee’s raising that concern to be concerted if the employee solicits the support of other employees in raising it. See *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12 at slip op. at 5-7 (employee engaged in protected, concerted activity by approaching other employees to solicit their support as witnesses to an incident of sexual harassment toward her). Thus, even Barrera giving notice at the September 30 safety meeting to his fellow dockworkers and Supervisor Navarro of Ybarra’s September 29 threat to him at work is a concerted activity as Barrera has solicited the support of his co-workers at the safety meeting.

25

30

The standard for assessing whether an employee’s activity amounts to concerted activity for mutual aid and protection is an objective one, as “[e]mployees may act in a concerted fashion for a variety of reasons—some altruistic, some selfish...” *Id.* (quoting *Circle K Corp.*, 305 NLRB 932, 933 (1991), enfd. mem., 989 F.2d 498 (6th Cir. 1993)). Thus, it is not motive that matters, but whether the “purpose of the conduct relate[s] to collective bargaining, working conditions and hours, or other matters of ‘mutual protection’ of employees.” *Id.* (quoting *Dreis & Krump Mfg. Co. v. NLRB*, 544 F.2d 320, 328 fn. 10 (7th Cir. 1976)). Further, it is immaterial whether the concerns being raised have merit. See, e.g., *Vought Corp.*, 273 NLRB 1290, 1294, 1294 fn. 28 (1984) (employee who allegedly harassed and intimidated a group of black coworkers by passing on rumor that the employer discriminated against black employees in promotions was engaged in protected activity; “[i]t [was] immaterial whether the rumor was accurate”); *Spinoza, Inc.*, 199 NLRB 525, 525 (1972), enfd. 478 F.2d 1401 (5th Cir. 1973). It is also immaterial whether other employees support or agree with an employee’s concerns.

35

40



*Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964); *Circle K Corp.*, 305 NLRB at 933.

An application of Board precedent to the record evidence firmly establishes that Barrera and Fernandez and other dockworkers engaged in protected, concerted activities on September 30. They discussed concerns about Ybarra's continuing harassment of them at the docks including Ybarra's September 29 threat to kill Barrera and Fernandez told Supervisor Navarro that the dockworkers as a group "were already tired that we would complain about supervisors [Ybarra] and he [Navarro] wouldn't do anything about it." (Tr. 53.) Moreover, dockworker Jose Portillo spoke up at the September 30 safety meeting and other dockworkers appeared angry at Supervisor Ybarra because Ybarra was going to them a lot and asking them to do things even though he was not their immediate supervisor like Navarro and Ybarra was from another department separate from the dock. (Tr. 34-35, 56.) Portillo added that we're "really tired that Alfredo [Ybarra] was always harassing us and he was always after us and that if he [Supervisor Navarro] didn't do anything about it that we [the dockworkers] would go to talk about it at HR [human resources]." (Tr. 56.) Also, Julio Martinez, another fellow dockworker, said that when Ybarra came around the dock and asked the dockworkers to do something he would act like he owned Respondent and assumed that each dockworker had to do whatever he ordered. (Tr. 54-55.) The five dockworkers group agreed that if Supervisor Navarro didn't do anything about Supervisor Ybarra's harassment, the group would go to the human resources department to report Ybarra because one person would be afraid to go alone to HR and report such conduct and they felt safer to do so as a group. (Tr. 55.)

In addition, Barrera and his fellow dockworkers believed that Ybarra would harass Barrera and his coworkers on the dock to do work for Ybarra and the wares department when Supervisor Navarro was the only supervisor with authority to give direct orders to the dockworkers. (Tr. 34-35, 56-57.) Finally, Fernandez also expressed to Navarro on September 30 that he was also concerned about Barrera's safety and continued interactions with Ybarra. I find that these discussions on September 30 are an "inherently concerted" activity as they involved the terms and conditions of the dockworkers' employment in light of Ybarra's continued harassing and disrespectful conduct directed at Barrera, Fernandez, and other dockworkers and usurping Supervisor Navarro's and Manager Olmeda's authorities to assign work duties in an orderly and non-harassing way.

Further, the protected, concerted nature of an employee's complaint to management is not dependent on the merit of such a complaint. See *Spinoza, Inc.*, 199 NLRB 525, 525 (1972), *enfd.* 478 F.2d 1401 (5th Cir. 1973). Therefore, Barrera's belief that Ybarra threatened to kill him on September 29 does not need to be true as long as Barrera reasonably believed it to be true as I find his belief was reasonable given Ybarra's prior harassing conduct against dockworkers and due to Barrera's difficulty understanding English. Even Manager Olmeda thought it was a simple miscommunication between Ybarra and Barrera.

Having found that the September 30 dockworkers' discussions with Supervisor Navarro were concerted activities based on the totality of the record evidence, I now turn to the issue of whether the dockworkers' concerted activities were engaged in for the purpose of "mutual aid or protection" under Section 7 of the Act. The Board has expanded the scope of this provision as follows:

We hold that an employee seeking the assistance or support of his or her coworkers in raising a sexual harassment complaint is acting for the purpose of mutual aid or protection. This decision applies equally to cases where, as here, an employee seeks to raise that complaint directly to the employer, or, as in *Holling Press*, to an outside entity.

*Fresh & Easy Neighborhood Market, Inc.*, supra at 7.

The Board will find that a concerted activity is for “mutual aid or protection” if “the employee or employees involved are seeking to ‘improve terms and conditions of employment or otherwise improve their lot as employees.’” *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3 (quoting *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)).

In this case, I find that Barrera’s, Fernandez’ and other dockworkers’ safety meeting complaints of Ybarra’s continuing harassment of dockworkers including Ybarra’s September 29 threat to Barrera were for the purpose of mutual aid or protection under Section 7 of the Act when Barrera, Fernandez, and other dockworkers tried to improve conditions at work and complained about Ybarra’s continuing harassing conduct more than once at the September 30 safety meeting in the presence of Supervisor Navarro who assured the dockworkers that he would report their complaints to upper management. I find that these complaints were engaged in for the purpose of “mutual aid or protection” under Section 7 of the Act.

In sum, I find that both Barrera’s and Fernandez’ complaints about Ybarra’s continuing harassment of dockworkers including Ybarra’s September 29 threat to Barrera at a September 30 safety meeting are protected concerted activities. I further find that Reynolds and other Respondent managers had knowledge of these protected concerted activities on September 30 before Barrera and Fernandez were terminated on October 2, 2015.<sup>15</sup> On September 30, Supervisor Navarro met and reported the dockworkers’ complaints to Manager Olmeda and Supervisor Ybarra. Ybarra then met with Director Reynolds on September 30 and disclosed the dockworkers’ harassment complaints including Barrera’s September 29 Ybarra threat to him. I find it is disingenuous for Respondent to argue that Director Reynolds had no knowledge of the dockworkers’ group harassment complaints against Ybarra on September 30, 2015 or any concerted activity. (See R Br. at 6.)

The third element, animus, is explained below and is readily established by Respondent’s failure to conduct a reasonable investigation, its summary discharge of Barrera and Fernandez, and its shifting explanations and falsification of records for these discriminatory 2 discharges.

#### *B. Respondent’s Animus*

Evidence that may establish a discriminatory motive—i.e., that the employer’s hostility to protected activity “contributed to” its decision to take adverse action against the employee—

<sup>15</sup> This finding is relevant even though Navarro, Ybarra, or Olmeda were not the decisionmaker. “[I]t is well established that the Board imputes a manager’s or supervisor’s knowledge of an employee’s protected concerted activities to the decisionmaker, unless the employer affirmatively establishes a basis for negating such imputation.” *G4S Secure Solutions, Inc.*, 364 NLRB No. 92, slip op. at 4 (2016).

includes, among other things: (1) close timing between discovery of the employee's protected activities and the discipline (see, e.g., *Traction Wholesale Center Co. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000) (immediately after employer learned that union had obtained a majority of authorization cards from employees, it fired an employee who had signed a card)); departure  
 5 from established discipline procedures; (3) inappropriate or excessive penalty; and (4) evidence that the employer's asserted reason for the employee's discipline was pretextual, such as disparate treatment of the employee, shifting explanations provided for the adverse action, failure to investigate whether the employee engaged in the alleged misconduct, or providing a  
 10 nondiscriminatory explanation that defies logic or is clearly baseless (see, e.g., *Camaco Lorain Mfg. Plant*, 356 NLRB 1182, 1185 (2011); *CNN America, Inc.* 361 NLRB No. 47 (2014); *Lucky Cab Co.*, 360 NLRB No. 43 (2014); *ManorCare Health Services—Easton*, 356 NLRB 202, 204 (2010); *Greco & Haines, Inc.*, 306 NLRB 634, 634 (1992); *Wright Line*, 251 NLRB at 1088 fn.12, citing *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556-557 (1994), enfd. sub nom., *NLRB v. Transmart, Inc.*, 117  
 15 F.3d 1421 (6th Cir. 1997)).

As explained above in section II.A., the evidence establishes that Barrera and Fernandez engaged in protected, concerted activities on September 30. Respondent had knowledge of those activities, as on September 30 Barrera, Fernandez, and other dockworkers openly complained to  
 20 Supervisor Navarro about Ybarra's harassing behavior directed at dockworkers including Ybarra's September 29 threat to Barrera. Supervisor Navarro communicated these dockworkers' complaints to upper management also on September 30 and Barrera and Fernandez were terminated on October 2, 2015, just 2 days later.

The evidence also establishes that Barrera's and Fernandez' protected activities were a contributing factor in each of their discharges. First, the timing of these October 2 discharges,  
 25 within 2 days of Barrera and Fernandez raising concerns about Ybarra's continuing harassing behavior against dockworkers, including Ybarra's September 29 threat to Barrera, in a September 30 safety meeting strongly supports a finding of unlawful motivation. Respondent's shifting defenses also suggest pretext and establish unlawful motivation. Respondent's assertions concerning the reasons for Barrera's and Fernandez' discharges are fairly characterized as made  
 30 up after-the-fact by falsely creating a narrative that both Barrera and Fernandez were so insubordinate they deserved to be terminated immediately rather than subject to the Respondent's established progressive discipline procedures.

Also, the terminations of Barrera and Fernandez are inappropriate and excessive penalties for 2 long-term employees with no prior former discipline and 11 years of complimentary  
 35 performance evaluations which consistently praised their work and granted them discretionary wage increases.

Respondent, first, asserts that the decision to terminate Barrera and Fernandez was made on September 29 ahead of the disclosure of any threat by Ybarra against Barrera. This is proven  
 40 false and the decision to terminate was made on October 1. Next, it asserts, that, even if the decision to fire Barrera and Fernandez was not made on September 29, there was sufficient evidence gathered quickly by Director Reynolds on September 30, October 1 and later to justify the discharges ignoring, of course, Ybarra's September 29 threat to Barrera and Fernandez and other dockworkers complaints of Ybarra's continuing harassing behavior on September 30.

Respondent faults Barrera and Fernandez for being threatening gangbangers whose gangster ways at work caused a large turnover of employees in September 2015. However, Respondent is unable to produce a shred of credible documentary evidence showing that it ever took any action to discipline Barrera or Fernandez prior to Ybarra's September 29 threat to Barrera, or even to confront them in any way, about their alleged misdoings, pursuant to Respondent's progressive discipline policy as it has for other employees. Respondent's inability to produce such documentary evidence is significant: Respondent's director Reynolds, Manager Olmeda, Manager Barton, and Supervisor Navarro all testified that, before Respondent discharges employees, it first verbally warns them, and then gives them written disciplines with suspension and demotion available in place of discharge.

Further, although Respondent contends that Barrera and Fernandez had been verbally warned a few times over a decade each with no actual written or formal discipline before September 29, Respondent failed to produce any evidence of actual discipline warranting terminations on October 2. In addition, Respondent's disparate treatment of Barrera and Fernandez as compared to employees working for Managers Olmeda and Barton and other employees working under Supervisor Navarro evidences unlawful motivation. Most importantly, Director Reynolds failed to follow her own complaint investigation procedure and interview all parties to a complaint such as Barrera, Fernandez, and Navarro. This disparate treatment of Barrera and Fernandez demonstrates animus.

Furthermore, Director Reynolds log (GC Exh. 5) is a sham as Reynolds failed to log entries from Navarro, Olmeda, Barrera, and Fernandez as well as the other dockworkers. Reynolds also fabricated meetings that she had with supervisors and managers in September in an incredible attempt to manufacture evidence of bad acts against Barrera and Fernandez to quickly justify their discharges. Director Reynolds was trying hard to avoid having to address the September 29 harassment incident between Ybarra and Barrera that led to the dockworkers' group complaints against Ybarra on September 30 which she was well aware was coming quickly to a head on September 30. Ybarra's email statement created at the behest of Reynolds provides that Navarro told him of Barrera's complaint of Ybarra's threat on "Friday" when, in fact, Navarro told Ybarra of this incident on Wednesday, September 30. I find Ybarra's email statement is false and was made up in order to seem believable for Ybarra's fake story when the September 30 disclosure by Supervisor Navarro to him occurred on a Wednesday and not a Friday. (See GC Exh. 7.)

Director Reynolds also misrepresented facts at hearing saying she had decided to terminate Barrera and Fernandez on September 29 and that Navarro and Olmeda, both men physically larger than both Barrera and Fernandez, were fearful of retaliation by Barrera and Fernandez. Reynolds log adds a false entry a year later in October 2016 resurrecting the fear of gangs' retort and alleging that on October 5, 2016, Ybarra came to her to say that he lives near Barrera and Fernandez and there is a gang presence there and "he is fearful." (GC Exh. 5 at 2.)

Because each of the various reasons Respondent proffers for its decision to discharge Barrera and Fernandez is pretextual, Respondent cannot meet its burden of establishing that it would have discharged Barrera and Fernandez even absent their protected, concerted activities.

In sum, I find that the General Counsel demonstrated the Respondent's animus toward the discriminatees' protected activities. That animus is compellingly demonstrated above by the

fact that the Respondent created false records after-the-fact when Director Reynolds' reaction to being informed of the dockworkers' complaints about Ybarra's continuing harassment on September 30 from Navarro, Ybarra, and/or Olmeda including Barrera's disclosure of Ybarra's September 29 threat to him, was to immediately terminate Barrera for his disclosure and Fernandez for being the lead complainer of the group who repeatedly told Supervisor Navarro he needed to inform Director Reynolds of Ybarra's harassing conduct. Only after the decision to terminate Barrera and Fernandez did Director Reynolds start to investigate and make up reasons to terminate the two dockworkers separate from the protected concerted activities.

I further find that the General Counsel has met her burden, and the burden shifts to Respondent. The employer cannot meet its burden merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086-1087 (2011); *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010), *enfd.* 646 F.3d 929 (D.C. Cir. 2011). If the employer's proffered reasons are pretextual (i.e., either false or not actually relied on) as here, the employer fails to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007). An employer fails to meet its rebuttal burden when the evidence shows that it tolerated an employee's shortcomings until the employee engaged in protected activity. *Global Recruiters of Winfield*, 363 NLRB No. 68 (2015) (Hirozawa, concurrence), citing *Diversified Bank Installations*, 324 NLRB 457, 476 (1997). The trier of fact may not only reject a witness story, but also determine that the truth is the complete opposite. *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016).

Because of the incredible pretexts referenced above, Respondent does not prove that it would have terminated Barrera or Fernandez regardless of their protected concerted activities. Therefore, I find that Barrera's and Fernandez' discharges were both motivated by their protected, concerted activities in violation of their rights under Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By discharging employees Martin Barrera (Barrera) and Jesus Fernandez (Fernandez) because of each of their protected, concerted activities for openly complaining about supervisors in other departments and/or making allegations that a supervisor threatened them, the Respondent violated Section 8(a)(1) of the Act and interfered with, restrained, and coerced Barrera and Fernandez in the exercise of the rights guaranteed in Section 7 of the Act.

3. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that they must cease and desist such practices and take certain affirmative action designed to effectuate the policies of the Act.

5           Specifically, having concluded that the Respondent is responsible for the unlawful  
 discharge of employees Martin Barrera (Barrera) and Jesus Fernandez (Fernandez), the  
 Respondent must offer each of them immediate reinstatement to each of their former jobs, or if  
 that job no longer exists, to a substantially equivalent position, without prejudice to each of their  
 10           seniority or any other rights and privileges previously enjoyed. I also order that Respondent  
 make Barrera and Fernandez each whole, with interest, for any loss of earnings and other  
 benefits that each of them may have suffered as a result of the discrimination against each of  
 them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289  
 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987),  
 15           compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Also,  
 Respondent must compensate Barrera and Fernandez for each of their search-for-work and  
 interim employment expenses regardless of whether those expenses exceed each of their interim  
 earnings. *King Soopers, Inc.*, 364 No. 93, slip op. at 9 (2016). Search-for-work and interim  
 employment expenses shall be calculated separately from taxable net backpay, with interest at  
 the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River*  
 20           *Medical Center*, supra. In addition, the Respondent shall compensate Barrera and Fernandez  
 each for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a  
 report with the Social Security Administration allocating the backpay award to the appropriate  
 calendar quarters for each of them. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB  
 No. 10 (2014). The Respondent shall also be required to expunge from its files any and all  
 25           references to the discharges, and to notify Barrera and Fernandez in writing that this has been  
 done and that neither discharge will be used against any of them in any way. The Respondent  
 shall also post the notice in accord with *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In  
 accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate  
 should be resolved at the compliance phase. Id. at 13.

30           I will also order that the Respondent hold a meeting or meetings, scheduled to have the  
 widest possible attendance, at which the attached notice marked “Appendix” shall be read to  
 Respondent’s employees by Director Jaime Reynolds in the presence of a Board agent. This  
 remedial action is intended to ensure that employees “will fully perceive that the Respondent and  
 its managers are bound by the Act’s requirements.” *Federated Logistics & Operations*, 340  
 35           NLRB 255, 258 (2003), enfd. 400 F.3d 920 (D.C. Cir. 2005).

The Board has broad authority under Section 10(c) to devise remedies that “effectuate the  
 policies of the Act.” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 900 (1984). In determining an  
 appropriate remedy, the Board has a duty “under Section 10(c) to tailor its remedies to varying  
 circumstances on a case by case basis, in order to ensure that its remedies are congruent with the  
 40           facts of each case.” *Diamond Walnut Growers, Inc.*, 340 NLRB 1129, 1132 (2003). Thus, the  
 Board has “broad discretion to fashion ‘a just remedy’ to fit the circumstances of each case it  
 confronts.” *Excel Case Ready*, 334 NLRB 4, 5 (2001) (quoting *Maramont Corp.*, 317 NLRB  
 1035, 1037 (1995)); see also *Pacific Beach Hotel*, 361 NLRB No. 65, slip op. at 3 (2014).  
 Requiring Reynolds to read the notice, is a just remedy based on the circumstances of this case,

in that it will help to ensure employees that Goodwill's director and HR vice president understands and takes seriously his obligations to comply with the Act.<sup>16</sup>

On these findings of fact, conclusions of law, and upon the entire record, pursuant to Section 10(c) of the Act, I hereby issue the following recommended<sup>17</sup>

5

### ORDER

The Respondent, Goodwill Central Coast, a California non-profit public benefit corporation, with facilities in Santa Cruz, Monterrey, and San Luis Obispo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

10

(a) Unlawfully discharging or otherwise discriminating against Respondent's employees because they openly complained about supervisors in other departments and/or made allegations that a supervisor threatened them; and

(b) 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.

15

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

(a) Within 14 days from the date of this Order, offer employees Martin Barrera (Barrera) and Jesus Fernandez (Fernandez) immediate and full reinstatement to each of their former jobs or, if any of those jobs no longer exists, to a substantially equivalent position, without prejudice to each of their seniority or any other rights or privileges previously enjoyed.

20

(b) Make employees Barrera and Fernandez whole for any loss of earnings and other benefits suffered as a result of the discrimination against each of them, as set forth in the remedy section of this decision.

25

(c) Compensate employees Barrera and Fernandez for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and submit the appropriate report to the Social Security Administration so that when backpay is paid each to Barrera and Fernandez, it will be allocated for each of them to the appropriate calendar quarters.

30

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

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

---

<sup>16</sup> I emphasize that this measure is remedial, not a punitive sanction.

<sup>17</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.

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

5 (f) Within 14 days from the date of this order, post at its facilities in and around Santa Cruz, Monterrey, and San Luis Obispo, California, copies of the attached notice marked  
 10 “Appendix”<sup>18</sup> in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent’s authorized representative, shall also be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,  
 15 defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the  
 Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2, 2015.

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

Dated, at Washington, D.C., May 17, 2017



25  
 Gerald Michael Etchingham  
 Administrative Law Judge

---

<sup>18</sup> 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.”



## 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** do anything to prevent you from exercising the above rights.

**WE WILL NOT** terminate you for talking to your coworkers about your wages, hours, and other terms and conditions of your employment, including complaints about supervisors in other departments and/or making allegations that a supervisor threatened you.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

**WE WILL** immediately offer Martin Barrera (Barrera) and Jesus Fernandez (Fernandez) reinstatement to their former positions, and if those jobs no longer exists, to substantially equivalent positions, without any loss to their seniority rights or any other privileges, and **WE WILL** immediately make Barrera and Fernandez whole with interest, compounded on a daily basis, for the bonuses, dividends, wages and benefits they lost because we fired them, including reasonable search-for-work and interim employment expenses.

**WE WILL** within 14 days, remove from our files, any and all records of the discharge of Barrera and Fernandez and **WE WILL** within 3 days thereafter, notify Barrera and Fernandez in writing that we have taken this action, and that the materials removed will not be used as a basis for any future personnel action against them or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against them.

**WE WILL** compensate Barrera and Fernandez for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 32, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

**GOODWILL CENTRAL COAST, A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION**

(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 or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

**Address: 1301 Clay Street, Suite 300-N, Oakland, CA 94612**

**Telephone: (510) 637-3300**

**Hours of Operation: 8:30 a.m. to 5 p.m.**

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/32-CA-172761> 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, (510) 637-3253.