Ishikawa Gasket America, Inc. subsidiary of Ishikawa Gasket of Japan *and* Julie A. Wilson and International Association of Machinists *and* Aerospace Workers AFL–CIO, District Lodge 57. Cases 8–CA–31264 and 8–CA–31292

December 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On May 18, 2001, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, a reply brief, and a brief in answer to the General Counsel's cross-exceptions. The General Counsel filed cross-exceptions and a supporting brief, and a brief in answer to the Respondent's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] to modify the remedy, and to adopt the recommended Order[3] as modified.

1. The General Counsel has filed a number of exceptions to, among other things, the judge's failure to find that the Respondent violated Section 8(a)(1) by unlawfully soliciting and promising to pay employee Delia Baldonado to surveil employees' union activities, and that Baldonado engaged in such surveillance. We agree. Although the judge made clear factual findings that establish these violations involving Baldonado in Section III,B, paragraph 3 of his decision, he did not make an express finding that this conduct violated Section 8(a)(1). Accordingly, we modify the judge's decision to expressly find the violations as to Baldonado.[4]

2. The General Counsel also excepts to the judge's failure to find that the Respondent violated Section 8(a)(1) based on language in the separation agreement it required former employee Lynn Brown to sign.[5]

The relevant facts are as follows. On April 5, 2000, the Respondent executed a separation agreement with departing employee Brown under which Brown would receive a monetary settlement in return for her agreement to the following terms:

> Employee acknowledges that she has not, and agrees that she shall not for a period of twelve months following the last day the Employee was employed by the Company for any reason or on any grounds (unless required by law): a. attempt to hire, influence, or otherwise direct any employee of the Company to leave employment of the Company or to engage in any dispute or work disruption with the Company, or to engage in any conduct which is contrary to the Company's interests in remaining union-free.

The General Counsel argues that this separation agreement is unlawful because it prohibits Brown from engaging in union and other protected activities for a 1-year period. We agree.

In our view, this separation agreement is overly broad in that it forces Brown to prospectively waive her lawful

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

The judge erroneously concluded, in the final par. of sec. III,B of his decision, that only one management faction was fired prior to the January 2000 election. The record establishes that both management factions were fired prior to the election. We find, however, that this error does not affect our decision.

[2] We modify par. 3 of the judge's conclusions of law to provide, consistent with the judge's findings, that Respondent unlawfully promised to pay employees for surveilling the union activities of other employees. We also modify par. 3 to insert the additional 8(a)(1) violation, discussed below, that Respondent unlawfully conditioned employee Brown's receipt of a monetary separation settlement on her future forbearance of protected concerted activities. As modified, par. 3 provides that:

> "3. By telling employees that their union activities were a threat to the company and that their annual bonuses would be reduced, by promising benefits, by interrogating employees and soliciting and resolving employee grievances, by soliciting employees to engage in surveillance, by promising to pay them for such surveillance, and by engaging in surveillance of employees' union activities, by discouraging the distribution of union literature, by distributing racially inflammatory literature, and by conditioning an employee's receipt of a monetary separation settlement on her future forbearance of protected concerted activities the Respondent has interfered with, restrained and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act."

The judge's proposed Order and notice have been similarly modified.

[3] We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co*., 335 NLRB 142 (2001), and we have conformed his notice to the modified Order.

[4] Because the judge's conclusions of law and proposed Order and notice already address the similar violations arising from parallel conduct involving employee Dena Slane (except as set forth in fn. 3, above), it is unnecessary to modify them.

[5] The judge made no findings as to this amended complaint allegation. The General Counsel originally alleged in the complaint that Brown was a supervisor. The Respondent denied this allegation in its answer. The General Counsel now agrees with the Respondent that the record evidence does not establish that Brown is a statutory supervisor. We agree. Thus, although the judge refers to Brown (when describing her discharge) as a supervisor, he does not make any findings that she is a statutory supervisor, nor does the record support such a finding.

Section 7 rights. "[F]uture rights of employees as well as the rights of the public may not be traded away in this manner." *Mandel Security Bureau, Inc.*, 202 NLRB 117, 119 (1973) (release used by employer was overly broad and unlawfully prohibited filing of unfair labor practice charges concerning future incidents). See generally *Metro Networks, Inc.*, 336 NLRB 63 (2001).

Accordingly, we find that the Respondent violated Section 8(a)(1) by conditioning Brown's receipt of separation payments on her refraining from protected concerted activities for a 1-year period.

3. The General Counsel excepts to the judge's proposed Order and remedy to the extent that it does not encompass several remedial measures requested by the General Counsel. We address below these requested remedies. In doing so, we take into account the Board's broad discretion to fashion remedies that will effectuate the policies of the Act.[6]

(a) The General Counsel requests that Respondent be required to "reimburse all discriminatees entitled to monetary awards for any extra and/or state income taxes that would or may result from the lump sum payment of awards." We decline to order this relief at this time.

This remedial relief sought by the General Counsel would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), enfd. 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn. 1 (2000). Because there has been no such briefing in this case, we decline to include this additional relief in the Order here. See *Cannon Valley Woodwork*, 333 NLRB No. 97 fn. 3 (2001) (not reported in Board volumes).

(b) Next, the General Counsel excepts to the judge's failure to require the Respondent to read the notice to employees directly to its employees on worktime. We similarly find this remedy unwarranted under the facts of this case.

The Board's standard Order requires a mailing in certain circumstances. *Charlotte Amphitheater Corp.*, 331 NLRB 1274 (2000). The reading of the notice by a respondent is an "extraordinary" or "special" remedy that will be imposed only where required by the particular circumstances of a case. *Texas Super Foods*, 303 NLRB 209 (1991). In cases where the Board has granted the remedy of notice reading by a respondent or its representative, the conduct has been egregious. *Wallace International de Puerto Rico*, 328 NLRB 29 (1999) (Board granted extraordinary remedies because of respondent's egregious conduct which included among other things, creating the impression of surveillance, threatening employees with discharge, telling employees plant would close if union came in, having mayor suggest to employees that unionization would cause plant to close).

The General Counsel does not argue that this is an egregious case, nor do we find it to be so. Accordingly, we decline to order the Respondent to read the notice to employees to its assembled work force.

(c) The General Counsel requests that the style of the standard notice to employees be changed so that it is "written in laypersons' language and without legal jargon." We embrace the principle that notices will most effectively apprise employees of their rights, and of the unlawful acts of respondent employers or unions, when they are written in clear laypersons' language.[7] We further find that this principle comports with trends in the public and private sectors to ensure that legal documents are drafted so that they can be easily understood. Thus, while a Board Order must be precisely phrased so it can be enforced by a circuit court of appeals, a Board notice is directed at an audience that is better served by clear laypersons' language. In our view, moreover, simplicity and clarity are certainly not inconsistent with precision. Notwithstanding our support for plain language notices, however, we decline to impose that remedy in this case because neither the General Counsel nor the Charging Party has proposed notice language setting forth the precise plain language they would have us adopt for the violations found here.[8]

(d) Finally, the General Counsel requests that the standard format of the notice to employees be expanded to include:

> a statement explaining what the NLRB is, generally describing an employee's rights under the Act, and that employees may obtain information from the Region in confidence, regarding their rights under the Act; set forth the Regional office's address, telephone number and hours of operation: provide the Board's Web address; and further provide all of the preceding information in Spanish along with a statement that a Spanish-speaking Board agent can be made available, if necessary;

Specifically, the General Counsel seeks to substitute the following two paragraphs for the first two paragraphs currently used in Board notices:

[6] See Sec. 10(c) of the Act.

[7] See, e.g., *Bilyeu Motor Corp.*, 161 NLRB 982 (1966); *Rondell Co.*, 222 NLRB 328, 329 fn. 3 (1976); *Yellow Cab Co.*, 148 NLRB 620, 628 fn. 15 (1964).

[8] We invite the General Counsel and other parties in future cases to suggest precise language as to the particular violations involved.

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

The General Counsel also seeks to have the following paragraphs inserted at the conclusion of the text of the current notice to employees:

> The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
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> | | |
> |---|---|
> | 1240 East 9th Street | Telephone: (216) 522-3715 |
> | AJC Federal Bldg., Rm. 1695 | Hours of Operation: 8:15 a.m. |
> | Cleveland, OH 44199-2086 | to 4:45 p.m. |
>
> Si quiere, se pueda hablar con un agente de La Junta Nacional de Relaciones del Trabajo en confianza [A Board agent who speaks Spanish can be made available to speak with you in confidence.] La pagina electronica de red de La Junta Nacional de Relaciones del Trabajo tambien tiene informacion en espansol: www.nlrb.gov. [Information in Spanish is also available on the Board's website: www.nlrb.gov.]

With one exception, discussed below, we find merit to this General Counsel exception. Thus, as previously discussed, we support the notion that notices to employees should be drafted in plain, straightforward, laypersons' language that clearly informs employees of their rights and the violations found. In our view, the General Counsel's proposed language at the beginning of Board notices clearly and effectively informs employees of their rights under the Act. Accordingly, for purposes of this case, and for all future Board cases where notices are required, we will replace the existing text with the initial two paragraphs set forth above.[9]

As to the additional paragraphs that the General Counsel seeks to have inserted at the conclusion of the text of the Board notice, we agree that the first two should be inserted in this case and in all subsequent Board cases where notices are required.[10] These first two paragraphs, clearly—yet simply—describe the function of the Board and its processes, and the location of the applicable Regional Office. We find that this descriptive, yet neutral information, serves the beneficial functions of apprising affected employees of their rights under the Act as well as providing useful information about the Board and its processes.

We do not, however, grant the General Counsel's exception to the extent that it seeks the insertion of the final Spanish paragraph in the Board notice. There has been no claim or showing in this case that this Spanish provision is needed to address the needs of the affected employees. We note, however, that upon the request of a party in a particular case, we will consider whether to provide the information set forth in the last proposed paragraph in Spanish or other relevant foreign language.

AMENDED REMEDY

In addition to the relief ordered by the judge, we modify the language of the notice to employees, as set forth above.

ORDER

The National Labor Relations Board orders that the Respondent, Ishikawa Gasket America, Inc., Bowling Green, Ohio, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by: telling employees that their union activities were a threat to the company and that their annual bonuses would be reduced; promising benefits; interrogating employees and soliciting and resolving employee grievances; soliciting employees to engage in surveillance, promising to pay them for such surveillance, and engaging in surveillance of employees' union activities; discouraging the distribution of union literature; distributing racially inflammatory literature; and conditioning employee receipt of separation payments on employee future forbearance of Section 7 rights."

2. Substitute the following for paragraph 2(e).

[9] In some cases (e.g., Sec. 8(b)(4)), the language may be modified.
[10] Id.

"(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act by telling employees that their union activities are a threat to the Company and their annual bonuses will be reduced, promising benefits, interrogating employees and soliciting and resolving employee grievances, soliciting employees to engage in surveillance, promising to pay for this surveillance and engaging in surveillance of employees' union activities, discouraging the distribution of union literature, distributing racially inflammatory literature, and conditioning employee receipt of separation payments on that employee waiving her Section 7 rights.

WE WILL NOT discriminatorily decrease the rate at which our annual employee bonus is calculated because of or in retaliation for our employees engaging in union or other protected concerted activity.

WE WILL NOT discharge, suspend or issue warnings to any employee because of or in retaliation for their engaging in union or other activity protected by Section 7 of the Act.

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

WE WILL within 14 days of this Order, offer Julie A. Wilson immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and make her whole for the losses incurred as a result of the discrimination against her, with interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the warnings, suspension and discharge of Julie A. Wilson, WE WILL, and within 3 days thereafter, notify her that this has been done and that evidence of the unlawful discharge and discipline will not be used as a basis for future personnel actions against her.

WE WILL make production and maintenance employees whole for any loss of 1999 Christmas bonus earnings suffered as a result of the discrimination against them, with interest.

ISHIKAWA GASKET AMERICA, INC. SUBSIDIARY OF ISHIKAWA GASKET OF JAPAN

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

1240 East 9th Street

AJC Federal Building, Room 1695 Telephone: (216) 522-3716

Cleveland, OH 44199-2086 Hours: 8:15 a.m. to 4:45 p.m.

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office.

Karen N. Neilsen and *Judith Fornalik, Esqs*. for the General Counsel.
Maurice Jenkins, Esq., of Detroit, Michigan, for the Respondent.
William Rudis, Esq., of Cincinnati, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Bowling Green, Ohio, on February 6–9, 2001. Subsequently, briefs[1] were filed by the General Counsel and the Respondent. The proceeding is based upon charges file January 20, 2000,[2] and January 31, 2000, as subsequently amended, by Julie A. Wilson, on individual and by the International Association of Machinist and Aerospace Workers, AFL–CIO District Lodge 57. The Regional Director's consolidated complaint dated October 30, 2000, alleges that Respondent, Ishikawa Gasket America, Inc., subsidiary of Ishikawa Gasket of Japan, violated Section 8(a)(1), (3) and (4) of the National Labor Relations Act by telling employees that their union activities were a threat to the company and that their annual bonuses would be reduced, by promising benefits, by interrogating employees and soliciting and resolving employee grievances, by soliciting employees to engage in surveillance and engaging in surveillance of employees union activities, by discouraging the distribution of union literature and distributing racial inflammatory literature, by prohibiting an employee from engaging in union activity and by disciplining and discharging an employee because of her union or other protected concerted activities and because she filed a charge against the employer with the Board.

Upon a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Michigan corporation engaged in the manufacture, distribution, and sale of automotive gaskets at facilities in Bowling Green, Ohio. It annually ships goods valued in excess of $50,000 from its Ohio location to points outside Ohio and it admits that at all times material is has been an employer engaged in operations affecting commerce within the meaning of Section 2(2) , (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent manufactures head and manifold gaskets for the automobile industry at its Bowling Green production facility. Its administrative headquarters are in Farmington Hills, Michigan, where its executive officers, accounting, engineering, marketing, and sales divisions are located. The Bowling Green plant opened in 1996 with 12 employees and has grown to approximately 200 salaried and hourly production and maintenance employees. Manufacturing occurs on 10 different production lines, each with three to seven employees managed by a line leader, who reports to a shift supervisor. Executive Vice President Masanori Ken Yamanami is the senior manager for both the Ohio and Michigan locations. He began working for Respondent in June 1999 and reports directly to President Tsunekazu Udagawa in Japan. Yasuji Hiramatsu is Respondent's executive technical advisor at the Ohio facility and he also reports directly to President Udagawa.

When the Respondent opened its Ohio facility, Gary Stasiak was the plant manager in charge. In July 1998, Joe MaKowski became vice president of manufacturing and was put in charge of the facility. The number of production employees continued to grow and on September 7, 1999, Respondent hired Dave Kendrick as operations manager to be MaKowski's right hand and to report directly to him. Plant Manager Stasiak then reported first to Kendrick. Makowski reported directly to Yamanami as did Human Resources Manager Ken Razska, until late November 1999, when Razska left. After Razska quit, many of his duties were assigned to Human Resources Generalist Andrew Hentges.

Prior to the Charging Party Machinists Union's interest in the Respondent's employees, there had been two previous attempts at organizing the facility, the Teamsters Union in October 1997 and the Auto Workers approximately a year later. In mid-October 1999, the employees once more began to talk seriously about having a union, the Charging Party was contacted and on November 30, 1999, the Union filed a petition (Case 8–RC–15984), to represent Respondent's production and maintenance employees at the Ohio facility. On January 21, 2000, a stipulated election was held. Out of approximately 160 eligible voters, 24 cast votes for the Union and 131 voted against the Union, the Regional Director certified the results on February 1, of the election. No objections were filed, however, during the months prior to the election the Respondent's managers engaged in conduct, discussed below, designed to oppose union representation at the facility and it disciplined and then terminated the Union's principal adherent, Julie Wilson.

The General Counsel presents a picture of management's actions during this timeframe through the inside experience and testimony of Operations Manager Kendrick who was terminated by the Respondent on December 17, 1999, shortly before Wilson also was discharged.

Kendrick described his duties as production, quality, a little bit of everything and to be Makowski's inside man in the plant because he didn't trust a group of other managers on the plant floor, most specifically Plant Manager Gary Stasiak and Human Resources Manager Razska and Razska's assistant, Lynn Brown, as well as Supervisors Mike Harkey and Penny Pauff. Kendrick was interviewed and hired by Vice President Yamanami.

Kendrick became aware of union organization talk on the shop floor in mid-October and this was confirmed when he was approached by Supervisor Lisa Low on November 2 when she

[1] The General Counsel's brief embraces a motion to correct certain errors in the transcript. The corrections suggested are appropriate and the motion is granted.
[2] All following dates will be in 1999 unless otherwise indicated.

told him she had overheard union-related discussions in the ladies' locker room. Thereafter he attended a meeting with other on-site managers including Hiramatsu and two Japanese engineers and President Udagawa (and an interpreter),[3] in which Makowski discussed the last union organizing attempt. Udagawa said he would talk about that with Makowski privately and stated that they "must not let this driver succeed at any cost. You must stop it, period." Udagawa also said that they should make a list of employees identifying who was pro or antiunion and develop strategies for what needed to be done in the future. Thereafter at a restaurant dinner (near Thanksgiving), Udagawa repeated his former admonition to a group of managers, including Kendrick.

After the first meeting Makowski prepared a list observed by Kendrick, for each of the three shifts, which named 12, 7, and 3 employees, respectively, who were thought to support the Company and a list which noted 125 union cards signed with an estimate by shift and a listing of names (including Julie Wilson), of 19 suspected "main players," also by shift. The list also included the names of supervisors suspected of being sympathetic to the Union (including Stasiak, Brown, and Hentges).

Kendrick became aware of who Wilson was soon after he started when he observed that at regular Monday meetings with first and third-shift employees she aggressively spoke up and asked questions on behalf of herself and other employees. After one such meeting Makowski introduced Wilson to Kendrick and said, "[T]hat's my pain in the ass." Thereafter, in mid-October, other supervisors told him that Wilson was the main union organizer and said that she was the one they had to deal with.

Wilson began working for the Respondent the first week of June 1998. Prior to Wilson's discharge on Christmas Eve 1999, she worked on first shift as a backup coater (higher than the coater position) under Supervisor Penny Pauff. Her responsibilities included training other coaters, doing simple maintenance work like changing screens, checking gaskets for defects, obtaining materials for the line, and filling out documentation.

Wilson said that employees began to seriously talk about organizing in late September or early October 1999 and that she personally began to talk about having a union in early October because among other things, she felt the plant needed to be organized as management personnel showed favoritism, discriminated against women, and the employees wanted better insurance. She told management about these problems at the weekly Monday morning meetings and became more emphatic about the problems at the meetings in late October.

Around 7:15 a.m. on November 9, Wilson injured her shoulder hanging gaskets. After informing Supervisor Pauff, she was taken to the hospital by another employee. When she was released from the hospital, she reported back to work around 9:15 a.m., spoke to Andy Hentges and gave him a work form that she had received from the doctor that listed her diagnosis as an "acute right shoulder strain" and restricted her from heavy lifting. He said okay, without further instructions. Wilson went to the cafeteria to get some water to take pain medication that had been prescribed. She went to her supervisor's office but Pauff was not there. While waiting, she spoke to Supervisor Lisa Low, Karen Aldridge, and Cindy Flores who shared the office with Pauff. After 5 to 10 minutes, Pauff came in and asked her to fill out an accident report form. Pauff left the office, Wilson finished the report and began to make shipping labels which she knew to be light-duty work which was in accordance with the doctor's instructions. She became drowsy from the pain medication and at 10:15 a.m. when Hentges came into the office she told him that the medication was making her drowsy and asked if she could let it wear off to which Hentges responded yes and left the office. Wilson then made a few more labels then laid her head on the desk.

Wilson then heard Kendrick yelling at Plant Manager Stasiak: "This is what you let your employees do." Kendrick left, Stasiak asked her what she was doing and ordered Raul Flores to write Wilson up. He told Wilson that she needed to go home and added that she would be paid for the rest of the day. After she went home, she became angry and called Hentges to complain about being written up. Hentges responded by telling Wilson that she needed to go take a drug test. Following Hentges' instructions, she went back to the hospital and had a drug test taken. When she returned home, Wilson called Vice President Yamanami at the corporate office in Michigan. Wilson reiterated what had happened earlier and complained that Kendrick was using her as a pawn and how she had been written up. Yamanami responded that he "didn't handle matters like this, [and] that he would transfer [her] to manager Ken Razska. Razska was not available and Wilson left a message with his secretary." Thereafter, Wilson called John Richards of the Machinists Union when Razska called her back, she repeated the story including had been written up. Wilson told Razska that she was "tired of the crap here, and that [she had] called the Union."

Wilson reported to work the following day, was directed to wait by the conference room where Hentges, Kendrick, Makowski, Razska, and Stasiak were having a meeting. Hentges and Stasiak they took Wilson into Razska's empty office and gave Wilson three written warnings and two suspensions.

The first discipline was a written warning and 3-day suspension for "sleeping during working hours." She recalled that she protested that she had already been written up for sleeping. Hentges and Stasiak discussed the wording of the next writeup. Wilson was given a written warning for "[f]ailure to report to drug test after Plant injury at the time of treatment." Wilson protested that employees other named had been injured at work, but not required to take a drug test, both Hentges and Stasiak ignored her. Wilson was then given a written warning and 1-day suspension for "[f]ailure to report to supervisor, leaving work area to avoid work." Wilson protested, but was instructed by to simply "sign the write-ups" which she did.

Operations Manager Kendrick said he "took a major role" in the decision to discipline Wilson after he received a call from Cindy Flores who told him that Wilson was sleeping in the back office. He confirmed her information and asked Flores how long she had been asleep to which Flores answered approximately 5 minutes. Kendrick instructed Flores and other supervisors who were in the office not to wake Wilson. Ken-

[3] Udagawa does not speak English.

drick got Plant Manager Stasiak and asked, "[I's this what you allow your employees to do, sleep on the job?"

Kendrick described how he went to Makowski's office and informed him of the incident. Makowski responded: "Outstanding. We got her now" and added, "We eliminate two problems at the same time, one a bad employee, and the other, we get rid of the Union antagonist." When they learned from Hentges that Wilson had been sent to the hospital with an injury earlier that day. MaKowski instructed Kendrick to call the hospital to see if Wilson had taken anything that could make her drowsy. Kendrick called the hospital inquiring whether Wilson had been prescribed any such medicine and was told "yes." He then asked whether Wilson had taken a drug test and was told no. They spoke to Hentges and asking about a drug test to which he reported "no" (under Respondent's procedures, a drug test is mandatory after an on-the-job accident requiring hospital attention).

The next day, November 10, Kendrick met with Makowski, Razska, and Stasiak to discuss the Wilson matter. Additionally, Kendrick believed that Technical Advisor Hiramatsu, along with an interpreter, were present but did not participate. Human Resource Generalist Hentges also came in and out of the meeting. MaKowski stated that they were there to discuss Wilson sleeping on the job and "what could and could not be done about it." They discussed whether there was enough evidence to fire Wilson under Respondent's policies but instead of termination, they opted to give Wilson the three warning disciplines described above and to place her in a position to be fired if she did anything further.

Razska then said to "keep a close eye" on Wilson, pointed out that Kendrick and Wilson did not get along, and told Kendrick that Wilson "hates your guts. It wouldn't take much for you to antagonize her and set her off, get her on the deep end. At one point during the meeting, Supervisor Pauff was called in and she stated that she did not assign Julie to make labels, but that she did see her in the production office at 10:20 a.m. but did not question it. Kendrick further attested that they did not discussed Wilson's verbal warning from Flores that had been given the day before as Kendrick said he personally had not been aware that it had been issued.

After contacting the union representative on November 9, Wilson became a vocal union adherent talking to employees about the Union and about the plant problems, getting signatures on employee petitions, going to employees' house with the Union's representative, and making flyers. On several occasions she and the Union's representative met with employees in the parking lot at nearby Woodland Mall to sign union cards. She also held three union meetings at her home. The first meeting was on November 11, after she had received the written warnings and suspensions. The second meeting was held on November 21. Wilson advertised that meeting in a flyer that was posted at the plant and described the meeting as a "housewarming party" because she thought employees were afraid.

Additionally, Wilson filed an individual unfair labor practice charge related to her discipline against Respondent (Case 8–CA–31169) on November 2, served on Respondent on December 1. This charge was subsequently withdrawn. The third meeting at her home was held on December 12.

On December 7, Kendrick had a phone conversation with Makowski who described that he was in the Michigan corporate office meeting with Yamanami to develop strategies about the best way to put a stop to the Union, and said they were going through a list of employees to see who on the list was prounion or antiunion.

Thereafter on December 10, Kendrick called Yamanami to tell him that he was disturbed and upset by some of the things that were going on and about what he had been asked to do concerning the union activity. He also testified that he had brought these matters to the attention of Respondent's legal counsel, Jenkins, and wanted to discuss them with him and Udagawa in person. Yamanami told Kendrick that he was well aware of the problems in the plant and that he would see what he could do. Kendrick renewed his request to meet in a follow up facsimile to Yamanami as follows:

> I have discussed with Mr. Jenkins my concerns over the methodology chosen by Joe and Ishikawa Gasket to combat the present union threat. Having worked for a Japanese company for over 5 years, I am fully aware of the perceived threat to the business that the Japanese have of unions. However, per our conversation, that does not make our discussion topics correct.

After Wilson's November warnings Kendrick checked local Municipal Court records for any information about her and confirmed that she had served 10 days in jail starting on June 4. He also requested corporate records reflecting Wilson's timecard information. Kendrick said he had a dual purpose in his investigation; to find probable cause to discharge Wilson and to see if Plant Manager Stasiak could be charged with favoritism and actions contrary to company policy. On December 12 Kendrick faxed information to Farmington Hills that had been requested by President Udagawa's translator. This information noted that Wilson had been given 4 days of vacation in June, 4 days before her 1-year anniversary date. Also in early December, Kendrick and MaKowski looked into an alleged incident between Maggie Jones and Julie Wilson that had happened 2 months earlier.

On December 17 the Respondent terminated Kendrick.

On December 28, Wilson received a termination letter dated December 24 by certified mail. The letter, signed by Hentges, informed her that her employment had been terminated effective December 23, but did not specify why. When the plant reopened after the 10-day Christmas shutdown was over, Wilson called Hentges and asked why she had been terminated. Hentges told her that it was because she had taken an early vacation in June 1999.

Subsequently, Wilson applied for unemployment compensation. She was never informed of any reason why Respondent had terminated her and the Ohio Bureau of Employment Services sent her a written "Determination of Benefits" that stated that she had been discharged for undisclosed reasons.

Human Resources Generalist Hentges testified that the sole reason that Wilson had been terminated was for allegedly threatening two employees: Cindy Flores and Margaret Maggie Jones. He did not refute Wilson's testimony that he told her only that it was because of the early vacation. Ya-

manami, however, testified that he and President Udagawa made the decision and that the reasons that they terminated Wilson were:

> Number one, intimidation of a colleague. Both cases, this intimidation was made to Maggie Jones and Cindy Flores. Second reason is she part of the Gary and Lynn faction. That was jeopardizing the situation.

He could not remember whether he had spoken to Wilson about the allegations against her (Udagawa had definitely not), and admitted he could not remember being involved in any other decision to terminate a production employee.

Hentges was the senior human resources management employee at the Ohio facility as a result of Manager Razska's departure in early December and he executed Wilson's termination based on instructions contained in a letter to him (with a copy to Yamanami), dated December 22 from Respondent's counsel. The letter reads as follows:

> Attached are documents, which recount incidents involving threatening or intimidating conduct on the part of production associate, Julie Wilson. You indicated that your former manager, Ken Razska did not inform you about the incident involving Maggie Jones. It is also clear that Mr. Razska dismissed the seriousness of Ms. Jones' complaint without undertaking any effort to investigate the matter. Ms. Jones' corroborated statement raises serious concerns and describes conduct that cannot be tolerated, especially in light of recent vandalism and the bomb threat. Ishikawa management has indicated that there will be no tolerance for any employee whose conduct, which serves to intimidate or threaten another.
>
> In addition, a recent inquiry into the circumstances surrounding a threat that Cindy Fores alleged was made by Ms. Wilson, has persuaded management that the only witness to that incident, other than Ms. Fores and Ms. Wilson, was not forthcoming when she was questioning due to concerns for her personal safety.
>
> Further, and as you were recently informed, on or about May 5, 1999, Ms. Wilson wrongfully sought and improperly accepted the benefit of a clear violation of the company's vacation policy, which provides that employees are not eligible to apply for, much less receive, any such paid leave days until they have worked at least one year. Based upon the recent disclosure of this transaction, it is management's view that the parties to that transaction acted improperly and in consort.
>
> Ms. Wilson's employment record with the company shows that on November 10, 1999, she was warned that she could be terminated for any further violation of company policy. Accordingly, I am informing you of the company's decision that Ms. Wilson is to be terminated effective Friday, December 24, 1999. *In light of the misconduct for which she is being discharged, Ms. Wilson's termination notice is to be delivered by overnight mail so that she will be informed only after she has completed her shift and left the plant premises*. In other words, you are to mail, via certified mail, the notice on the evening of Friday, December 24, 1999. The enclosure letter should: (1) include appropriate information regarding COBRA, etc.; inform her that her final paycheck (including any accrued vacation pay) will be mailed to her; and (2) inform her that she is prohibited from entering onto the plant premises, including the parking lot.
>
> It is expected that you will treat this matter with the utmost professionalism and confidentiality as the safety of others may be involved.

The record, including especially the testimony of manager Kendrick, shows that he and other managers also engaged in other described conduct prior to the Board election held on January 21, 2000, conduct which is alleged to have violated the employees' Section 7 rights. The specific factual background relating to these incidents will be set forth in the following discussion.

III. DISCUSSION

The records shows that in the latter half of 1999 the Respondent's Ohio plant was subjected to increasing internal managerial conflicts with two apparent factions being identified. At the same time, employees renewed their interest in seeking union representation, an event that appears to have contributed to the festering competition between the management factions. Then, several weeks before a Board election was held, the Respondent's top Japanese official in the United States made major decisions in which he first purged the company of management personal in one faction, and then purged the Company of the apparent leading union activist.

A. Credibility

The Respondent asserts that much of the testimony of former operations manager, Kendrick's, is self-serving, contradictory, and arguably false and is tainted by his bitterness over being terminated because of his participation in the intramanagement dispute at Respondent's Ohio facility. My evaluation of Kendrick's demeanor and testimony indicates that he sometimes did tend to exaggerate positions or thoughts attributable to others, especially other managers. This, however, does not preclude a conclusion that when Kendrick testified as to the basic events described above (or the 8(a)(1) events he was aware of as otherwise set forth below), he was believably and truthfully recalling what actually had occurred. While Kendrick was not a perfect witness, his testimony was often corroborated by documentation (for example, a list of pro or antiunion employee made in apparent response to Udagawa's asserted instructions), there is little direct evidence to refute his testimony. I also find that witness Yamanami's testimony was at least equally self serving (Yamanami and Hentges were the only management witnesses called by the Respondent), and I find that that my description of facts stated above and in the following discussion which generally credit Kendrick's (and Wilson's), testimony are the most trustworthy and overall credible facts.

B. Alleged Violations of Section 8(a)(1) of the Act

Wilson attended a meeting between management and first-shift employees on a Tuesday in late November with Operations Manager Kendrick, vice president MaKowski, and human

resources manager Razska. Makowski started the meeting by telling the employees that "the Japanese take the posting of flyers for a Union as threat and they wouldn't tolerate any third party coming into their plant." Razska then took the microphone and announced that their annual Christmas bonuses were going to be cut by 2 cents an hour from 15 to 13 cents. (The previous bonus, distributed at Christmas time, had been calculated by multiplying 15 cents times the number of regular hours that she had worked in every 40-hour week during the preceding year), the employees responded by making various complaints. Current employee Pamela Rader also attended this same meeting and confirmed that this was the first meeting she had attended where the Union had been brought up and recalled being told about the bonus and that "the Japanese were strongly against the Union."

The Respondent admits that it decreased the employees' annual bonus. Neither Kendrick nor Makowski were privy to such financial information but they were told at a management meeting held on November 17, that the amount of the employees' Christmas bonus was yet "to be determined."

The statements credibly attributed to management first identifies the Employer's displeasure with any union organizing attempt. This expression was promptly followed by an announcement of a reduction in the rate which the usual Christmas bonus is calculated. The linking of these statements (and the subsequent fulfillment of its bonus plan), without further explanation, implies that the bonus reduction was being made because of the renewed union organizing efforts and, accordingly, and I find that it clearly is coercive and that the linked statements interfere with employee Section 7 rights, see for example *Frank Leta Honda*, 321 NLRB 482, 489–490 (1996). Under these circumstances, the Respondent's conduct in this respect is shown to be a violation of Section 8(a)(1) of the Act, as alleged. Other allegations related to the bonus issue are discussed in section C, below.

In mid-November 1999, Operations Manager Kendrick began to frequently question employee Delia Baldonado almost every afternoon when she arrived at work. He had initiated these conversations with Baldonado because MaKowski had told him "that she was a good reference for [union] information." He never personally asked Baldonado to get information (because he felt that this was already understood), but on two occasions he witnessed Makowski directly solicited Baldonado to get information regarding union meetings. The first instance occurred in MaKowski's office where MaKowski asked Baldonado to go to Wilson's supposed "house warming party" on Sunday, November 21, and he asked Baldonado for the names of those at the meeting and the big pushers of the Union. The following Monday, Baldonado was called into MaKowski's office and in Kendrick's presence Baldonado gave MaKowski a list of employees who had attended the meeting with stars by the names of those who were the main instigators.

Kendrick also was in MaKowski's office when the phone rang and MaKowski answered, "[H]i, Delia." He congratulating her on doing a good job in getting information and that he did not know that something was going on that day and asked if she would "mind going to that, as well?" MaKowski also told her not to worry that he knew she was supposed to be at work at 3:30 p.m. and the meeting was a 5 p.m. and that he would pay her for her time. When MaKowski hung up the phone, he told Kendrick that there was a union van that was going to be at a nearby mall and that Baldonado was going to videotape the meeting from the Burger King parking lot. Baldonado phoned again around 6 p.m. when Kendrick was in MaKowski's office and Kendrick heard MaKowski remark that she had gotten video pictures and ask how quickly she could get them back to him. He affirmed that he would take care of her pay, and that she had done a super job. After he hung up, MaKowski told Kendrick that Baldonado had said that Supervisor Lisa Low had been a lookout for the Union.

Kendrick was called by employee Dena Slane at work some time after November 9 who asked if she could come back to the plant that evening to talk to him. That night Slane (accompanied by her husband, Supervisor Mark Slane), met with Kendrick and MaKowski and told them about union activities on the plant floor, including the information that Wilson definitely was the pusher of the organizing and that she had Plant Manager Stasiak's backing. Slane also told them that she was afraid and was getting nervous about them asking her to tell lies. She added that Lynn Brown had noticed her. Kendrick also said that they had initially gotten Union Representative John Richards' card from Slane. Makowski told Slane that it was a good idea for her to take time off and instructed her to bring in a doctor's slip and assured her not to worry that "we'll make it right for you." Kendrick then told her that "if Joe tells you he's going to make it right, then he's going to pay you for it." The next day Slane called and reported to Kendrick. Kendrick recorded this conversation (but left it in his desk after he was discharged). Slane again asked about pay and Kendrick reassured her that she MaKowski would pay her for being off. Thereafter, Slane was absent from work and phone calls were exchanged to report the latest news on the organizing activities. Kendrick testified that when she did not him, he would call her. General Counsel's Exhibit. 36, which is a time report for Slane's time records show that she Slane was absent from work December 7 through 20, when Makowski was fired.

Supervisor Mark Slane (called by the Respondent), affirmed that he accompanied his wife, however he was not asked about the subjects of whether Dena Slane had been solicited to report to Kendrick regarding further union activities, and whether she had been promised payment for doing so. As noted by the General Counsel, the failure to examine a favorable witness regarding any factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference against Respondent "regarding any such fact. *Flexsteel Industries*, 316 NLRB 745, 758 (1995). Also, the Respondent failed to call Dena Slane (who at the time of the hearing was still employed by Respondent), to the witness stand to directly refute not only these allegations or that she had engaged in the surveillance reported to Kendrick. Under these circumstances I find that the record contains reliable, unrefuted evidence that the Respondent solicited and promised to pay Dena Slane to engage in surveillance of other employees' union activities and that she engaged in surveillance, as alleged. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act, see *National Garment Co.*, 241 NLRB 703, 707 (1979),

affd. in pertinent part in *NLRB v. National Garment Co.*, 614 F.2d 623 9th Cir. (1980).

Current employee Cindy Wheeler attended a meeting held on December 5, with first shift line leaders and recalled that Norm Cowell and Raul Flores were among other line leaders who were in attendance. Plant Manager Stasiak and the line leaders' supervisor were both present and handed out a memorandum dated December 5, 1999, and headed "Line leader Meetings & Supervisors." The memo contained the following instruction:

> 1. Any Union Material please take down or place in waste container. (SUPERVISORS).

When Wheeler left the meeting, she showed the memorandum to the operators on her line and Wilson also confirmed that she had been shown the memorandum by her line leader who told her that she had just received it from Plant Manager Stasiak in a meeting. Operations Manager Kendrick also confirmed that the memo was formulated at an earlier December manager's meeting where it was decided that Stasiak should issue the memorandum to the supervisors and line leaders (nonsupervisors) because he was in charge of the personnel on the floor.

There is no showing that the Respondent maintained and/or enforced a valid no distribution policy at its Ohio facility and I find that the Respondent's written and verbal instructions to remove union literature, which was relayed to the line leaders and then disseminated among the production employees, directly discouraged employees from distributing union literature, see *Holly Farms Corp.*, 311 NLRB 273, 274 (1993). Accordingly, I find that its actions violate Section 8(a)(1) of the Act as alleged in the complaint (as amended at the hearing).

In late November or early December current employee Pamela Rader was cleaning the cafeteria when she observed Kendrick and Stasiak came into the cafeteria where union literature was on the tables. Kendrick asked what they should do with the literature and Stasiak ordered "throw it away." Thus then started "picking everything up and throwing it away, [but] they kept some." Kendrick admitted that he started to do a "morning walk-through" with other managers looking for union paraphernalia in the locker rooms and cafeteria beginning around mid-November. Kendrick also said he personally made two daily sweeps through the two men's bathrooms/locker rooms and employee break area/cafeteria looking for, and removing, union literature through mid-December and that he removed literature from the men's locker rooms "pretty much daily" and from the cafeteria approximately once or twice a week. Supervisor Penny Pauff, or someone, who was closely by, would be asked to check the women's locker room for literature. In late November, Kendrick also saw another manager, Harkey, recruit employee Angie Katavarus to take down union literature in the women's locker rooms. Kendrick testified that Katavarus came to him shortly thereafter almost in tears. She was upset about what was she had been asked to do by Harkey.

Wilson also saw Supervisor Pauff remove union literature from one of the women's locker rooms in approximately late November or early December. Wilson also was standing by the production office when Pauff queried "I wonder who's posted all of this Union literature[.]" When Wilson answered that she had posted some in the women's locker room, Pauff immediately went to the women's locker room. Following Pauff, Wilson then saw Pauff tear down the literature that she had posted.

During the fall of 1999, Respondent had two bulletin boards located in the cafeteria (the breakroom) on which employees could post nonrelated work items, such as cars for sale, thank you notes, and people having parties. Kendrick confirmed that these type of non-related work items were posted on the two bulletin boards in the cafeteria and that employees did not need permission to post them. Employees also had been permitted to place similar items in both the women's and men's locker rooms/bathrooms prior to campaign. Under these circumstances the record shows that Respondent's supervisors (or persons acting on their directions) reportedly removed union literature from nonprohibited locations and I find that this action coercively interferes with the employees Section 7 rights. Accordingly, I conclude that it is shown to have violated Section 8(a)(1) of the Act in this respect, as alleged.

In early December, Kendrick joined with Makowski in preparing a deliberately racist leaflet that would appear to have been prepared by the Union. The purpose expressed by Makowski was to be able to use that to have any election favorable to the Union, disallowed. Kendrick then printed and posted the following leaflet:

> December 1941 the Japs bomb Pearl Harbor
> 1945 the first thing truly "Made in the USA" and tested in Japan gets us even
> 1998 the Japs bring in Joe
> 1999 the Japs bring in Dave
> 1999 We give you our own bomb to drop on the sneaky BASTARDS!!!!
>
> VOTE UNION,
>
> VOTE AMERICAN
>
> VOTE AGAINST JOE AND DAVE
>
> January 2000 WE GET EVEN!!!

Shortly before December 7, Kendrick posted the document in the front men's locker room and in the breakroom. Employee Pamela Rader saw the Pearl Harbor literature at a management meeting with first-shift employees around the beginning of December and said that they were "trying to say that people that wanted the Union made these" (she thought that Kendrick was the one from management who spoke about the flyer).

Executive Vice President Yamanami denied personal knowledge of Makowski's actions, however, this does not excuse Respondent's liability with respect to action attributable to supervisors. The language used is inflammatory and objectionable, see *YKK (U.S.A.), Inc.*, 269 NLRB 82 (1984), and otherwise, it is a violation of the Act to make such racial pronouncement in connection with a union campaign see *Sewell Mfg. Co.*, 138 NLRB 66 (1962). This of course is compounded by the Respondent's fraudulent attempt to attribute the documents origination to the Union and, accordingly, I find that the General Counsel clearly has shown a violation of 8(a)(1) of the Act, as alleged.

Operations Manager Kendrick described how he would walk through the plant every morning asking employees how things

were going and what were some of the issues that the individual had. He began to do this prior to the petition being filed on November 30, and Kendrick was not aware of any other managers, including President Udagawa or Executive Vice President Yamanami, ever doing so prior to the petition being filed. However, during the first 2 weeks of December 1999 numerous employees were individually paged and thereafter went into the plant conference room for meetings of between 20 and 45 minutes with Udagawa and Yamanami, who had come to the Ohio plant for this purpose. Kendrick spoke with Yamanami after one employee had just left and Yamanami stated that he keeps talking to people and "asking what it would take to keep the Union out of here, and about half the employees are telling me that I have to fire you and MaKowski, and the other half are telling me I have to fire Stasiak and Lynn Brown."

Although some employees requested the meetings, others did not. Yamanami admitted that he questioned some of these employees about the Union's organizing activities and that he and Executive Technical Advisor Yasuji Hiramatsu met with between 20 and 30 of the employees in the early part of December that had not requested to meet with him. He also was aware that Udagawa and his translator met with other employees.

These actions by the Respondent top officials during a union campaign can inherently lead employees to believe that selection of a collective-bargaining representative in the election would be unnecessary. When management officials have not previously make this a practice and where an employer suddenly embarks upon a practice of soliciting grievances during a union organizing campaign, it properly may be found that is implicitly promising to correct problem discovered as a result of its inquiries, see *Valley Community Services*, 314 NLRB 903, 904 (1994). Accordingly, I also conclude that the Respondent is shown to have violated Section 8(a)(1) of the Act in this respect, as alleged.

This solicitation of grievance was confirmed by employee Wheeler who described how Yamanami initiated the conversation by asking her how she liked working at Ishikawa Gasket and then asked her why the employees were upset and why they wanted a third party, meaning the Union. Wheeler said they were paid lower wages than other companies and that the employees were upset because there was too much favoritism in the plant. Yamanami gave her a list of all of the employees' names and asked her to circle who she thought were for the third party. Wheeler circled Wilson's name because she knew everyone already knew that Wilson was for the Union. Yamanami asked if she was sure that there was not anyone else. She responded no and was then dismissed from the room. During this conversation, which lasted approximately 15 to 20 minutes, Yamanami and Hiramatsu conversed with each other in Japanese.

On direct examination by Respondent's counsel, Yamanami admitted that he spent 3 days in the beginning of December, meeting with most of the line leaders (for each of the 10 lines) on the first and second shifts. He also affirmed that he had questioned some of the line leaders regarding who was supporting the Union.

Under these circumstances, I conclude that in the course of illegally soliciting grievances the Respondent's top officials the Respondent on occasion also violated Section 8(a)(1) of the Act by interrogating employees about the identity of union supporters. As this was part of the same process, I find that the totality of the actions are coercive in nature and thus the interrogations are in violation of the Act, as alleged.

Employee Rader was approached by Kendrick prior to Christmas 1999, and asked, "[W]hat can the Union do for [her] that Ishikawa can't do?" Rader told him that she did not like the attendance policy, Kendrick responded that "they were working on it, the Company was working on changing things." Kendrick looked at Rader's union button (some employees had just begun to wear their union buttons that day) and thereafter Kendrick went up and down the line talking to the employees, mainly to those who were wearing buttons, who then took their buttons off. As noted by the General Counsel, on this occasion, Kendrick went beyond his part practice of speaking with employees in general terms and he specifically referred to the Union when discussing who could best resolve problems, the Union or management, and he apparently directed his attention to those who were identifying union buttons. Under these circumstances, I find that Kendrick's actions on this occasion also were improper and I find that Respondent again is shown to have violated Section 8(a)(1) of the Act, as alleged.

As indicated above, employee complaints to Yamanami and his own inquiries about what it would take to keep the Union out suggested a solution that they would get rid of one or the other of the management factions. Thereafter, Yamanami followed through in this regard and terminated Manager Kendrick on December 17. Makowski and Stasiak and Supervisors Pauff and Lynn Brown also were terminated shortly thereafter.

At an employee meeting held on January 19, 2 days prior to the election, which was conducted on January 21, President Udagawa (through an interpreter) told the employees that they didn't need a third party because they had an open door policy and because "they got rid of management because they were terminated." Employee Rader also attended this meeting and recalled that Udagawa said that "he gave us what we wanted. He fired the management and that we did not need a Union."

The net result of the Respondent's action in terminating one management faction prior to the election is that it resolved employees' grievances by discharging Brown, Kendrick, MaKowski, Pauff, and Stasiak in order to dissuade its employees from supporting the Union. See *Pyramid Management Group*, 318 NLRB 607, 614 (1995). Accordingly, I find that the General Counsel has shown that the Respondent violated Section 8(a)(1) of the Act in this respect, as alleged.

C. The Bonus Issue

Yamanami said that he and President Udagawa made the decision to decrease the bonuses for production employees. He added that they had lowered the managers and office employees bonuses by 50 percent based on their performance. He stated that he looked at the financial situation. He conceded that the "productivity and profitability [had been] improving in 1999 but said that having the situation of two factions confronting and battling, I had a great fear that if that continue our business

will be jeopardized and the company will not really make money and because of what is going on [in] the plant." He also said that he considered the fact that there was a union organizing drive going on at the plant "very seriously." He concluded that "this" was the amount they could pay, looking at the Company's financial situation, however, he also said he acted on the basis of Japanese custom that even though the Company is not really making money, for the purpose of encouraging employees, particularly when the plant was established in 1996 and we needed more, better employees and the Company partially paid this bonus to encourage them. On cross-examination, Yamanami admitted that in 1999 the American subsidiary of Ishikawa Gasket had profit gains by at least four times over the preceding year. On redirect, and over the General Counsel's objection Respondent introduced Respondent, Exhibit 6, a financial statement for 1998 and 1999, which indicated that Respondent had a higher "accumulated deficit" in 1999, but which also indicated that Respondent had cut its net loss by over 64 percent or over $2.4 million. The exhibit also confirmed that Respondent's gross profits for 1999 were $1,656,306 compared to 1998 at $355,776.

Prior to the hearing and at several times during the hearing the General Counsel, through an appropriate subpoena duces tecum sought from the Respondent to the production of:

> All documents reflecting the amount of annual bonuses given to employees at Respondent's Bowling Green, Ohio facility, from 1996 through 1999. Additionally, all documents relied upon, whether in whole or in part, to determine the percentage value of annual bonuses given to employees at Respondent's Bowling Green, Ohio facility, from 1996 through 1999, including but not limited to annual reports, policies utilized, profit analysis, memorandum, and/or personal notations.

Although the record had initially opened on January 19, 2001, at the time the hearing reconvened on February 6, Respondent had yet to turn over any documentation concerning the bonus. The General Counsel raised a continuing objection on the record and Respondent's counsel maintained: "Just for the record, Your Honor, I informed counsel that Mr. Yamanami will be coming to Ohio, and those records will be made available to the General Counsel tomorrow." Respondent failed to produce the documentation by the close of the hearing the following day. Counsel for the General Counsel again raised her objection and, because she was ready to rest her case, requested that Respondent be precluded from putting on a defense concerning the bonus decrease. The Respondent's counsel stated to the court: "I will commit, and you may preclude any bonus evidence or documents if I fail to get counsel these financial documents this evening."

The Respondent identified its Exhibit 6, a summary financial report (without underlying documentation), on February 9, the last day of the hearing and I allowed it to be admitted into evidence noting that I would consider argument regarding limiting its purpose. Accordingly, the General Counsel request that an adverse inference against Respondent based on its failure to produce not only the entire financial report, but the remaining documentation requested in the subpoena duces tecum, specifically information covering the years 1996 through 1999 concerning Respondent financial status and the amount of bonuses. On brief the Respondent relies upon this document in asserting that that it had accumulated a deficit that increased in total (but at a decreased year to year loss rate) and that this justified Yamanami's decision to decease the 1999 bonus.

The accepted standard for review of an issue of this nature is *Wright Line.*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), which requires that the General Counsel must make a showing sufficient to support an inference that the employees' union or protected concerted activities were a motivating factor in Respondent's subsequent decision to take adverse action. Here, the General Counsel has shown that employee Wilson and others engaged in union and protected concerted activity, that the Respondent knew of this activity, that management has a strong antiunion attitude and that Manager Kendrick and other managers engaged in numerous actions, discussed above (especially the threat that company would not tolerate a (union) third party with the same meeting in which the bonus reduction was announced), which have been found to violate Section 8(a)(1) of the Act, and the employees' fundamental Section 7 rights. This conduct and the employer's attitudes about union's support the drawing of an inference regarding the employer's motivation, see *Town & Country Electric v. NLRB*, 106 F.3d 816 (8th Cir. 1997).

Under these circumstances I find that the General Counsel has met its *Wright Line* burden and that the record should be evaluated to consider Respondent's defense and whether the General Counsel has met his overall burden.

The Respondent's response to the subpoena on bonus matters was untimely and less than forthright and I otherwise find that the Respondent financial evidence and justification must be considered to be insufficient and unpersuasive. Most specifically, I cannot find that there is reliable evidence to explain or distinguish how and why the Respondent established its bonus in past years as compared with 1999 and I cannot find that it established that it would have decreased an admitted incentive based bonus when in fact the financial results for 1999 show apparent success in that it had a major profit gain over the previous year.

Contrary to the Respondent's argument on brief, the record shows that Yamanami made his bonus decision after both he and managers at the Ohio facility knew of the union activity and I find that the Respondent otherwise has not persuasively shown that it would have decreased (for economic reasons), the establish bonus rate in 1999 for production employees (as compared to managers, the area where Yamanami had his main problem), even if their had been no union activity. Finally, although the actual bonus payment occurred just prior to Christmas, the announcement of the reduction was made at the same meeting in which the Respondent illegally threatened employees that its owners were strongly against the Union and the linking of this threat with the act of changing conditions of employment by reducing employee bonuses has the clear effect of discouraging union membership. As noted, even the Respondent's limited documentary evidence and Yamanami's testimony show that productivity and profitability had improved and, under all these circumstances, I find no credible

business justification for the Respondent's actions in reducing the past rate of which the employees' bonus would be computed. Otherwise I find that the Respondent has not persuasively shown that it would have done so even in the absence of the employees' union activities. Accordingly, I find the General Counsel has shown a violation of Section 8(a)(1) and (3) of the Act in this respect, as alleged, see *Frank Leta Honda*, 321 NLRB 482, 491 (1996), and *Keeler Die Cast*, 327 NLRB 585, 588 (1999).

D. Wilson's Discipline and Termination

These issues also must be evaluated under the *Wright Line* criteria noted above. Here, the record shows employer animus as discussed above, and I further find that the indications of animus often were directed specifically at Wilson. For example, Kendrick's credible testimony that when Makowski was informed of Wilson being observed sleeping, he stated:

> 'Outstanding. We got her now, We eliminate two problems at the same time, one a bad employee, and the other, we get rid of the Union antagonist.'

Kendrick also testified that Manager Razska said to "keep a close eye" on Wilson and pointed out that Kendrick and Wilson did not get along, and told Kendrick that Wilson "hates you guts. It wouldn't take much for you to antagonize her and set her off, get her on the deep end." They then decided to give Wilson the three warning disciplines described above and to place her in a position to be fired if she did anything further.

Among other things, the record shows that management was well aware of her union activities as well as her prior activism as a frequent speaker at monthly meetings between employees and management and, as noted in the section above discussing its 8(a)(1) violations, it specifically targeted Wilson home union meetings when it solicited another employee to engage in surveillance of Wilson's and other employees union activities. Wilson also filed a separate charge, served on the Respondent on December 2, related to her disciplinary warnings and the Respondent was aware of this when it subsequently investigated the circumstances surrounding her vacation, some 5 months earlier, and reinvestigated an alleged incident between Wilson and Maggie Jones that had occurred (and been considered by management with no resulting discipline), 2 months earlier. Thereafter, Yamanami took both of these events into account as alleged justifications for his decision to terminate Wilson on December 24. All the disciplinary actions involving Wilson occurred in close proximity to Wilson's union activities and after mid-October when Manager Kendrick first was told by other supervisors that Wilson was the main union organizer that the Company had to deal with.

Under these circumstances, I conclude that the General Counsel has made a strong showing consistent with the *Wright Line* criteria, supra, and I find that the record supports and inference that Wilson's union and protected activities were a motivating factor in the employer's decision both to give her disciplinary warnings and suspensions and then to terminate her. Accordingly, the record will be evaluated to consider the Respondent's defense and whether the General Counsel has carried his overall burden. As pointed out by the Court, in *Transportation Management Corp.*, supra:

> An employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected concerted activity.

The Respondent's defense centers on its claim that its actions were justified by its right to make and enforce rules for its business and to take disciplinary action against employees who violate its rules. Here, the Respondent, in effect, restates a truism that does little to persuasively demonstrate that the same actions against Wilson would have occurred even in the absence of her protected activity.

Wilson was given a series of warnings and suspensions the day after she returned to the facility after being treated at the hospital for a work-related injury. First she was given a verbal warning by Supervisor Flores at Plant Manager Stasiak's instruction after he was yelled at by Operative Manager Kendrick. This initiated discipline (unrecognized by the higher ranking managers) was duplicated the next day in triplicate (and included a 3-day and 1-day suspension), for (1) sleeping during work hours, (2) failing to report for a drug test at the time of treatment after a plant injury, and (3) failure to report to supervisor, leaving work area to avoid work.

Here I credit Wilson's testimony about the sequence of events, testimony that is not refuted by any witness except Hentges who recall that when Wilson returned from the Hospital in the morning she gave him a return to work slip and went out to the production floor. He said nothing at that time about a drug test but did so when he later saw her near the cafeteria and that Wilson said, "Okay." Hentges agreed that: "She had told me that her medication may make her drowsy. And I told her that if it would she would need to make sure she let her supervisor know, because I didn't want her on the line if, you know, she was drowsy." He also said he was with other managers in the meeting concerning her discipline and that Kendrick stated that he wanted disciplinary action against Wilson, that Stasiak was "soft" on employees, and he wanted to be in the room to make sure the matter was taken care of, but, contrary to Kendrick, he denied that there was any mention of union activities. He said that Wilson did not appear before the management group for any investigation into the matters but that he was present when Stasiak subsequently met with her to present the warnings and that some discussion occurred about the appropriateness of the discipline. He also agreed that Wilson, after initially being sent home by Stasiak on the day of the incidents, did in fact report the next day for the drug test and he agreed that it is not mandatory for the drug test to be given at the time of the injury.

Here, Wilson's unrefuted testimony shows that after presenting her return to work slip to Hentges she took pain medication, went to her supervisor's office, spoke with other supervisors and then complied with Pauff's (her supervisor) direction to fill out an accident report form. Without further instructions, she began the light duty task of making shipping labels (consistent with the doctor's "light duty" instructions), and became drowsy. This behavior is inconsistent with Respondent's third

accusation and there is no support for Respondent's claim that she failed to report back to her supervisor or left her regular work area (except to go to the hospital), especially in view of Hentges' admitted receiving the return to work slip and his awareness of her medication. Wilson also went back to the hospital for a drug test in response to Hentges' request. Moreover, there is no requirement that the drug test be made at the time of treatment, as incorrectly stated in her warning and the record otherwise shows that other employees have been granted latitude in this respect. Clearly, the second and third warnings could not stand the light of reasonable investigation and here, Wilson was never given the opportunity to explain the circumstances. While it appears that Wilson did become drowsy after taking her medication and did put her head on the table, she did so in a room occupied by supervisors! Kendrick was alerted to the situation by Cindy Flores (who had an apparent personal conflict with Wilson, see the following discussion), and did observe her in a sleeping position but it is apparent from his testimony that he was equally irritated at his supervisor's letting this occur as with Wilson's position. He clearly seized upon this opportunity not to find out the circumstance, but to immediately join with Vice President Makowski and purposedly retaliate against her in order to get ride of a principal union supporter. No meaningful investigation was made, only a meeting dominated by Kendrick's command influence and his statement that he wanted disciplinary action and to make sure that it was taken care of. Clearly, the expressed desire of Kendrick, and Makowski to "get" Wilson, rather than a desire to enforce reasonable work rules, dominated the Respondent's actions and, under the circumstance I find that the justification for its actions are pretextual and they fall far short of showing that it would have so quickly rushed to judgment were it not for Wilson's protected activity. Accordingly, I find that the General Counsel has met his overall burden and shown that Wilson's disciplinary warnings and suspensions were discriminatory and a violation of Section 8(a)(1) and (3) of the Act, as alleged.

Thereafter, Wilson's activities became more specifically connected with the Machinists Union's organizational efforts and the Union's election petition that was filed on November 30.

Kendrick thereafter checked local Municipal Court records for any information about Wilson and confirmed that she had served 10 days in Jail starting on June 4 (this coincided with her vacation). He also requested corporate records reflecting Wilson's timecard information. Kendrick admitted that he had a dual purpose in his investigation; to find probable cause to discharge Wilson because of vacation irregularities and to see if Plant Manager Stasiak could be charged with favoritism and actions contrary to company policy. On December 12 Kendrick faxed information to Farmington Hills requested by President Udagawa's translator. This information noted that Wilson had been authorized to start her vacation in June 4 days before her 1-year anniversary date.

In early December, Kendrick and Makowski also looked into an alleged incident between Maggie Jones and Wilson that had happened 2 months earlier. Meanwhile, Respondent's two top officials, Vice President Yamanami and President Udagawa, began to hold meetings with employees when they solicited grievances and information about union activities and sentiments. They also received information about Wilson's vacation and her alleged threatening confrontation with Jones.

In mid-December there was a purge of the principal local managerial officials involved, most specifically Kendrick and Makowski, however, Yamanami pursued the Wilson matter and, with Udagawa's concurrence, made a decision to terminate Wilson. Again, Wilson was not given any opportunity to defend herself but was given a termination notice by certified mail effective December 23, with no explanation given for the action. A phone call to Hentges resulted in her being told it was for an improper early vacation in 1999. No reason was at all given to the Ohio Bureau of Employment Services. Hentges and Yamanami both testified at the hearing that it was for threatening or intimidation of other employees.

The Respondent presented witnesses who testified about incidents they had with Wilson in October in which they felt threatened. This matter (allegedly Wilson made a shooting motion with her hand towards Jones), however, previously had been brought to former human resources manager, Raska's, attention, he investigated but took no further action.

On brief the Respondent contends that Wilson was terminated because she previously had been warned (the warnings of November 10, discussed above), that she could be terminated for any further violations of company policy. Disingenuously, the Respondent then terminated her not "further" alleged policy violations but for past alleged violations.

Kendrick admitted that in December he looked at her past record in an attempt to find a reason to discharge Wilson and I credit the documents and testimony that this information was sent to higher company officials at Farmington Hills facility. It also appears that Yamanami pursued Wilson's discipline based upon knowledge of her union involvement, including information acquired a result of his interrogation and the actions of company managers that were in themselves violations of the Act, including soliciting employees to spy on other employees' union activities and interrogating employee about other employees' union sympathies.

Here, I find that the reinvestigation of Wilson's past actions was pretextual and I find that its conclusion that each such past event was a dischargable offense is equally pretextual. This is especially true of the early vocation issue, where Wilson began her time off, with the approval of the appropriate supervisors, 4 days before her technical anniversary date. She took nothing of value away from the company and received no extra time off and it is clear that this minimal accommodation would have been of no consequence were it not coincidentally tied in with Wilson's union activities and her suspected relationship with the supervisory "faction" that approved her vacation but which also ended up on the loosing side in Yamanami's decision to purge part of his management team.

While the matters of threatening or intimidating conduct was potentially more serious, the allegations had gone through one initial level of management review (and the record shows that an initial police complaint was not pursued in the Flores incident). No attempt was made to find out from Wilson the specifics of what might actually have occurred. Management

made no attempt to pursue these allegations in November, but after the election petition and Wilson's charge were filed Yamanami became personally involved and appears to have accepted the accusations at face value and to have uncharacteristically put himself into the position of imposing frontline discipline. I find that there is no showing that he would have done this were it nor for his sudden involvement in plant operations brought on by the Union's organizing campaign and the forthcoming union election.

Cindy Flores (who is a clerical employee) accused Wilson of telling her "you know you're dead meat" and that Wilson said it was a threat. Later, when Owagana and Yamanami were having interviews at the plant, she complained to them about the incident as well as alleged damage to his car and a broken window. At the hearing Flores said she didn't know why Wilson had threatened her but incidentally admitted that on November 9 she had observed Wilson "sleeping" in the office and that she had gone to Kendrick and told him about Wilson. This and Wilson's discipline occurred prior to the alleged threat. Flores also described another incident where she admittedly had spied on Dena Slane (who was with Wilson when the alleged threat was made) at Kendrick's request and Slane had complained in effect, that Flores was informing on her smoking in the ladies room. It also was developed that Flores was part of a romantic conflict involving herself, Dena Slane, and Slane's husband, Supervisor Mark Slane. These details, which certainly affect the reliability and validity of the allegations against Wilson, were not within Yamanami's knowledge when he made his uninformed decision and I find that is clear that he did not had an accurate or reliable bases to reach a proper decision. Otherwise, he did not investigate or attempt to learn the truth or the existence of mitigating circumstance but arbitrarily imposed the most severe discipline possible, termination.

The most apparent justification behind Wilson's termination is the letter, not by Yamanami but from Respondent's counsel, directing Hentges how, when, and why to discharge Wilson. It is apparent from Kendrick's testimony and the letter itself that Respondent's counsel was more than indirectly involved in the attempt to discharge Wilson. An evaluation of these circumstances support an inference that after the Union filed its election petition and Wilson filed charges, the decision was made to terminate Wilson at a time prior to the election, and to have counsel, not plant officials, draw together some seemingly legitimate reasons for its actions.

Although Yamanami asserts that he made the actual decision, no documentation to that effect was produced and counsel himself exercised apparent authority and directed the plant human resources official how, when, and why to terminate Wilson. (Counsel chose not to have any non-involved counsel represent the Respondent at the hearing and, in effect, he precluded his own testimony about his role in this matter.) This state of affairs does not demonstrate conditions which plausibly or persuasively could show that Yamanami, Respondent's principal operating official in the United States, had a valid reason, independent of Wilson's union and protected conduct, for personally getting involved in reviving past and somewhat remote allegations against her.

I infer that the reasons, apparently engineered by counsel, are pretextual and I otherwise find that the Respondent has failed to persuasively show that Wilson would have been warned, suspended and then terminated even in the absence of her concerted protected activity, her union activity and her filing of a charge with the Board. Under these circumstances, I find that the General Counsel has carried his overall burden and I conclude that the Respondent's conduct is shown to have been in violation of Section 8(a)(1)(3) and (4) of the Act, as alleged.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By telling employees that their union activities were a threat to the Company and that their annual bonuses would be reduced, by promising benefits, by interrogating employees and soliciting and resolving employee grievances, by soliciting employees to engage in surveillance and by engaging in surveillance of employees union activities, by discouraging the distribution of union literature and by distributing racial inflammatory literature, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By discriminatorily decreasing the rate at which its annual bonus was calculated because of the employees' union activity, the Respondent has violated Section 8(a)(1) and (3) of the Act.

5. By discriminatorily issuing warnings to and suspending employee Julie A. Wilson on November 10, 1999, and by discriminatorily terminating Wilson on December 23, 1999, because of his union or other protected concerted activities and because she filed charges with the Board, Respondent has violated Section 8(a)(1), (3) and (4) of the Act.

REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate Julie A. Wilson to her former job or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of earnings he may have suffered because of the discrimination practiced against her by payment to her of a sum of money equal to that which she normally wold have earned on the days of her suspension and from the date of the discriminatory discharge to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (May 28, 1987),[4] and

[4] Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amend-

that Respondent expunge from its files any reference to the warnings, suspension and discharge and notify her in writing that this has been done and that evidence of this unlawful action will not be used as basis for future personnel action against her.

The Respondent shall also be required to make whole with interest all production and maintenance employees embraced in the proposed bargaining unit who had their 1999 Christmas bonus calculation reduced by 2 cents an hour for any loss of earnings they suffered as a result of the Respondent's unlawful change in their bonus plan, see *Frank Leta Honda*, supra.

Otherwise, it is not considered necessary that a broad order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10((c) of the Act, I issue the following recommended[5]

ORDER

The Respondent, Ishikawa Gasket America, Inc., subsidiary of Ishikawa Gasket of Japan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, warning, or suspending any employee because of or in retaliation for their engaging in union or other activity protected by Section 7 of the Act or because they filed charges with the Board.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by telling employees that their union activities were a threat to the Company and that their annual bonuses would be reduced, promising benefits, interrogating employees and soliciting and resolving employee grievances, soliciting employees to engage in surveillance and engaging in surveillance of employees union activities, discouraging the distribution of union literature and distributing racial inflammatory literature.

(c) Discriminatorily decreasing the rate at which its annual bonus for production and maintenance employees is calculated because of or in retaliation for employees engaging in union or other protected concerted activities.

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

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

(a) Within 14 days from the date of this Order, offer Julie A. Wilson full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Julie Wilson whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(c) Make production and maintenance employees whole for any loss of 1999 Christmas bonus earnings suffered as a result of the discrimination against them in the manner set forth in the Remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to Julie A. Wilson's unlawful discharge, warnings and suspensions and within 3 days thereafter notify her in writing that this has been done and that the evidence of these unlawful discharge, suspension and warnings will not be used against her in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Bowling Green, Ohio and Farmington Hills, Michigan, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 1999.

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

ment to 26 U.S.C. § 6621. Interest accrued before 1 January 1997 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

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

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."