

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

BOAR'S HEAD PROVISIONS CO., INC.

Respondent

and

**Cases 07-CA-209874
07-CA-212031**

**UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION (UFCW), AFL-CIO**

Charging Party

**THE GENERAL COUNSEL'S POST-HEARING BRIEF
TO THE ADMINISTRATIVE LAW JUDGE**

I. Statement of the Case

This case arises out of a series of unfair labor practice charges filed by the United Food & Commercial Workers International Union (UFCW), AFL-CIO, against Boar's Head Provisions Co., Inc., from November 9, 2017 to March 30, 2018.¹ After an investigation, the Regional Director of Region 7 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, alleging that Respondent violated the National Labor Relations Act by: 1) threatening employees with the loss of benefits; 2) interrogating its employees about their Union membership and activities; 3) soliciting employee grievances and promising to remedy those grievances if employees abandoned their support for the Union; 4) engaging in surveillance of employees engaging in Union activity and/or creating the impression that their activities were

¹ On November 9, 2017, the United Food & Commercial Workers International Union (UFCW), AFL CIO ("the Union") filed charge 07-CA-209874 alleging that Boar's Head Provisions Co., Inc. ("Respondent") violated the National Labor Relations Act ("Act"). That charge was amended four times on January 18, 2018, February 13, 2018, February 28, 2018 and March 30, 2018 [GC1(a)(e)(g)(k)(m)]. Charge 07-CA-212031 was filed by the Union on December 21, 2017 and amended two times on February 13, 2018 and March 30, 2018 [GC1(c)(h)(o)]. The Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Complaint") is included in the formal papers as GC1(q)].

under surveillance and 5) maintaining an overly broad dress code. The Complaint further alleges that Respondent violated Section 8(a)(3) of the Act by: 1) disciplining and suspending union supporter Walter Aguilar; 2) increasing wages and benefits of union supporter Nelson Langarita; 3) increasing the wages of union supporter Apolonia Rios; 4) improving attendance and vacation policies for all employees; and 5) providing maintenance employees with hand tools in order to discourage their Union membership and activities.² The hearing was held before Administrative Law Judge Thomas Randazzo (“ALJ”) December 10 through 14, 2018 and April 29 through May 3, 2019.³

II. Introduction⁴

Upon learning that its employees were considering a union organizing campaign, Respondent embarked on a four-month coordinated and aggressive course of conduct to undermine employee support for the Union. In so doing, Respondent utilized the proverbial “carrot and stick”; it coaxed employees into abandoning the Union with promises and grants of benefits while simultaneously threatening the employees with reprisals if they did not abandon the Union.

Respondent’s efforts to induce the employees to abandon the Union (i.e. the “carrot”) specifically included numerous captive audience meetings between employees and high-level corporate and local managers where employees were not only allowed to express their “concerns,” but were specifically encouraged to tell Respondent exactly what they wanted to see

² The General Counsel respectfully moves to withdraw Complaint paragraphs 7(b), 8(c), 13, 14, 16(c), 18(b) and 19.

³ During the hearing, the ALJ granted the General Counsel’s motions to withdraw paragraphs 5(b), 8(a), 11 and 15. The ALJ also granted the General Counsel’s motion to amend paragraph 12 from alleging that Respondent denied off duty employees’ access to parking lots to alleging that Respondent engaged in surveillance and created the impression that employees’ union activities were under surveillance.

⁴ References to the transcript will be denoted as [Tr. followed by the page number(s)]; the General Counsel’s exhibits will be denoted as [GC followed by the exhibit number]; the Union’s Exhibits as [U followed by exhibit number] and Respondent’s exhibits as [R followed by exhibit number].

change at the facility. After employees expressed a series of concerns, including their unhappiness with the vacation and attendance policies, they were assured that the concerns would be heard, considered and changed where possible. In October 2017, Respondent not only changed those unpopular policies for the entire production and maintenance staff, it also gave significant wage increases to two known Union supporters.

In conjunction with those promises and benefits, Respondent brandished its “stick” by making it clear to employees its apparent benevolence was conditioned on the absence of the Union. Specifically, during numerous captive audience meetings and in individual conversations, Respondent threatened employees that negotiations would start with nothing and that employees would lose their current benefits. In August 2017, Respondent targeted, suspended and disciplined main Union organizer Walter Aguilar. In the following weeks, Respondent repeatedly interrogated and surveilled employees who either participated or were suspected of participating in Section 7 activity.

The substantial weight of the record evidence established that Respondent engaged in numerous and repeated violations of Sections 8(a)(1) and (3) of the Act, in an effort to completely undercut the Union campaign and to interfere with the employees’ rights to engage in union and protected concerted activities.

III. Credibility

The General Counsel called several employee witnesses during its case-in-chief, all of whom testified in a straightforward, consistent, and detailed manner. To the extent that credibility determinations are necessary in this case, those determinations should weigh in favor of the non-supervisory witnesses called during the General Counsel’s case in chief. The Board has long viewed a witness’ status as a current employee as a significant factor in resolving credibility issues. *Flexsteel Industries, Inc.*, at 745 citing *Farris Fashions*, 312 NLRB 547, 554,

fn. 3 (1993), enfd. 32 F.3d 373 (8th Cir. 1994); *Circuit Wise, Inc.*, 309 NLRB 905, 909 (1992). In this regard, the Board has held that the testimony of current employees is entitled to enhanced credibility. *Advocate South Suburban Hospital*, 346 NLRB 209, fn. 1 (2006); *American Wire Products*, 313 NLRB 989, 993 (1994) (current employee providing testimony adverse to his employer is at risk of reprisal and thus likely to be testifying truthfully). Moreover, testimony from current employees tends to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Division*, 197 NLRB 489, 491 (1972). *Shop Rite Supermarket*, 231 NLRB 500, 505 fn. 22 (1977) (Testimony of current employees adverse to their employer is “given at considerable risk of economic reprisal, including loss of employment ... and for this reason is not likely to be false”).⁵

Many of Respondent’s witnesses were current or former supervisors or agents of Respondent. Not unexpectedly, these witnesses frequently denied material facts testified to by the General Counsel’s witnesses.⁶ Much of the testimony of Respondent’s witnesses was elicited with leading questions during direct examination. This testimony should be afforded less weight than the testimony of the General Counsel’s witnesses and discredited where appropriate. *T.M.I.*, 306 NLRB 499 (1992); *H.C. Thomson*, 230 NLRB 808 (1977). To the extent that Respondent’s witnesses failed to deny or contradict the testimony of the General Counsel’s witnesses, the testimony of the General Counsel’s witnesses should be credited. *Mark Lines, Inc.*, 255 NLRB 1435 (1981) (finding a violation of Section 8(a)(1) where General Counsel’s evidence offered

⁵ Current employees who testified included Walter Aguilar, Ascension Rios, Elva Rivas and Norma Chacon. It must also be noted that none of the employees who testified, whether current or former, stood to gain any monetary damages from the litigation of this case.

⁶ Arguments regarding the credibility of specific witnesses are highlighted below in the statement of facts.

through witness of ‘less than impressive credibility’ was not rebutted and therefore confirmed by uncontradicted proof). When a party presents a knowledgeable witness but fails to elicit testimony about a matter to which the witness would normally testify, an adverse inference may be drawn against that party. *Greenbriar Valley Medical Center*, 360 NLRB 994, fn. 1, 998, fn. 11 (2014), citing *Douglas Aircraft*, 308 NLRB 1217 (1992).

Finally, the General Counsel asks that the Administrative Law Judge draw adverse inferences in any instance where Respondent failed to call any material witnesses reasonably assumed to be favorably disposed toward it. A trier of fact may draw the “strongest possible adverse inference” against a party that fails to present a material witness presumed to be favorable to it, sometimes called the “missing witness rule.” *Flexsteel Industries, Inc.*, 316 NLRB 745, 758 (1995); *Douglas Aircraft Company*, 308 NLRB 1217, 1217 fn. 1 (1992); *Martin Luther King, Sr. Nursing Center*, 231 NLRB 15, fn. 1 (1977).

IV. Facts

A. Background

Respondent, headquartered in Sarasota Florida, operates eight facilities throughout the United States, including the production facility in Holland, Michigan [Tr. 34-35].⁷ The Holland plant employs approximately 600 employees assigned to either the “Raw” side, where uncooked meat is brought in to be cooked; or the “Ready to Eat/RTE” side, where cooked meat is packaged and distributed [Tr. 35, 219, 823].

Human Resources in Holland is headed by Shannon Van Noy (Human Resources Business Partner). Van Noy oversees approximately seven human resources representatives who

⁷ There are two distribution facilities in Columbus, Ohio and Brooklyn, New York/Edison New Jersey. The New York/New Jersey facilities are also represented by the UFCW. There are five production facilities in Forrest City, Arkansas, New Castle, Indiana, Jarratt, Virginia and Petersburg, Virginia [Tr. 34-35]. Both Virginia facilities are represented by the UFCW.

are responsible for effectuating the personnel and labor policies within the plant [Tr. 766].

Several of the human resources staff, including Human Resource Specialists Rodolfo Rodriguez and Vicente Nunez, are fluent in Spanish and serve as interpreters for the staff and employees when necessary [Tr. 1120, 1216]. Van Noy and her staff report directly to Director of Human Resources Scott Habermehl, who works out of the corporate offices in Florida [Tr. 34-35].

Plant Manager Bradley Rurka supervises numerous managers and supervisors on both sides of the facility including sanitation supervisor Guadalupe Rodriguez, Beef Trim Supervisor Maria Mendoza and Assistant to the Supervisor Carlos Giron [Tr. 103-104, 895, 1328].

In 2017 and at all material times, Respondent maintained an employee handbook [GC 2; Tr. 37] applicable to all production and maintenance employees. The handbook includes specific examples of behavior considered by Respondent to be “Class II Offenses”, i.e., misconduct that is “serious and will result in progressive discipline,” including the following provision:

*2.9: ... Wearing unauthorized badges, pins or other items on helmet or exterior garments.*⁸

In the summer of 2017,⁹ Respondent also maintained vacation and attendance policies for employees. These policies had been in effect since about 2015 [Tr. 805]. Due to the nature of Respondent’s policies, the attendance and vacation issue were inexorably intertwined [Tr. 1563]. Specifically, Respondent’s policies did not provide *any* sick leave or any vacation time to low-senior employees [Tr.1642-1645].¹⁰ As a result, many employees incurred attendance points¹¹ for *any* absence, even if the absence was related to documented medical or family issues. While

⁸ There is no evidence that the policy had been modified, negated or explained by Respondent to any employees or that any exceptions were tolerated.

⁹ All dates are 2017, unless otherwise noted.

¹⁰ Before the Union campaign, first year employees received *no* vacation time, employees with 1-3 years seniority earned only 5 days of vacation, employees with 3-10 years of vacation earned 10 days and employees with more than 10 years earned 15 days of vacation [Tr. 1062, 1164, R 11, R 12].

¹¹ A half point was issued for a tardy or an absence under four hours, while a full point was issued for absences of more than 4 hours.

employees with higher seniority could use their meager vacation time for such issues or appointments, they were not allowed to take vacation time in any increment under eight hours – meaning they would need to use an entire day for even the shortest of medical appointments [Tr. 720]. The alternative for those employees, of course, was to incur attendance points for shorter absences and run the risk of being terminated after accumulating ten attendance [Tr. 1563].

Accumulated attendance points remained on an employee’s record and would only drop off after two months [60 days] of perfect attendance [GC 7; Tr. 398, 400, 666, 710, 805, 849, 1043, 1563, 1642].¹² The 2015-2017 attendance and vacation policies were widely unpopular among the employees and had been for quite some time [Tr. 805, 1039]. While Respondent acknowledged the shortcomings of the policies, Van Noy expressed that she felt that the policy was “lenient” in the months prior to the union organizing drive [R-12(j)(2)].

While Respondent had been aware of its employees’ animosity toward the policies since 2015, and changes to the policy were discussed by management from 2015 to 2017, no changes were approved, announced or made by Respondent prior to commencement of the Union organizing campaign in July 2017 (R 12; Tr. 804). In fact, attempts by local personnel to enhance or adjust the policies to address significant employee turnover had been steadfastly rejected by Respondent’s corporate leadership for two solid years before the Union campaign [R 11, R 12; Tr. 853, 1538-1539, 1583].

Respondent also maintained a policy in 2017 that was applicable only to the employees in the maintenance department. Respondent had traditionally required its maintenance employees to buy and provide their own maintenance tools but would loan those employees five hundred

¹² The policy in effect from 2015-2017 was different from the prior policy, which dropped attendance points after the passage of 30 days without the accrual of a point [Tr. 398, 805].

dollars to purchase them. The employee would then be required to pay the five hundred dollars back over time from payroll deductions [Tr. 366, 1576].

B. Events of August 2017

The Union began organizing the employees in the summer and word of this activity spread very quickly to management officials [Tr. 47, 247; GC 3, GC 4]. The evidence shows that as of August 9, Van Noy was aware that the maintenance employees were considering organizing and that one of their issues was Respondent's requirement that they purchase their own maintenance tools to perform their jobs [GC 4, Tr. 247]. Van Noy and other Human Resources employees immediately brought the organizing efforts to the attention of Habermehl and Senior Vice President of Operations Larry Helfant, who agreed to coordinate a "strategy for communicating [their] message" [GC 4].

After learning of the organizing campaign, both local and corporate managers began to research ways to provide the disgruntled employees with solution for the things that drove them to unionization [GC 8]. Specifically, Respondent contacted other Boar's Head facilities to determine exactly what equipment was provided to their employees and discussed whether similar policies could be enacted locally [R 11; R 12].¹³ It also began to revisit the possibility of changing its attendance and vacation policies [R 12; Tr. 1575].

Within two weeks of being told about the organizing activity, on August 21 and 22, Habermehl traveled from Florida to Michigan to personally deliver Respondent's anti-union message to *all* the production and maintenance employees on all three shifts. During the approximately one-hour meetings, Habermehl presented a power point presentation – without

¹³Respondent acknowledged that the issue was related to unionization. In R 12(r)(1), Habermehl admits that they couldn't limit any proposed additional vacation benefits to "maintenance only without giving union organizations a lot of ammunition for the production group."

using a script – regarding the unionization process and a general message of why unionization was not in the best interest of the employees [Tr. 52; GC 27]. The first meeting was translated into Spanish by human resources employee Vicente Nunez. The remainder of the meetings were translated by another human resources employee, Rodolfo Rodriguez [Tr. 53].¹⁴ At some of the meetings, employees asked questions and make comments, while at others, there was no employee participation.

The testimonial evidence regarding these meetings was highly variant and the employee witnesses had varied levels of recollection. However, the evidence demonstrated that at every meeting held August 21-22, Habermehl explained the unionization process and did an in-depth comparison of the wages of the employees in the Jarret, Virginia facility (which was unionized) and the wages of the Holland employees [Tr. 117, 148, 242, 263, 383, 662, 1172, 1504]. He also discussed any prospective negotiations with the Union and what impact it would have on employees. The evidence demonstrates that in *at least* one of the meetings with employees, Habermehl stated that any prospective negotiations with the Union would begin at “zero” or “the minimum” [Tr. 115-117, 262, 395].¹⁵

During a morning meeting with Habermehl, employees Walter Aguilar and Nelson Langarita challenged Habermehl about the information regarding the unionized Virginia plant.

¹⁴ The workforce is predominately Spanish speaking.

¹⁵ Walter Aguilar recalls Habermehl stating in the 6:30 a.m. meeting that negotiations would start from “zero to the minimum and that a lot of benefits could be lost” [Tr. 117]. Apolonia Rios recalls Habermehl stating that negotiations would “start at zero” in her meeting [Tr. 395]. Some employees who testified did not recall such a statement being made at the meeting they attended, but the evidence shows that most of those employees did not attend the same meeting as Aguilar. For example, Jorge Torres attended the afternoon meeting [Tr. 1184]. Abigail Forsten was an office employee who did not specify which meeting she attended [Tr. 1158]. Employee Gabriela Esquivel did not indicate whether she attended the same meeting as Aguilar and Langarita and did not recall much about what happened in her meeting [Tr. 1387]. However, a few of Respondent’s witnesses alluded to hearing either Habermehl himself or other employees mention a statement similar to “bargain from zero.” For example, translator Rodolfo Rodriguez indicated that at some point Habermehl mentioned a “blank piece of paper” [Tr. 1250] and Torres recalls other employees telling him that Habermehl said negotiations would start at zero at the meeting they attended [Tr. 1198]. Van Noy denied such statements being made, but she does not speak Spanish [Tr. 795].

Aguilar asked whether the unionized employees in Virginia received free boots from the company and Langarita asked whether those employees had better benefits in lieu of pay [Tr. 132, 153]. Another Union supporter Ascension Rios commented that after 19 years of service, he believed he deserved four weeks of vacation [Tr. 265].

The specific message that negotiations would start at zero was not limited to just those meetings with Habermehl. It was repeated to the employees in written correspondence that Respondent attached to their paychecks on September 1 [GC 6]. The document, which was confirmed by Van Noy to be an accurate summation of the statements made in those meetings [Tr. 665], reaffirmed that Respondent's negotiations with a union would specifically NOT start with what employees had, but would "start at zero or the minimum allowed by law" [GC 6].

The message was repeated by other managers as well. On about August 24, Union organizer Walter Aguilar was working in his department when he was approached by his supervisor Guadalupe Rodriguez. Rodriguez admitted on the record that that based on the comments from other employees, he was aware of Aguilar's strong Union support [Tr. 101]. Rodriguez asked directly why Aguilar was supporting the Union [Tr. 99-100]. When Aguilar indicated that he felt that the facility did not have enough people to perform the work and that there was abuse of the employees [Tr. 100, 119],¹⁶ Rodriguez told Aguilar that employees could lose their bonuses and their company-sponsored picnics [Tr. 100]. Rodriguez also indicated that the Union would negotiate from zero if the employees selected the Union [Tr. 120].¹⁷

About four days later, on August 28, Aguilar was in his work area and expressed concern that the employees were working themselves too hard and that they should "take it easy." (or "work easy") [Tr. 124]. Aguilar credibly testified that the purpose of the statement was to

¹⁶ This concern was held by many employees, as reflected in GC 28.

¹⁷ Rodriguez admitted to the majority of the statements on the record [Tr. 95-102].

encourage employees to take care of themselves and not get hurt because of the Company's demands [Tr. 124]. There was no evidence that any employee stopped working, slowed down or that production was affected in any way based on Aguilar's statement.

Aguilar's relatively innocuous statement was reported by an employee to Supervisor Leticia Estrada, who thought it was necessary to report it to RTE Manager Judy Urasanski [Tr. 1044]. Urasanski in turn felt that Aguilar's statement needed to be reported to Leah Cochran, the senior human resources coordinator. Cochran then reported the statement to Shannon Van Noy [Tr. 1044; R 5]. Despite the fact that no work had been interrupted and Aguilar's comments had literally no impact on any individual in the department, Van Noy determined it was a "serious" situation. She contacted Habermehl in Florida and they decided to conduct a full investigation [Tr. 670, 1047, 1102-1103].

Notably, instead of first speaking to the employee who had complained to Supervisor Estrada, Van Noy and Cochran spoke with Aguilar directly, via translation by Human Resource employee Leah Cochran [Tr. 1047, R5]. Aguilar admitted saying that that he didn't feel he should have to do the work of two people [Tr. 1052, R5]. Based on this meeting and no other investigation, and despite no actual impact on production, Van Noy suspended Aguilar pending an investigation [Tr. 1054].¹⁸

After suspending Aguilar, Respondent began its investigation. As noted in the reports taken by Cochran, none of the employees interviewed said that Aguilar told them to slow down production or stop working. Instead, the employees said that Aguilar asked them "why are you hurrying?" [R 5]. Another employee testified that she heard Aguilar "making fun of another

¹⁸ Van Noy testified that she did not tell him how long his suspension would last [Tr. 811].

employee” and that he was always telling employees to “not work so hard.”¹⁹ Another employee indicated that Aguilar told her to hurry up and then said that the harder she worked, Respondent would only pressure her to work harder.²⁰ During the interviews, two employees mentioned that Aguilar was passing out cards and talking about the Union during the “incident” [R 5].

Despite the fact that the investigation was concluded in one day, Aguilar was required to serve a three-day suspension. Upon his return on August 31, he was told that his suspension was rescinded, but that he was still receiving a written warning for attempting to cause a work slowdown [GC 10].

Inexplicably, the three-day suspension was not recorded in any way by Respondent – there was no document, correspondence, notation or any other record that the suspension was issued or created. When asked how Aguilar’s supervisor, other employees, or those responsible for payroll would know that Aguilar was suspended as opposed to simply being a no-call, no-show, Van Noy indicated that the suspension would be “communicated” to them, but there was no testimony or evidence as to who was told what or when any communications took place [Tr. 864].²¹

Respondent did not confine its approach to threats and the suspension of Union organizer Walter Aguilar. It also held numerous meetings with employees whereby it solicited grievances and either overtly or implicitly promised that those grievances would be remedied. These

¹⁹ Van Noy also testified that the investigation revealed that were other employees who were laughing and mocking others about working so hard, but that “joking is not a violation of the...rules” [Tr. 814]. Leah Cochran equivocated by stating that “Walter was accused of telling people to slow down their work, which is different than not wanting to work and mocking people who do” [Tr. 1094].

²⁰ That employee also indicated that she “never pays attention” to Aguilar [R 5].

²¹ Van Noy also indicated that it was treated as “progressive discipline” because she believed that Aguilar had made “similar statements previously” that had never been reported [Tr. 815]. Respondent provided no evidence of any other statements made by Aguilar or provided an explanation of how something that was never reported or acted upon would serve as the basis for progressive discipline.

meetings began within days of Habermehl's August meetings and continued throughout the month of September.

Specifically, on about August 24, the same day that Aguilar was interrogated by his supervisor about the Union, Plant Manager Bradley Rurka held at least three meetings with the production and maintenance employees where he read prepared remarks to them, with interpretation provided by Human Resources specialist Rodolfo Rodriguez [Tr. 106-107; GC 9]. In that oddly titled "24-hour speech," Rurka told the employees that the purpose of the meeting was to "follow up" on the meetings held with employees earlier in the week. Rurka explicitly told employees that Respondent had heard their concerns and would respond in a way that reinforced to employees that they were a "family." Noting employee complaints about the unfairness of Respondent's attendance and vacation policies, Rurka announced that Respondent was going to "try something new" and change those policies to better fit the needs of the employees [GC 9 at 5]. Specifically, Rurka stated that "[a]fter listening to you, we are adding to the list of court appearances, any meetings or events related to immigration issues and we are expanding the list of medical visits to include all medical visits, not just preventative [GC 9 at 4]." He told the employees that "what [Respondent is] changing is a good first step toward bring our family back together" [GC 9 at 7].²² Rurka also mentioned pending changes to both the lock out policy and the PPE equipment that was provided, which were two issues that were specifically mentioned by the maintenance employees as the reason for considering the Union [GC 9, GC 4]. After giving the employees the good news that their complaints would most likely be remedied, Rurka then appealed to the employees to keep "communicating" with management about their concerns so that those concerns could be addressed and, if possible, remedied. In

²² He also indicated that "we acknowledge that [vacation] is an important issue to you and we are still working on it ... But we don't want to come to you empty handed" [GC 9, page 5-6].

furtherance of that goal, Rurka told employees that Respondent was “bringing back” the employee suggestion box and promised employees that every single comment would be considered and that management would report back to employees on what could and could not be fixed [GC 9].

This message – that Respondent was eager to listen and remedy employee complaints– was reiterated a few days later on August 29. Senior Vice President of Operations Larry Helfant traveled from Florida and met with the production and maintenance employees in Holland for the purpose of getting “general feedback” from the employees about “anything” [Tr. 447, 1619, 1637]. Despite not having a much of a recollection of anything that was said or communicated specifically, Helfant did recall that he scheduled and held the meetings “to listen” [Tr. 1637] and that two main employee concerns were vacation and attendance policies [Tr. 1620, 1639]. Helfant also indicated that he recalled that the maintenance employees wanted Respondent to provide and pay for their tools [Tr. 1640-1641].

Several employees had a better recollection of the meetings and confirmed that the two main issues were the vacation and attendance policies [Tr. 269, 1162, 1246]. Employee Ascension Rios recalled Helfant indicating that he was aware of problems at the plant and that he would like to “solve” those problems for the employees [Tr. 270].²³ Apolonia Rios recalls that Helfant stated that he was there to address employee complaints because he “hear [sic] about the rumors. And he would address the complaints that the workers had at the time” [Tr. 397]. Maintenance employee Rodney Valenzuela recalled Helfant specifically asking the employees

²³ Respondent witness Abigail Forsten recalled Helfant stating that Respondent would “look into” employee complaints [Tr. 1162] and that Helfant stated that Respondent was “looking into what they could do better for the newer employees going on out” [Tr. 1174].

how Respondent could “help [the employees] out in maintenance” and what their opinions were about the Company’s policies [Tr. 366-367].²⁴

C. Events of September 2017

After the August 29 meeting, employee Apolonia Rios decided to take advantage of Helfant’s solicitous posture and approach him directly about her own grievances [Tr. 401, 447]. Rios and her husband Ascension Rios were both Union supporters whose photo had been featured on the front page of the Union’s Facebook page [GC 11]. Through the translation services of a nearby maintenance employee, Rios explained to Helfant that she had been demoted in March 2017²⁵ and that the almost three dollar per hour wage decrease had negatively impacted her [Tr. 401, 1647]. She explained that she felt like her demotion had been unfair and Helfant told her that he would look into it for her [Tr. 401-402, 1648-1649].²⁶

After the conversation with Rios, Helfant instructed the Human Resources department to reconsider the situation and investigate her demotion and complaints [Tr. 1628]. As a result, Rios was called into Human Resources to speak with representative Leah Cochran who informed Rios that Helfant had directed Cochran to reinvestigate the circumstances of Rios’ demotion [Tr. 402-404]. About two weeks later,²⁷ Respondent increased Rios’ wages and issued her a lump sum

²⁴ Human Resource Representative Rodolfo Rodriguez recalls Helfant mentioned in this meeting that Respondent didn’t want to “compromise” or cause any issues while employees were talking about the Union [Tr. 1305].

²⁵ Apolonia Rios’ March 2017 demotion was for performance issues after she had unsuccessfully completed a performance improvement plan [GC 16; Tr. 400-404]. While Respondent attempted to present evidence that others had been granted ad hoc wage increase upon request in the past, those examples all dealt with either downsizing or transferring to another department [Tr. 807]. The evidence did not establish or suggest that Rios’ demotion was the result of a department consolidation or downsizing action by Respondent [Tr 861-862].

²⁶ It should be noted that Helfant recalled almost nothing about the encounter, including the approximate date [Tr. 1648-1649].

²⁷ There is no date certain, but it appears that this occurred around September 11 [Tr. 448].

backpay check for the difference between her rate what she was demoted to in March to the wage rate she was given in September [Tr. 404-405].²⁸

Around this same time, known Union supporter Nelson Langarita²⁹ was also granted a wage increase [Tr. 706-707]. Not long after the Habermehl meetings where Langarita had asked about Union benefits in Virginia, Langarita expressed his desire for more pay with Human Resources representative Yaritza Berrios [Tr. 1015]. As of September 26, Langarita's wages were increased from \$14.15 per hour to \$15.40 per hour [GC 21] and he was officially placed in a new position that Respondent created specifically for him [Tr. 1015].³⁰

Later in September, Helfant met *again* with the Holland employees. This meeting – a mere two weeks after employees were asked about and expressed their desire to see changes to the attendance, vacation and tool policies – was for the sole purpose of announcing that the vacation and attendance policies were in fact being updated and improved [Tr. 125, 1177, 1305, 1397, 1404]. In his meeting with the maintenance employees, Helfant also announced that Respondent would be purchasing tools – at no cost to the employees – for the whole maintenance department [Tr. 366].

The changes announced by Helfant during that meeting were summarized in a flyer entitled: “Explanation of Changes to Policies” that was issued to all employees in their paychecks [GC 7]. The flyer explained the specific changes that were pending, including: (1) allowing attendance points to drop off after 30 days instead of 60; (2) allowing employees to take pre-scheduled vacation time for medical appointments; (3) allowing absences for additional life

²⁸ Pursuant to her demotion in March 2017, Rios had her pay reduced from \$16.45 to \$14.15 per hour [GC 12, GC 16-18]. After meeting with Helfant, Respondent increased her wage rate to \$15.90 and her lump sum check was issued at that same rate [Tr. 405].

²⁹ There is no dispute that Respondent knew that Langarita was a Union supporter [Tr. 708].

³⁰ Langarita was subpoenaed for both hearing sessions but failed to respond or appear [GC 20; Tr. 763].

events to be excused without the accrual of an attendance point; (4) granting employees the right to use vacation time for a call off (up to five times per year); (5) using vacation time in four-hour increments; and (6) other changes to holiday pay, the wellness program, the lock out procedure and the employees' PPE [GC 7; Tr. 1177]. Significantly, the memo announced the creation of *another* suggestion box for employees and encouraged them to use it [GC 7].

The official October 1 change to the policy included all the items in the bullet points set forth in the "Explanation of Benefits" [GC 7] and added a few more [GC 22; Tr. 1026]. The vacation policy – which had been the source of so many complaints by so many employees for several years as expressed in the August and September meetings – was expanded. Senior employees received two more days of leave, newer employees were rewarded five days of vacation and employees were allowed to use the time in smaller increments, and in some circumstances, without prior approval [Tr. 400, 710, 720].³¹ Later in October, Maintenance Manager Guy Yondo came to the facility to take orders from the maintenance employees so that they could choose the brand of tools they preferred [Tr. 370].

While Respondent argued that it had been planning to change those policies (particularly the vacation policy) for a long time, the evidence demonstrated that changes to those policies had been floating on the periphery *since 2015* [Tr. R 11, R12]. Other than exploratory e-mails between managers from time to time, there was no evidence that any change had been agreed upon for discussion or implemented at any time before union organizing began. To the contrary, Respondent's witnesses appeared to confirm that the owners of the company had no appetite for

³¹ Respondent relies on the fact that it changed the policy at all non-union facilities, but that is irrelevant. The change was made in Holland and other facilities, *after* the union organizing began and *after* employees expressed their desire to see it change [Tr. 857].

an increased vacation benefit [Tr. 1530].³² Then, despite a two-year period of no change, the matter was resolved within *a month and a half* of Union organizing.

While the majority of the employees were receiving unexpected benefits, many individual Union supporters were continuing to hear about the negative effects of unionization. About two weeks after the meetings with Helfant, most likely in late September or early October, employee Ascension Rios was directly approached by his supervisor Maria Mendoza in the beef pump area [Tr. 271]. Mendoza asked Rios directly if he supported the Union.³³ She told him that if he did support the Union, Respondent would “notice” that and he could end up “in court” [Tr. 272]. Rios stated that he supported the Union even with the risks involved. She then told him that the situation in the [unionized] New York facility was “not good” and that if an employee gets many warnings, the Union would take them to court [Tr. 273].³⁴

Around the same time, employee Elva Rivas and a group of employees who worked near her on the beef trim line were approached by supervisor Maria Mendoza in mid-morning. Mendoza asked the employees if they agreed with the Union and whether they would like to be represented by a union [Tr. 87-88]. When one employee expressed support, Mendoza indicated that the Union was not for everyone and that if the Union was selected by the employees, the employees would lose the seven minutes they were allotted at that time for donning and doffing their safety gear during break times [Tr. 89].³⁵

³² The phrase used several times by Habermehl was that the ownership did not believe in “pay for time not worked” [Tr. 1530].

³³ Mendoza’s denials of the conversation were based on leading questions [Tr. 980]. She later stated she was “not good at remembering” [Tr. 1005].

³⁴ Rios explained that Mendoza indicated that if he received discipline from Respondent while represented by a union, he could have to go to court with the union [Tr. 273]. This appears to be some kind of reference the NLRB charges, but that was not explicit on the record.

³⁵ The other witness to the conversation, Jose Villalobos, was inherently incredible and provided overly certain and conclusory testimony. For example, after denying that *anyone* had *ever* spoken to him about the Union (“Never. Never”) [Tr. 943], he then almost immediately admitted that employees were talking about the Union and “giving some papers” [Tr. 944]. He then admitted that employees were talking about the Union on the line and he actually

D. Events of October 2017

A few weeks later, in late October, Human Resources Specialist Vicente Nunez approached employee Norma Chacon at her work station [Tr. 304-306]. After some personal small talk, he told her that he saw her passing out Union flyers in the parking lot [Tr. 305]. He then asked her if she wanted the Union because she believed that there was a lack of justice in the workplace. Chacon indicated that she thought they needed a union because the employees needed someone to represent their interests and to defend them [Tr. 307]. She gave a few examples of complaints she had about working conditions, including an incident where she believed that she was mistreated by the company nurse and the lack of training [Tr. 308]. Before Nunez could respond, Chacon excused herself to take her break [Tr. 309].³⁶

In response to Respondent's robust and retaliatory reaction to the employees' organizing efforts, the Union decided to make its own showing of support. On four dates in October and November, Union organizers and several employee organizers distributed Union literature to other employees both in the employee parking lot and in the street adjacent to the facility.

The employee parking lot is next to the facility and has one exit and two entrances, all of which are one-way [GC 13]. In addition to being used as a parking area, employees often congregate during the off hours to work on cars or sell food and produce and have for many years [Tr. 768, 884, 1345].³⁷ Adjacent to the lot is a security gate house/guard shack that serves as the entrance to the facility and is normally manned by two security officers. Those officers monitor the parking lot by CCTV and by periodic foot patrols [Tr. 250]. Those guards are

participated in the conversation by saying that he had been with Respondent for 17 years and he didn't need anything [Tr. 944-945].

³⁶ Nunez largely corroborated Chacon, although he indicated that *she* brought up the topic of the Union [Tr. 1132].

³⁷ Employees have traditionally done so without any security presence or interference [Tr. 1367, 1447].

supervised by Ron Ortega, who has an office inside the facility and does not normally perform day to day security patrols or duties [Tr. 1467-1468].

On October 11, Union organizer Francisco Castillo and two fellow organizers set up on the public right of way outside Respondent's parking lot at about 1:00 p.m. Respondent security officer Gerald Cox saw the organizers and immediately notified Ortega, who came down to the guard shack with Cox [Tr. 1423]. While security supervisor Ortega denied that he had any advance knowledge of the handbilling activities, internal email shows that he was told by Habermehl [GC 29] to expect such activities on that date.

Cox and another officer, Security Officer Doll, approached the Union organizers at about 1:00 and informed them that they could not be on Respondent's property [Tr. 488, 1424, 1346]. Organizer Francisco Castillo indicated that he knew that he was not allowed on private property and he had no intention of entering the parking lot [Tr. 488]. At that time, there were only a few employees coming and going from the lot, and while some of the guards returned to the guard shack, others, including Ortega, stayed in the lot and encouraged the cars to keep moving past the Union organizers [Tr. 488].

At the time of the shift change, between 2:30 and 4:00, several employees, including Walter Aguilar, Nelson Langarita, Apolonia Rios, Norma Chacon, Tomasa Garcia and Sanjuana Garza began to hand out flyers to employees *inside* the parking lot [Tr. 127, 301, 408, 493; GC 13, GC 14]. Some cars stopped to take the literature as they were coming or going from work and others continued to drive by without stopping [Tr. 492, 1350].

During that time, at least two, and at one time four security guards [Tr. 1352] were in the parking lot near the employees who were handing out literature. Those guards regularly patrolled the lot to observe the Union supporters and at times were in very close proximity to them [GC

14; Tr. 303, 422, 489]. The employees who testified all indicated that the guards followed them and made loud statements in the direction of the employees and Union organizers. While the employees acknowledged that the guards were speaking in English and most of them did not understand all of what was said, the employees all testified that they felt the guards were instructing them to leave [Tr. 128, 303, 313, 494].³⁸

During this chaotic situation on October 11, Human Resources Business Partner Shannon Van Noy, who had been contacted directly by security and informed of the Union's presence, came to the parking lot with Assistant Plant Manager Mark Emmons, Human Resources Specialist Rodolfo Rodriguez, Security Supervisor Ortega and Security Officer Cox [Tr. 771]. Those individuals, as a group, approached the employees and the Union organizers who were congregated near the exit of the parking lot [Tr. 496, 772; GC 14]. Van Noy and the other supervisory and security personnel spoke briefly to Castillo in English, telling him that he was not allowed on the property [Tr. 497, 772]. Castillo indicated that he understood and said that the employees had the right to handbill inside the parking lot and pointed to the solicitation policy posted outside the lot [Tr. 496, 1348]. The employees who were in the parking lot had congregated to listen to (if not understand) the conversation between Van Noy and Castillo.

While Van Noy, Emmons and Rodriguez returned to the facility, Ortega testified that he remained in the parking lot for two and a half hours that day observing the employees and the Union organizers [Tr. 1428]. It is undisputed that Ortega and the other guards did, in fact, remain in the parking lot the entire time the employees were attempting to distribute literature, and that they were both watching the employees and encouraging the other employees to move past the

³⁸ Agular testified that the guards told them that the [employees] should get "out of there" [Tr. 128]; Chacon testified that the guards expression was "mad" and that he kept walking behind cars and "watching" her [303]; Apolonia Rios testified that the guards were "watching" them hand out flyers and that they moved toward the employees passing out flyers [Tr. 422]. This is corroborated by GC 14.

Union supporters. Specifically, Security Supervisor Ortega testified that he and the other guards made motions with their hands that individuals and cars should “keep moving” [Tr. 128, 459, 488-490, 1350, 1377, 1439, 1445]. Those movements included a pushing away gesture and a waving gesture toward the outside of the parking lot [Tr. 1377, 1445]. Both Security Officer Cox and Security Supervisor Ortega admit that they repeatedly said “keep moving” over and over (in English) while making the hand gestures, and that they did so in proximity of the employees who were passing out flyers [GC 14(2)-(5)]. Ortega further admitted that even when he was not herding employees out of the lot past the Union organizers, he stayed in the lot “observing” the situation [Tr. 1439, 1475]. This testimony was corroborated by the photos taken on October 11 and October 18 [GC 14(1); Tr. 518], showing that the guards were very close to the employees who were distributing literature and, in some cases, between employees who were attempting to hand out literature and those who may have otherwise taken it [GC 14 (2)-(5)].

The Union returned to distribute flyers in the street on October 18, October 25 and November 16. On each of those dates, employees in the parking lot were joined by various security guards who continued to patrol the lot, observe the employees, and direct the cars to move past the organizers [Tr. 511-514].

On one of the dates that the flyers were being distributed in October, employee Ascension Rios was approached by supervisor Carlos Giron in the parking lot [Tr. 278]. Giron, who was with two other employees, mentioned that he saw Rios in a photograph on the Union’s Facebook page [Tr. 278-279; GC 11] and commented about Rios’ “friends” who were handing out flyers in the parking lot.³⁹ Giron and the other two employees were laughing in what Rios characterized as a “mocking” fashion [Tr. 279]. Rios did not substantively respond.

³⁹ “Boar’s Head Workers United”

V. Legal Authority and Respondent's Violations

A. 8(a)(1) Violations

1. Unlawful Threats

In assessing whether a statement is a threat, the Board gauges whether the employer engaged in conduct which tends to interfere with the free exercise of employees' rights under the Act. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The determination does not turn on the employer's motive or on whether the coercion succeeded or failed. *Olympic Supply Inc. d/b/a Onsite News*, 359 NLRB 797 (2013). While the Board has found that an employer is free to make statements predicting the effects of unionization to employees, such statements must be "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond its control." *NLRB v. Gissel Packing Co.*, supra at 618; *Olympic Supply*, supra. Questionable threats need not be explicit "if the language used...can reasonably be construed as threatening." *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). The Board considers the totality of the circumstances in assessing an implicit or ambiguous threat. *KSM Industries*, 336 NLRB 133 (2001).⁴⁰

Threats that unionization would result in loss of wages have long been found to be coercive and as such, violate Section 8(a)(1). *Oklahoma City Collection District of Browning Ferris, Inc.* 263 NLRB 799, 800 (1980, enfd. mem. 679 F.2d 900 (9th Cir. 1982). Predictions of plant shut down, loss of contracts, loss or transfer of work, lost jobs, or changes in working

⁴⁰ Any argument that Respondent's unlawful statements were "lost in translation" and that this precludes finding a violation is without merit. It is well established that an employer bears the risk that its statements will be translated in such a way that an employee who speaks a different language will reasonably understand the statements as coercive. See, e.g., *API Industries*, 314 NLRB 706, 706 fn. 1 (1994); *Cream of the Crop*, 300 NLRB 914, 917 (1990). "It is a reality that antiunion employers often choose their words carefully in an attempt to convey an unlawful message to employees – who will miss the legal niceties but will grasp the employer's gist – while avoiding statements that are literal violations of the Act. The need for translation complicates this strategy." *Langdale Forest Products Co.*, 335 NLRB 602, 603 (2001) (dissent).

conditions or benefits must be based on objective facts. *NLRB v. Gissel Packing Co.*, 395 U.S. at 618. An employer must explain how a change in existing benefits and working conditions could result from the give-and-take of future collective bargaining rather than suggesting that employees, by entertaining the prospect of union representation, were courting the wrath of the employer. *Franklinton Preparatory Academy*, 366 NLRB No. 67, slip op. at 2 (April 20, 2018). The burden of proof is on the employer to show that a prediction was based on objective fact. *Schaumburg Hyundai*, 318 NLRB 449 (1995).

a. Bargaining From Scratch Threats – Complaint Paragraphs 5(a), 6(a) and 10

The weight of the evidence shows that during his August meetings with the employees, Director of Human Resources Habermehl said that any prospective negotiations with the Union would begin at “zero” or “the minimum” [Tr. 115-117, 262, 395]. A couple of days later, Production Supervisor Rodriguez repeated Habermehl’s threat when he told Union supporter Walter Aguilar that employees could lose their bonuses and their company-sponsored picnics and that Respondent would negotiate from zero if the employees selected the Union [Tr. 120]. Respondent repeated these threats in a written correspondence to employees that it attached to their paychecks [GC 6]. The letter was confirmed by Van Noy to be an accurate summation of the statements made in Habermehl’s meetings with employees [Tr. 665]. It reaffirmed that Respondent’s negotiations with the Union would not start with what employees had, but would “start at zero or the minimum allowed by law” [GC 6]. It read:

if a union gets voted in, will negotiations start with what we already have? No. If a union is voted in, negotiations will not start at current wages and benefits. Nobody knows what the final outcome of the contract will be because each item is negotiated starting with zero or the minimum allowed by law. It could be more but it could be less.

It is well established that ‘bargaining from scratch’ statements by employers violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a

threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore. For the duty to bargain ordinarily forecloses unilateral changes, and bargaining begins with existing wages and conditions. On the other hand, such statements do not constitute a violation when the employer's other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations. *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980) citing *TRW United Greenfield Division*, 245 NLRB 1135 (1979); *Stumpf Motor Co., Inc.*, 208 NLRB 431 (1974); *BP Amoco Chemical*, 351 NLRB 614, 617–618 (2007) (statements regarding loss of existing benefits are evaluated in terms of whether they are more reasonably construed as a result of union selection versus a “possible outcome of good-faith bargaining).

In reviewing such statements, the Board has stated that “‘bargaining from scratch’ is such a dangerous phrase which carries within it the seed of a threat that the employer will become punitively intransigent in the event the union wins the election.” It emphasized that when such a statement can be reasonably read in the context of a threat to either end existing benefits prior to bargaining or to “adopt a regressive bargaining posture designed to force a reduction of existing benefits for the purpose of penalizing the employees” for selecting the union, it will find a violation. *Coach & Equipment Sales Corp.*, 228 NLRB 440, 440–441 (1977). In so finding, the Board stressed that “presence of contemporaneous threats or unfair labor practices is often a critical factor in determining whether there is a threatening color to the employer’s remarks.” *Id.*

Here, Respondent’s references to bargaining from zero and similar statements went beyond descriptions of the normal give and take of collective bargaining and are more reasonably construed as a result of union selection versus a possible outcome of good faith

bargaining. Respondent's statements reasonably could be understood – and indeed, *were* understood – by the employees as threats to their existing wages and benefits, leaving them with the impression that what they might ultimately receive through collective bargaining would depend upon what the Union was able to induce Respondent to restore. These threats violated Section 8(a)(1).

b. Other Threats – Complaint Paragraphs 16(b) and 18(c)

Around late September/early October, Production Supervisor Maria Mendoza further threatened employees with the dire consequences that would result from the employees choosing to be represented by the Union. Mendoza approached employee Ascension Rios in his work area and told him that if he supported the Union, Respondent would “notice” and that he could end up “in court” [Tr. 272]. Around the same time, Mendoza approached employee Elva Rivas and a group of employees who worked near her on the beef trim line and asked if they agreed with the Union and whether they would like to be represented by a union [Tr. 87-88]. When one employee expressed support, Mendoza told the employees that if the Union came in the employees would lose the seven minutes they were allotted at that time for donning and doffing their safety gear during break times [Tr. 89].

As set forth above, an employer must explain how a change in existing benefits and working conditions could result from the give-and-take of future collective bargaining rather than suggesting that employees, by entertaining the prospect of union representation, were courting the wrath of the employer. *Franklinton Preparatory Academy*, 366 NLRB No. 67, slip op. at 2 (April 20, 2018). Respondent failed to meet its burden of proving that Mendoza's predictions were based on objective fact. As such, these threats were coercive and violative of Section 8(a)(1).

2. Unlawful Interrogations – Complaint Paragraphs 6(b), 16(a), 18(a)

The Board has determined that the legality of interrogations of employees must be viewed in context of all the circumstances and whether the questioning would reasonably tend to coerce the employee at whom it is directed so that she would feel restrained from exercising the rights protected by Section 7 of the Act. *Westwood Health Center*, 330 NLRB 935, 940 (2000); *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124 (2014). While the Board will consider whether an employee is an open union supporter as a factor in determining whether an interrogation is coercive, the factor is merely one of many and not determinative. *Norton Audobon Hospital*, 338 NLRB 320 (2002); *Bourne v. NLRB* 332 F.2d 47, 48 (2d Cir. 1964). The fact that any such conversation is cordial or polite is not dispositive of whether it would be coercive to a reasonable employee. *Woodcrest Health Care Center*, 360 NLRB No. 58, slip op. at 8 (2014).

Often, as in the present case, interrogations are accompanied by threats. Supervisor Rodriguez's August threats to Walter Aguilar that the employees' bonuses and Company-sponsored picnics were at risk, were made in the context of Rodriguez asking Aguilar why he was supporting the Union [Tr. 99-100, 120]. Similarly, Supervisor Mendoza asked employees on the beef trim line if they agreed with the Union and whether they would like to be represented by a union [Tr. 87-88]. When one employee expressed support, Mendoza said that if the employees selected the Union, they would lose the seven minutes they were allotted at that time for donning and doffing their safety gear during break times [Tr. 89]. Mendoza asked employee Ascension Rios about his support for the Union and told him that if he supported the Union, Respondent would "notice." In the context of these threats and Respondent's other contemporaneous unfair labor practices, the questioning of these employees regarding their support of the Union would

reasonably tend to coerce the employees such that they would feel restrained from exercising their Section 7 rights. As such, these interrogations violated Section 8(a)(1).

3. Solicitation of Grievances – Complaint Paragraphs 7(a), 8(b), (d), 9

The solicitation of employee grievances during an organizing campaign “raises an inference that the employer is promising to remedy the grievances,” an inference that is “particularly compelling when, during a union organizational campaign, an employer that has not previously had a practice of soliciting employee grievances.” *Garda CL Great Lakes, Inc.*, 359 NLRB 1334 (2013) citing *Amptech, Inc.*, 342 NLRB 1131, 1137 (2004); *Desert Aggregates*, 340 NLRB 289, 297-298 (2003) (Employer statements that union campaign had “rung bells all the way to the top” of company coupled with an appeal that employees should “give the company a year” and see what changes would be made was an unlawful solicitation and promise to remedy employee grievances); *Jefferson Smurfit Corp.*, 325 NLRB 280, 283 (1998) (Employers entreaty to employees “if you have further problems or there’s things here in the plant that you don’t like, why don’t you give us a chance to address them” found to be unlawful solicitation and implied promise to remedy grievances in violation of Section 8(a)(1)). See also *Multi-Natl. Food Serv.*, 238 NLRB 1031, 1036 (1979) citing *Merle Lindsey Chevrolet, Inc.*, 231 NLRB 478 (1977), citing *Uarco, Incorporated*, 216 NLRB 1 (1974).

In the present case, repeated and unequivocal solicitation of employee grievances was a key component of Respondent’s union avoidance strategy. The evidence shows that during the August 24 meeting, Plant Manager Bradley Rurka read from a prepared statement (the “24 Hour Speech) telling the employees that Respondent was listening to their concerns and promising to respond in a way that reinforced to employees that they were a “family” [Tr. 106-107, GC 9]. Rurka discussed specific policy changes and told the employees that “what [Respondent is]

changing is a good first step toward bring our family back together” [GC 9 at 7]. Rurka then appealed to the employees to keep “communicating” with management about their concerns so that those concerns could be addressed and, if possible, remedied. Rurka told employees that Respondent was “bringing back” the employee suggestion box and promised employees that every single comment would be considered and that management would report back to employees on what could and could not be fixed [GC 9 at 6]. Respondent summarized the improvements in an “Explanation of Changes to Policies” that was issued to all employees with their paychecks [Tr. 665, GC 7]. The memo concluded by announcing another suggestion box for employees and encouraged them to use it [GC 7].

Suggestion Box

- The box in the hall by Accounts Payable is now a Suggestion Box. Use it.

A few days later, Senior Vice President of Operations Larry Helfant traveled from Florida and met with the production and maintenance employees in Holland for the purpose of getting “general feedback” about “anything” [Tr. 447, 1619, 1637]. Helfant told the employees that he was aware of problems at the plant and that he wanted to “solve” those problems for the employees [Tr. 270, 366-367, 397].

Respondent’s message to the employees could not have been clearer – a union wasn’t necessary because Respondent was ready and willing to address their concerns. As the Supreme Court stated in *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964): “[t]he danger inherent in well-timed increases in benefits is the suggestion of a fist inside a velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.” *Id* at 409.

Respondent's brazen solicitation of, and promises to remedy, the employees' grievances for the purpose of discouraging union activity violated Section 8(a)(1) of the Act.

4. Rule Prohibiting "Badges, Pins or Other Items" – Complaint Paragraph 20

An employer may not prohibit employees from wearing buttons and pins containing union or other protected concerted messages unless the employer can show special circumstances justifying the restriction. *Cintas Corp.*, 252 NLRB 752 (2009). *Arden Post-Acute Rehab*, 365 NLRB No. 109, slip op. at 17-18 (2017); *In-N-Out Burger, Inc.*, 365 NLRB No. 39 (2017), enfd. 894 F.3d 707 (5th Cir. 2018); and *Boch Honda*, 362 NLRB No. 83, slip op. at 2-3 (2015), enfd. 826 F.3d 558 (1st Cir. 2016). The Board has only found special circumstances justifying the proscription of union insignia when the display jeopardizes employee safety, equipment or product safety or unreasonably interfere with a public image which the employer has established as part of its business plan. *United Parcel Service*, 312 NLRB 596, 597 (1993) citing *Nordstrom Inc.*, 264 NLRB 698, 700 (1982).⁴¹

Respondent's proffered special circumstance for proscribing "unauthorized badges, pins or other items on helmet or exterior garments" – food safety – is most certainly reasonable. The problem with the rule as written it makes no distinction between production areas and non-production areas. A rule that curtails employees' Section 7 right to wear union insignia in the workplace must be narrowly tailored to the special circumstances justifying maintenance of the rule, and the employer bears the burden of proving such special circumstances." *Boch Honda*,

⁴¹ In *The Boeing Company*, 365 NLRB No. 154, slip op. (2017), the Board adopted a new standard for evaluating an employer's workplace rule, policy, or handbook provision. The *Boeing* test considers both the legitimate justifications associated with the disputed rule and any adverse impact the rule may have on protected activity. The Board in *Boeing* did not, however, alter well-established standards regarding certain kinds of rules where the Board has already struck a balance between employee rights and employer business interests. As it pertains to the instant case, the *Boeing* decision did not deal with the "special circumstances" test of apparel rules. See, e.g., *Long Beach Memorial Center, Inc. d/b/a Long Beach Memorial Medical Center & Miller Children's and Women's Hospital Long Beach*, 366 NLRB No. 66, slip op. at 1-2 (Apr. 20, 2018) (finding hospital's restrictions on wearing union pins overbroad and unlawful without reference to *Boeing* test).

362 NLRB No. 83, slip op. at 2 (2015), enfd. 826 F.3d 558 (1st Cir. 2016); see also *W San Diego*, 348 NLRB 372, 373-374 (2006) (special circumstances that justified employer's ban on buttons worn in public areas did not justify a ban on buttons worn in nonpublic areas). In the instant case, Respondent's witnesses admitted that Respondent has absolutely no need to prohibit badges and pins in non-production areas [Tr at 826, 1572]. As Respondent has not demonstrated special circumstances justifying its absolute prohibition on badges and pins in non-production areas, its maintenance of this overly broad prohibition of unauthorized pins and badges violates Section 8(a)(1).

6. Surveillance – 12 and 17

While an employer may observe open, public union activity on or near its property lawfully, an employer unlawfully “surveils employees engaged in Section 7 activity when it observes them “in a way that is ‘out of the ordinary’ and thereby coercive.” *Alladin Gaming, LLC*, 345 NLRB 585, 586 (2005). Indicia of coerciveness include the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation. *Id.*

In the instant case, the following facts are undisputed:

- On October 11, Security Supervisor Ron Ortega stood in the parking lot for two and a half hours watching employees and the Union organizers distribute literature to Respondent's employees [Tr. 1428].
- Ortega and other security guards stayed in the parking lot the entire time the employees were attempting to distribute literature, both watching the employees hand out the flyers and encouraging other employees to move past the Union supporters [Tr. 1439, 1475].
- Ortega stayed in the lot for the purpose of “observing” the situation [Tr. 1439, 1475; see also GC 14(1), Tr. 518, showing that the guards were very close to the employees distributing literature and, in some cases, between employees who were attempting to hand out literature and those who may have otherwise taken it [GC 14(2)-(5)].

- The Union returned to distribute flyers in the street on October 18, October 25 and November 16. On each of those dates, several employees passed out flyers in the parking lot and on each of those dates, those employees in the parking lot were surveilled by security guards who encourage the cars to move past the organizers [Tr. 511-514].

There is no evidence that Security Supervisor Ortega had a regular practice of standing in the parking lot for long periods of time to observe employees. There is no evidence that Respondent's security guards had a regular practice of standing in close proximity to, or between, employees while they were in the parking lot. There is no evidence that Respondent's security guards had a regular practice of discouraging employees from communicating with each other in the parking lot. To the contrary, it is not at all unusual for employees to congregate in Respondent's parking lot at the end of their shifts for various purposes [Tr at 1447-1448]. Respondent's observation of employees as they distributed literature was indisputably "out of the ordinary." As such, Respondent's surveillance was coercive and violated Section 8(a)(1).

On one of the dates in October that the employees distributed flyers, Production Supervisor Carlos Giron approached employee Ascension Rios in the parking lot and said that he saw Rios in a photograph on the Union's Facebook page and commented about Rios' "friends" handing out flyers in the parking lot [Tr. 278-279, GC 11]. It is well established that whether an employer creates an unlawful impression of surveillance is determined on an objective basis. Such actions are unlawful if a reasonable employee would assume that his union activities are being monitored. *Stevens Creek Chrysler*, 353 NLRB 1294, 1295 (2009). In this case, when Supervisor Giron indicated to employee Rios that he had been looking at the Union's Facebook page it was entirely reasonable for Rios to assume that Giron was monitoring employees' Union activities. As such, Giron's statement created an impression of surveillance in violation of Section 8(a)(1).

B. 8(a)(3) Violations

1. Walter Aguilar's Suspension and Discipline – Complaint Paragraphs 21 and 23

Walter Aguilar was an open Union supporter and organizer. In the week leading up to his suspension, Aguilar spoke out during one of the August 21-22 meetings held by Scott Habermehl, challenging Habermehl's claims regarding working conditions at the unionized Virginia plant [Tr. 132, 153]. A few days later, about August 24, Supervisor Rodriguez interrogated Aguilar about his support for the Union. [Tr. 100, 119].

A few days after these events, on August 28, Aguilar was in his work area and expressed concern that the employees were working themselves too hard and that they should "take it easy" (or "work easy") [Tr. 124]. Aguilar credibly testified that he was merely trying to encourage employees to take care of themselves and not get hurt because of the Company's demands [Tr. 124]. There is no evidence that any employees stopped working or slowed down, or that production was affected based on Aguilar's statement. Nevertheless, Human Resources Business Partner Van Noy determined it was a "serious" situation. She contacted Corporate Director of Human Resources Habermehl in Florida and they decided to conduct a full investigation [Tr. 670, 1047, 1102-1103].

Before conducting any investigation, Van Noy called Aguilar to the office. Aguilar acknowledged that he had said he didn't feel he should have to do the work of two people [Tr. 1052, R5]. Without further investigation or any evidence of impact on production, Van Noy suspended Aguilar [Tr. 1054].

After suspending Aguilar, Respondent began its investigation. As reported in the Company's investigation notes, none of the employees interviewed said that Aguilar told them to slow down production or stop working. Instead, when questioned by Van Noy, two employees

assumed that she was asking about Aguilar's union activity and told Van Noy that Aguilar was passing out cards and talking about the Union [R 5]. Another employee stated that she heard Aguilar "making fun of another employee" and that he was always telling employees to "not work so hard." [R 5]. Another employee indicated that Aguilar told her to hurry up and then said that the harder she worked, Respondent would only pressure her to work harder.

Respondent's investigation, which appears to have taken no more than an hour [R 5] – was concluded the same day of Aguilar's suspension. For reasons it has never explained, Respondent kept Aguilar out of work for three days. Upon Aguilar's return on August 31, Van Noy told him that his suspension was rescinded, but that he was still receiving a written warning for attempting to cause a work slowdown [GC 10]. During her testimony, Van Noy stated that Respondent treated the matter as "progressive discipline" because she believed that Aguilar had made "similar statements previously" that had never been reported [Tr. 815]. Yet the record is bereft of evidence of any such statements made by Aguilar. Van Noy was not asked, and did not explain, how something that was never reported or acted upon would serve as the basis for progressive discipline.

Under the Board's *Wright Line* decision, in cases alleging discrimination in violation of Section 8(a)(3) and (1), where motivation is at issue, the General Counsel bears the initial burden of showing that the respondent's decision to take adverse action against an employee was motivated, at least in part, by antiunion considerations. 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. (1982), *approved in NLRB v. Transportation Corp.*, 462 U.S. 393 (1983). The General Counsel may meet this burden by showing that: (1) the employee engaged in union or other protected activity, (2) the employer knew of such activities, and (3) the employer harbored animosity towards the union or other protected activity. *Camaco*

Lorain Mfg. Plant, 356 NLRB No. 143, slip op. at 3-4 (2011); *Intermet Stevensville*, 350 NLRB 1270, 1274-1275 (2007); *Senior Citizens Coordinating Council*, 330 NLRB 1100, 1105 (2000); *Regal Recycling, Inc.*, 329 NLRB 355, 356 (1999). Animus may be inferred from the record as a whole, including timing and disparate treatment. *Brink's, Inc.*, 360 NLRB 1206, fn. 3 (2014). If the General Counsel establishes discriminatory motive, the burden shifts to the employer to demonstrate that it would have taken the same action absent the protected conduct. *Intermet Stevensville*, supra; *Senior Citizens*, supra.

It is undisputed that prior to his suspension, Walter Aguilar was engaged in union activity and that Respondent was well aware of his activity. The evidence that Respondent's hostility to that activity "contributed to" its decision to suspend and issue discipline to Aguilar is substantial and includes the following:

- (a) the close timing between Aguilar's protected activity at the August 21-22 Habermehl meeting and the discipline;
- (b) Respondent's other contemporaneous unfair labor practices demonstrating its animus to the Union organizing activity, including its solicitation of, and promises to remedy, employee grievances, threats to bargain from zero [GC 6]; and Supervisor Rodriguez's threats to, and interrogation of, Aguilar; and
- (c) evidence that Respondent's asserted reason for Aguilar's discipline was pretextual, including its failure to conduct any meaningful investigation prior to suspending Aguilar and Respondent's disparate treatment of Aguilar.

With regard to the latter, the evidence shows that employees engaged in much more egregious behavior were issued lesser discipline by Respondent including non-disciplinary coaching notices. For example, several employees who were involved in "verbal altercations"

with co-workers were only issued “coaching letters” or letters of “behavioral expectations” [GC 24, GC 25, GC 26]. There was no evidence that any of those employees was placed on an investigatory suspension before the coaching letters issued. Another employee received a written warning like Aguilar, but in that case, the employee had shouted at another employee and had been warned of such behavior in the past [GC 23]. Again, there was no evidence that the employee served an “investigatory suspension” like Aguilar. This disparate treatment is compelling evidence of pretext. *Camaco Lorain Manufacturing Plant*, 356 NLRB 1182, 1185 (2011)(other employees engaged in similar conduct not discharged but given lesser discipline); *Turtle Bay Resorts*, 353 NLRB 1242, 1243 (2009)(more serious discipline issued to union supporter than to at least 5 employees who engaged in similar conduct). In sum, the ample record evidence of animus and pretext supports the conclusion that Respondent’s suspension and discipline of Aguilar violated Section 8(a)(3).

2. Hand Tools for Maintenance Employees; More Favorable Attendance and Vacation Policies; Promotions and Raises for Employees Langarita and Rios – Complaint Paragraphs 22, 24, 25 and 26

a. Changes to Tool and Attendance/Vacation Policies

The Supreme Court has held that an employer violates the Act when it grants a wage increase or other benefits for the purpose of inducing employees to vote against the union. *NLRB v. Exchange Parts Co.*, supra at 409. The Court explained that Section 8(a)(1) “prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect.” Id. The *Exchange Parts* standard applies to allegations both that an employer unlawfully announced a benefit in violation of Section 8(a)(1), see, e.g., *Village Thrift Store*, 272 NLRB 572 (1983), and that it unlawfully

implemented a benefit in violation of Section 8(a)(3), see *In Home Health, Inc.*, 334 NLRB 281, 284 (2001), and *Perdue Farms*, 323 NLRB 345, 352-353 (1997), enf. denied in relevant part on other grounds 144 F.3d 830 (D.C. Cir. 1998).

Upon learning of the organizing drive, Respondent's managers wasted no time looking for ways to address the issues that drove the employees to consider unionization [GC 8]. Up to that point, Respondent had required its maintenance employees to pay out of pocket for their tools [Tr. 366, 1576]. Believing that the maintenance employees were the source of the nascent organizing efforts, Respondent immediately began discussing providing maintenance tools in Holland [R 11, R 12]. Respondent also began to revisit the possibility of changing its attendance and vacation policies [R 12; Tr. 1575]. Respondent's internal communications make clear that the sudden interest in improving working conditions was directly related to unionization. In one such communication, Senior Vice-President Habermehl strategizes that Respondent couldn't limit any proposed additional vacation benefits to "maintenance only without giving union organizations a lot of ammunition for the production group" [GC 8].

On August 24, Rurka met with the employees to "follow up" on the issues raised by employees in the meetings held after Respondent discovered their organizing efforts [GC 9 at 4]. Rurka told the employees that Respondent had heard their concerns and was responding in a way that reinforced to employees that they were a "family." Rurka told the employees that the "most common concern" was about Respondent's attendance and vacation policies. Rurka continued: "So we are going to try something new. We are going to change the vacation policy ..." [GC 9 at 5]. Rurka announced that Respondent was adding to the list of court appearances, any meetings or events related to immigration issues and expanding the list of medical visits qualifying for excused absence [GC 9 at 4]. Rurka said "what [Respondent is] changing is a good first step

toward bring our family back together” [GC 9]. Rurka also told the employees: “we acknowledge that [vacation] is an important issue to you ... we don’t want to come to you empty handed” [GC 9, page 5-6]. Rurka also announced changes to both the lock out policy and the PPE equipment that was provided, two issues that were specifically mentioned by the maintenance employees as the reason for considering the Union [GC 9, GC 4].

Respondent summarized the improvements in an “Explanation of Changes to Policies” that was issued to all employees with their paychecks [Tr. 665; GC 7]. The specific changes included: (1) allowing attendance points to drop off after 30 days instead of 60; (2) allowing employees to take pre-scheduled vacation time for medical appointments; (3) allowing absences for additional life events to be excused without the accrual of an attendance point; (4) granting employees the right to use vacation time for a call off (up to five times per year); (5) using vacation time in four-hour increments; and (6) other changes to holiday pay, the wellness program, the lock out procedure and the employees’ PPE [GC 7; Tr. 1177]. The memo announced the creation of another suggestion box for employees and encouraged them to use it [GC 7].

About two weeks after employees expressed their desire to see changes to the attendance, vacation and tool policies, Helfant returned to the Holland facility to announce several improvements [Tr. 125, 1177, 1305, 1397, 1404]. In his meeting with the maintenance employees, Helfant also announced that Respondent would be purchasing tools – at no cost to the employees – for the whole maintenance department [Tr. 366].

The official October 1 change to the policy added a few more changes to those included in the “Explanation of Benefits” [GC 7, GC 22, Tr. 1026]. The vacation policy – which had been the source of so many complaints by so many employees for several years as expressed in the

August and September meetings – was expanded. Senior employees received two more days of leave, newer employees were rewarded five days of vacation and employees were allowed to use the time in smaller increments, and in some circumstances, without prior approval [Tr. 400, 710, 720]. Later in October, Respondent began to take orders from the maintenance employees for the purchase of tools [Tr. 370].

An employer's legal duty in deciding whether to grant a benefit is to act as it would have if the union were not present. *Red's Express*, 268 NLRB 1154, 1155 (1984). Thus, while the Board has inferred from the timing of such a grant of benefit that it was unlawful, the Respondent may rebut this inference by showing that the timing of its action is explained by reasons other than the pending election. *B&D Plastics*, 302 NLRB 245 (1991); see also *DMI Distribution of Delaware*, 334 NLRB 409, 410 and fn. 9 (2001) (applying the same analysis to unfair labor practice cases as to objections cases); *Desert Aggregates*, 340 NLRB 289, 290–91 (2003) citing *Holly Farms Corp.*, 311 NLRB 273, 274 (1993).

Respondent argues that it had been planning to change those policies (particularly the vacation policy) for a long time, but the evidence shows that changes to those policies had been floating on the periphery *since 2015* [R 11, R12]. But there is no evidence that any change had been agreed upon for discussion or implemented at any time before Union organizing began. In fact, the evidence confirms that Respondent's owners were not receptive to improved vacation benefits for the employees [R 11; R 12; Tr. 853, 1530, 1538-1539, 1583]. Then, despite a two-year period of no change, the matter was resolved within weeks of it learning of the Union organizing. Respondent also points to the fact that it changed policies at all non-union facilities. But as noted above, the changes at Holland and the other facilities took place only *after* the threat

of Union organizing began and only *after* employees expressed their desire to see it change, in response to Respondent's solicitations [Tr. 857].

Respondent has not met its burden of showing that the timing of these improved working conditions was based on reasons other than the organizing efforts. As such, announcement of the changes made by Respondent unlawfully interfered with the employees' exercise of their Section 7 rights, in violation of Section 8(a)(1). *Guard Publishing Company*, 344 NLRB 1142 (2005). Furthermore, the implementation of the changes violated Section 8(a)(3). *Thorgren Tool & Molding, Inc.*, 312 NLRB 628, 632 (1993).

b. Promotions and Raises for Employees Langarita and Rios

In addition to its broad changes to policy impacting all employees, Respondent also affected more targeted changes to employees' terms and conditions of employment. In response to Larry Helfant's solicitation of grievances at the August 29 meeting, employee Apalonia Rios told Helfant that Respondent demoted her in March 2017 and reduced her wage rate by nearly three dollar per hour wage [Tr. 401, 1647]. Helfant told Rios that he would look into it for her [Tr. 401-402, 1648-1649]. After the conversation Helfant instructed the Human Resources department to reconsider Rios' demotion [Tr. 1628]. About two weeks later, Respondent increased Rios' wages to \$15.90 and issued her a lump sum backpay check [Tr. 404-405].

Around the same time, Respondent granted a sudden wage increase to known Union supporter Nelson Langarita [Tr. 706-708]. Specifically, after the Habermehl meetings where Langarita asked about benefits at Respondent's Virginia facility, he too approached Human Resources with a request for more pay [Tr. 1015]. Langarita's wages were promptly increased from \$14.15 per hour to \$15.40 per hour [GC 21] and Respondent placed him in a new position created specifically for him [Tr. 1015].

The timing of Respondent's decisions to grant these wage increases compels the inference of unlawful motive. Respondent did not rebut this inference by showing that the timing of its actions was unrelated to the employees' organizing efforts. Respondent attempted to present evidence that others had been granted ad hoc wage increase upon request in the past, but those instances involved either employee downsizing or transferring to another department [Tr. 807]. Apolonia Rios' March 2017 demotion was for performance issues after she had unsuccessfully completed a performance improvement plan [GC 16, Tr. 400-404]. In sum, Respondent's implementation of these changes interfered with the employees' exercise of their Section 7 rights and violated Section 8(a)(3). *Thorgren Tool & Molding, Inc.*, 312 NLRB 628, 632 (1993).

VI. Conclusion

For the reasons set forth above, Counsel for the General Counsel respectfully urge the Administrative Law Judge to find and conclude that the Respondent engaged in the unfair labor practices as alleged and to recommend the requested remedial Order set forth below.⁴²

VII. Proposed Order and Notice

Respondent is hereby ordered to:

1. Cease and desist from:

(a). Threatening employees with loss of benefits (including a 7 minute donning and doffing time allowance), that rules would be enforced more strictly or that negotiations would start from zero if they selected the Union as their bargaining representative;

⁴² The General Counsel seeks the special remedy of Notice reading in this case. In determining whether additional remedies are necessary to fully dissipate the coercive effect of unlawful discharges and other unfair labor practices, the Board has broad discretion to fashion a remedy to fit the circumstances of each case. *Casino San Pablo*, 361 NLRB No. 148, slip op. at 6-7 (2014); *Excel Case Ready* 334 NLRB 4, 4-5, (2001). In this regard, the Board has held that a public reading of the notice is an "effective but moderate way to let in a warming wind of information, and more important, reassurance." *Federated Logistics & Operations* 340 NLRB 255, 256 (2003) citing *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 539-540 (5th Cir. 1969).

- (b). Interrogating employees about their union membership, activities and sympathies;
- (c). Soliciting employee complaints and grievances and promising to remedy them, by statement and inducement to use the suggestion box, including increased benefits and improved terms and conditions of employment if they do not select the Union as their bargaining representative;
- (d). Promising employees that the vacation and attendance benefits would be changed if they did not select the Union as their bargaining representative and then granting those benefits to employees;
- (e). Surveilling employees or give them the impression that their union activities are under surveillance by Respondent;
- (f). Maintaining a rule that denies employees the right to wear unauthorized badges and pins on exterior garments;
- (g). Increasing wages for employees to induce them to abandon support for the Union or any other labor organization;
- (h). Discipline or Suspend employees for engaging in union or protected concerted activities;
- (i). Engaging in the conduct described in paragraphs 1(a) – (h), or in any like or related manner interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act or discriminating in regard to the hire or tenure or terms or conditions of employment of its employees so as to discourage their support for, membership in, assistance to, or activities on behalf of the Charging Party, or any other labor organization.

2. Take the following affirmative actions:

- (a). Rescind and expunge from its files and records any reference to the suspension and disciplinary notice issued to Walter Aguilar and advise him, in writing, that this has been done and that the suspension and disciplinary notice will not be used against him in the future in any way.
- (b). Rescind, in writing, and remove the rules described in paragraph 20 of the Complaint and Notice of Hearing.
- (c). Schedule a meeting or series of meetings meant to reach the widest possible audience at which Larry Helfant and/or Scott Habermehl will read the notice to employees in English, Spanish, Vietnamese, Laotian, and any other language spoken by employees at Respondent's facility. Alternatively, require that Respondent promptly have a Board agent read the notice to employees during work-time in the presence of Respondent's supervisors and agents identified above in paragraph 4.

(d). Post appropriate notices in English, Spanish, Vietnamese, Laotian and any other languages spoken by employees at Respondent's facility.

SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT, FEDERAL LAW, GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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 threaten you with loss of benefits or termination if you choose to be represented by or support the United Food and Commercial Workers International Union (UFCW), AFL-CIO (Union), or any other labor organization.

WE WILL NOT threaten you by telling you that negotiations will start from scratch, or the minimum required by law, if you choose to be represented by the Union or any other labor organization.

WE WILL NOT solicit complaints and/or grievances from you thereby impliedly promising you benefits of improved working conditions in order to discourage your activities on behalf of, or in support of, the Union, or any other labor organization, including by directing you to use the suggestion box.

WE WILL NOT promise you better benefits to discourage your activities on behalf of, or in support of, the Union, or any other labor organization.

WE WILL NOT coercively interrogate you concerning your union sympathies and activities or the union sympathies and activities of other employees.

WE WILL NOT surveil, or create the impression that your union organizing activities are under our surveillance while you distribute literature in our parking lot by telling you that we were instructed to identify employees distributing literature in our parking lot, and by telling you that we saw your picture on a union Facebook page.

WE WILL NOT convey to you the impression that it would be futile for you to select the Union, or any other labor organization, as your collective bargaining representative by telling you that the Union cannot help you because the Union will not be able to get you reinstated if you are terminated.

WE WILL NOT stop you from distributing literature about the Union, or any other labor organization, in our parking lot and in other non-work areas.

WE WILL NOT stop you from wearing union insignia such as badges, pins, and other items on exterior garments in non-work areas and **WE WILL** rescind the rule in our handbook on that subject.

WE WILL NOT grant wage increases or promotions in order to discourage your activities on behalf of, or in support of, the Union, or any other labor organization.

WE WILL NOT grant benefits, such as providing you new tools, in order to discourage your activities on behalf of, or in support of, the Union, or any other labor organization.

WE WILL NOT discipline, or otherwise discriminate against you, because of your activities on behalf of, or in support of, the Union, or any other labor organization and to discourage your activities on behalf of, or in support of, the Union, or any other labor organization.

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

WE WILL NOT in any like or related manner discriminate in regard to the hire, or tenure, or terms and conditions of employment, in order to discourage membership in, or support for, the Union, or any other labor organization.

WE WILL remove from our files all references to the suspension and verbal warning of Walter Aguilar and **WE WILL** notify him in writing that this has been done and that the suspension and warning will not be used against him in any way.

Respectfully submitted this 4th day of September 2019.

/s Colleen Carol

/s Steven Carlson

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