Phillips 66 (Sweeny Refinery) *and* International Union of Operating Engineers, Local Union No. 564. Cases 16–CA–087373, 16–CA–089250, and 16–CA–089036

January 15, 2014

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND SCHIFFER

On April 9, 2013, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel and the Respondent each filed exceptions, a supporting brief, and an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The 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 and to adopt his recommended Order as modified below.[2]

1. We agree with the judge that Supervisor Tynes Schroller unlawfully threatened lead operator Roger Bennett by stating that the Respondent probably would make lead operator a salaried position (effectively curtailing Bennett's and other leads' pay) in the event the Union came in.[3]

2. For the reasons given by the judge, we also agree with his finding that Supervisor Desiree Cromwell unlawfully interrogated employee Winston Bush when she asked him, "[w]hat's your opinion of this union thing?"

3. Finally, we agree with the judge that the Respondent unlawfully denied the Union use of the Respondent's property to hold an organizing event. The Respondent owned a tract of land directly across the road from the facility involved in this case, which it leased to a local fire department for its fire station. Without objection by the Respondent, the fire chief, Craig Peterson, had routinely permitted the Union, which represented a small unit of the Respondent's crane operators, and at least four of the Respondent's other "in-house" unions that represented existing units to hold their monthly membership meetings in the fire station's office. In August 2012,[4] the Union obtained Peterson's permission to use the fire station's office and immediate surrounding area for a September 13 barbecue aimed at organizing the Respondent's remaining 340 unrepresented employees. The Union distributed a flyer inviting those employees to attend the event to "discuss the benefits of having a Union at your plant."

On about September 11, however, the Respondent's human resources director, Mike Saiz, called Peterson and told him that "the unions are really not supposed to have things on our property," and directed Peterson to tell the Union to move the September 13 event elsewhere. Peterson asked Saiz if he, Peterson, had been wrong to let the unions use the fire station building for their monthly meetings. Crediting Peterson, whose testimony was unchallenged because Saiz did not testify,[5] the judge found that Saiz replied that he did not object to the "in-house" unions meeting at the fire station and that "he only had a problem with this event and not with the other meetings." In Peterson's words, "we . . . talked about it being an organizing event—or it was a new union," and Saiz distinguished between "in-house union" activity and other union activity. Peterson then informed the Union that it would have to move the event. On these facts, we agree with the judge's finding that the Respondent engaged in unlawful discrimination by drawing a distinction between the Union's organizing event and membership meetings by its "in-house" unions, both activities protected by Section 7 of the Act. As found by the judge,

[1] The Respondent has implicitly 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.

There are no exceptions to the judge's dismissal of an allegation that Supervisor Tynes Schroller unlawfully interrogated employee Roger Bennett.

[2] We shall modify the judge's recommended Order to provide for electronic posting of the remedial notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010). In addition, in the absence of evidence of corporatewide misconduct, we find merit in the Respondent's cross-exception to a corporatewide posting requirement and will confine that requirement to the facility at issue. Further, our Order requiring the Respondent not to discriminate against the Union in granting access to the Respondent's property shall be limited to the particular fire station property involved in this proceeding.

[3] We disagree, however, with the judge's reliance on *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 618 (1969), in making that finding. Citing *Gissel,* the judge noted that Schroller made his prediction "even though there was no record evidence to support this conclusion." Accordingly, he found that the statement was "no longer a reasonable prediction based on available facts, but a threat of retaliation based on misrepresentation and coercion." *Gissel*, however, addresses predictions of adverse economic consequences flowing from unionization that are outside of the employer's control. Here, Schroller's statement that the Respondent probably would make Bennett's position salaried if the Union came in concerned a decision wholly within the Respondent's control and was retaliatory on its face. Accordingly, it is irrelevant whether Schroller's statement had any factual basis. Further, contrary to the Respondent's argument, it is no defense that Schroller and Bennett were friends. See *Southwire Co.,* 282 NLRB 916, 917–918 (1987).

[4] All subsequent dates are 2012.

[5] We draw an adverse inference from the Respondent's failure to call Saiz to testify at the hearing. See, e.g., *Fairhaven Properties, Inc.,* 314 NLRB 763, 769 (1994); *Advanced Installations,* 257 NLRB 845, 849 (1981).

there appears to have been no reason for the Respondent's action other than that, on this occasion, the Union was attempting to organize the Respondent's unrepresented employees—an effort to which the Respondent was opposed. The judge thus properly found that the Respondent violated the Act.

As it did at the trial, the Respondent maintains in its exceptions that it barred the Union's use of the fire station property for two lawful reasons: the barbecue event would have involved the consumption of alcohol, and the building's office was too small to accommodate the expected turnout. However, there is no evidence that Saiz asserted or relied on these reasons at the time. Because the Respondent's asserted reasons are rationalizations unsupported by evidence that these distinctions were relied upon by the Respondent employer, we reject them. See *Guard Publishing Co. v. NLRB*, 571 F.3d 53, 60 (D.C. Cir. 2009) (finding that employer could not justify its discrimination between different types of email solicitations based on a distinction it never invoked before the General Counsel issued the complaint).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Phillips 66 (Sweeny Refinery), Old Ocean, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

"(a) Refusing to allow the Union or any other labor organization nondiscriminatory access to the Old Ocean Volunteer Fire Department property."

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

"(b) Within 14 days after service by the Region, post at its Sweeny Refinery copies of the attached notice marked 'Appendix.'[4] Copies of the notice, on forms provided by the Regional Director for Region 16, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the 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 September 11, 2012."

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 threaten you with the loss of overtime pay or other benefits if you choose International Union of Operating Engineers, Local Union No. 564 (the Union) or any other labor organization to represent you.

WE WILL NOT coercively question you about your support for the Union or for any other labor organization.

WE WILL NOT refuse to allow the Union or any other labor organization nondiscriminatory access to the Old Ocean Volunteer Fire Department (Fire Department) property.

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

WE WILL notify the Union and the Fire Department that the Union may use the Fire Department property on a nondiscriminatory basis.

PHILLIPS 66 (SWEENY REFINERY)

Dean Owens, Esq., for the General Counsel.
Dan Dargene, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on February 21, 2013 in Houston, Texas. The consolidated complaint here, which issued on December 27,

2012[1] and was based upon unfair labor practice charges, and an amended charge, that were filed between August 16 and September 12, by International Union of Operating Engineers, Local Union No. 564 (the Union), alleges that Phillips 66 (the Respondent), on August 14 and September 11, interrogated employees about their union activities and sympathies and on August 14, also threatened employees with loss of benefits if they selected the Union as their bargaining representative. The consolidated complaint further alleges that since about September 11, the Respondent has interfered with its employees and the Union's use of the Old Ocean Voluntary Fire Department property to conduct a union organizing event. It is alleged that by these actions the Respondent violated Section 8(a)(1) of the Act.

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

The Respondent operates a petrochemical refinery in Old Ocean, Texas, a town approximately 60 miles south of Houston. The Union presently represents a unit of approximately 20 crane operators at the Respondent's Sweeny Refinery (the facility), located in Old Ocean, Texas. On August 17, it filed a petition to represent all operators and terminal operators employed by the Respondent at the facility. The Acting Regional Director issued a decision and direction of election dated September 6 where he found that the unit of operators and terminal operators was the appropriate unit and ordered that an election be held in that unit. At the election conducted on October 4 and 5, there were 87 votes cast in favor or the Union and 233 votes cast against the Union. No objections having been filed, on October 15, the Regional Director issued a certification of results of election finding that a majority of the valid ballots were not cast for any labor organization.

There are three distinct incidents here that are alleged to violate the Act: it is first alleged that on August 14, Tynes Schroller, training supervisor, and an admitted supervisor and agent of the Respondent, interrogated an employee about his union activities and sympathies and those of his fellow employees, and threatened him with the loss of benefits if the employees selected the Union as their bargaining representative. It is next alleged that on September 11, Desiree Cromwell, team leader and an admitted supervisor and agent of the Respondent, interrogated an employee about his union activities and sympathies, as well as those of his fellow employees. Finally, it is alleged that the Respondent, by Mike Saiz, its human resources director, interfered with its employees and the Union's use of the Old Ocean Volunteer Fire Department property to conduct a union organizing campaign. Respondent denies these allegations.

[1] Unless indicated otherwise, all dates referred to here relate to the year 2012.

A. August 14 Incident

The recipient of Schroller's remarks on August 14, was Roger Bennett, who has been employed by the Respondent for 33 years, and is presently classified as a lead operator at the facility, a nonsupervisory position. He reports to Dale Thames, supervisor specialist, and Carlos Sepulveda, the team leader. He has known Schroller for almost 30 years, had worked with him for about 10 years and considers him a friend; up to a few years ago, they used to play golf together. Schroller is not his supervisor, he does not assign work to Bennett, give him performance evaluations, or discipline him. Bennett testified that it is a known fact at the facility that he is a union supporter and he was an observer for the Union at the election. He testified that on August 14, while he was making changes in the Respondent's procedures in the computer room in the administration building at the facility, he was approached by Schroller, the highest ranking manager in the training department, who asked, "What's going on with the Union?" Bennett shrugged his shoulders, but did not respond. He testified: "I knew better than to . . . I didn't want to start a conversation about the Union." Schroller said that if the Union came in, the odds are that the Respondent would make the lead operator position salaried. Bennett responded that he didn't want to be salaried, and that he would rather "bump back" and be an operator rather than being salaried. Bennett told other employees about this incident.

Schroller has been employed at the facility for 27 years and has been a training team leader for 3 years; he reports directly to Saiz. He has known Bennett for about 27 years; during 10 of those years, they worked side-by-side and he considers him a friend. He and the six training team analysts that he oversees provide operational and maintenance training for the hourly employees at the facility, some hands-on, but most through the computer, in the training room. He has no supervisory authority over the unit of employees that the Union was attempting to organize. He testified that on August 14, while he and Bennett were working in the training computer laboratory, he commented that there was going to be another vote, and he was not even aware that the Union was having cards signed. They discussed the pros and cons of unions and how other refineries operate with a union. He told Bennett that if the Union came in, everything would have to be renegotiated. He also told Bennett that at the other refineries owned by the Respondent, the operators were salaried.

B. September 11 Incident

This situation involved Winston Bush, who has been employed by the Respondent for 15 years as a chemical plant operator. His lead operator is Alvin Johnson; Cromwell is his team leader. His department's responsibility is to monitor environmental concerns pertaining to the river water used at the facility. He testified that he had no involvement with the Union's organizational campaign. On September 7, he sent Cromwell an email setting forth his concerns about some plants that had appeared in the water system that could cause a problem for the water supply. On September 11, while he was making his rounds of the reservoir and the river in his truck he received a call from Charlie Willbanks, his lead operator at the

time, saying that Cromwell wanted to speak to him. He drove back and saw her on the roadway and told her that he could show her the problem areas and she agreed, and he said, "hop in." He was getting ready to show her the problem areas, when she said, "Let me ask you something, what's your opinion of this union thing?" He did not reply, testifying: "I tried to stay as close-mouthed on it as I possibly could." He told her that he didn't have an opinion about it and she told him that the facility was probably one of the better ones that she had worked at because they were close knit and family oriented. She said that the employees have "a good thing here" and that she has worked in other plants and knows how hectic it could be "working in a unionized environment." She mentioned that in one unionized plant nine hundred cases had to go to arbitration. When he arrived at the location that Cromwell asked to be dropped off at, she stayed in the truck and continued to talk about how the Union would not necessarily be beneficial to the employees. To play the "Devil's Advocate," he asked her what would be the worst thing about having a union for representation, and she said that the company already had an employee review board and an open door policy. He asked her if he were her husband, brother or cousin, would she be having this conversation with him and she said that she would. Before leaving the truck, she gave him a printout of the pros and cons of a union. Shortly thereafter, a group of employees, including Bush, invited her to join them for lunch.

Cromwell has been employed at the facility for 4 years and has been team leader for a year and a month. On Monday, September 10, while she was speaking to Bush, he asked if she had seen his September 7 email and when she did recollect it, he asked if she had time the following day to drive with him to inspect the problem areas, and she said that she did, and on September 11, she had him paged and he picked her up in his truck. She testified that after about 15 minutes and discussions of the water situation, she mentioned that she was surprised that she received an email dated August 21, from the general manager of the facility that the Union had filed a petition with the Board to represent the operators. She testified that Bush responded that he was not surprised because of the issues the operators were having with management. She told him that the Respondent had implemented a lot of new programs to improve communications between the employees and management and had established a peer review process and an employee excellence team, and he acknowledged that they were good programs. He asked her to take off her manager's hat and asked if he were her cousin, husband or brother, would she be telling him the same things, and she said that she would. While in the truck, they spent 15 minutes or less speaking about the Union, and a majority of the time, speaking about the water system.

C. The Union Party at the Firehouse

The Old Ocean Volunteer Fire Department (the Fire Department), is located directly across the road from the facility, on land owned by the Respondent. On September 18, 1980, the Respondent entered into a lease agreement with the Fire Department for $1 a year for a period of 5 years, but from year to year thereafter until either party gives the other 30 days written notice of its intention to terminate the agreement. Apparently, neither party has exercised its right to terminate the agreement. The building on the premises is small and contains bays where the fire trucks are stored, and it is located on a third of an acre lot with adjacent acreage containing a baseball field and a parking lot. Over the years the Union has held regular monthly meetings of its membership composed of crane operators employed at the facility. Prior to arranging these meetings, the Union called Craig Peterson, the Fire Chief, for permission to use the facility for the meeting, and he has always given his approval. Charles Singletary, business manager of the Union, testified that other unions representing pipefitters, boilermakers, welders, operating engineers and electricians employed at the facility also used the building for their monthly meetings.

Singletary testified that in mid-August, he called Peterson to ask permission to use the Fire Department property for either a pancake breakfast or another function and that they would be using the property for the entire day. Peterson gave him permission, and told him that the property had no kitchen, and Singletary said that they would bring everything that they needed. Singletary asked if he could take the fire trucks out of the bays, and he said that if he were available he could, and he also asked if the Union could use the meeting room if people wanted to come inside out of the Summer heat, and Peterson said that they could. Singletary also said that they were going to be setting up tents and that they would have everything that they needed. About a week later, he called Peterson to confirm, and told him that they were either going to have a barbecue, where they cooked the food elsewhere, and brought it to the site, or would have the party catered, and the party was scheduled for September 13. Shortly thereafter the Union distributed a flyer to all employees on the Excelsior list stating that the barbecue would be at the Fire Department property on September 13 from noon to 8 p.m. Eric Wells, an organizer for the Union, testified that on about September 11 he received a telephone call from Peterson saying that the Union would not be able to have their barbecue at the Fire Department because he was contacted by Saiz stating that the barbecue would not be taking place there.

Peterson testified that a number of years ago he began allowing in-house unions at the facility to use his building for meetings, and prior to this situation, he never refused permission for a union to use the building. When he received the call from Singletary asking if the Union could use the property on September 13, he told him that they could do so. A few days prior to September 13, he received a telephone call from Saiz asking about the Union's barbecue: "And he asked me if I was aware that our station sat on Phillips property, and I said yes, sir. And he said, well the unions are really not supposed to have things on our property. And I said, okay . . . he asked me if I would call and talk to the people and get them to move it, and I said, sure." Peterson then asked Saiz if he was wrong letting the other unions use the building for their meetings, and he said that he didn't have a problem with the in-house unions meeting at the fire station: "he said he only had a problem with this event and not with the other meetings." Peterson then called the Union and told them that because the firehouse sat on Respondent's property they could not have their meeting there and they would have to move it to another location, and mentioned

the telephone call that he received from Saiz. The Union was able to obtain the use of a VFW hall, approximately four miles away for the meeting on September 13. Although they expected approximately 100 people to attend, only about 30 attended the event at the VFW hall.[2]

III. ANALYSIS

It is initially alleged that Schroller's questioning of Bennett, on about August 14, violated Section 8(a)(1) of the Act. As there are credibility issues involving the testimony of Bennett and Schroller, and Bush and Cromwell, I found the testimony of Bennett and Bush to be totally credible and believable, and credit their testimony over that of Schroller and Cromwell. Although I did not find Schroller to be an incredible witness, I found Bennett to be clearly more credible. In addition, I found Cromwell, at times, to be evasive and incapable or unwilling to answer directly, and I credit his testimony over hers.

Rossmore House, 269 NLRB 1176 (1984), and some more recent cases such as *John W. Hancock, Jr., Inc.*, 337 NLRB 1223 (2002); *Toma Metals, Inc.*, 342 NLRB 787, 789 (2004); and *Camaco Lorain Mfg.,* 356 NLRB 1182 (2011), set forth the factors to be considered in determining whether questioning of this nature violates the Act:

> (1) The background, *i.e.*, is there a history of employer hostility and discrimination?
>
> (2) The nature of the information sought, *e.g.,* did the questioner appear to be seeking information on which to base taking action against individual employees?
>
> (3) The identity of the questioner, *i.e.,* how high was he/she in the company hierarchy?
>
> (4) Place and method of interrogation, *e.g.,* was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
>
> (5) Truthfulness of the reply.

The Board also takes into consideration whether the supervisor and the questioned employee had a friendly relationship and whether the employee was reluctant to respond. *Gelita, USA, Inc.*, 352 NLRB 406 (2008). Further, the Board stresses that these factors are not to be mechanically applied. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).

Taking these factors into consideration, there is no history of hostility between the Respondent and the Union, other than the allegations here and, in fact, some of the Respondent's employees are organized; Schroller's question to Bennett was a general, nonspecific, question, rather than one that attempted to induce Bennett to incriminate himself. Schroller and Bennett had worked together side by side for 10 years, they have known each other for almost 30 years and still consider the other a friend. Bennett is a known union supporter, was an observer for the Union at the election, and Schroller is not Bennett's supervisor, he is a training team leader, and the question was asked while they were in the computer room of the administration building. On the other hand, rather than answer the question, Bennett shrugged his shoulders because he didn't want to discuss the subject. Other than Bennett's reluctance to answer Schroller's inquiry, all of these factors are answered in Respondent's favor. I therefore find that there was no unlawful interrogation here, and recommend that this allegation be dismissed. However, the complaint also alleges that Schroller threatened Bennett with the loss of benefits if the employees selected the Union as their collective bargaining representative, and that is precisely what Schroller did; he told Bennett that if the Union came in, the odds were that the Respondent would make the lead operator position (Bennett's job) salaried, even though there was no record evidence to support this conclusion. This statement by Schroller was "no longer a reasonable prediction based on available facts, but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment." *Gissel Packing Co. v. NLRB,* 395 U.S. 575, 618 (1969). By telling Bennett that the Respondent would probably do that in response to the employees' union activities, the Respondent violated Section 8(a)(1) of the Act.

Employing the same factors for the September 11 situation involving Cromwell and Bush, I find that her questions and comments violated Section 8(a)(1) of the Act. Unlike Schroller's general question: "What's going on with the Union?" Cromwell's question was specific, asking him his opinion about the Union. In addition, Bush had no involvement, or open involvement, with the Union, she was his supervisor and they were not on a friendly basis, as Bennett and Cromwell were, and the conversation was one-on-one in the closer confine of the Respondent's truck. Further, his testimony that he tried to stay as closed mouthed as he could, establishes that he was uncomfortable with the question. For all these reasons, I find that her question about the Union, while they were in the truck, violated Section 8(a)(1) of the Act.

The final issue relates to the legality of the Respondent's refusal to allow the Union to have its September 13 party at the Fire Department. The evidence establishes that the Respondent owns the land on which the Fire Department sits and that it leases the land to the Fire Department for a dollar a year. The evidence also establishes that the Fire Department, with no objection from the Respondent, has regularly granted Respondent's in-house unions permission to hold meetings on its premises. The first occasion when such permission was denied was on about September 11, when Saiz overruled Peterson and told him that unions were not really supposed to meet on its property, and asked him to call the Union to tell them to move their meeting to another location, which he did. Unlike Counsel for the General Counsel's Brief, I find it unnecessary to differentiate between Respondent's rights as the owner, or not the owner, of the property on which the Fire Department is located. Rather, I find that the appropriate inquiry is whether the denial of

[2] There was some testimony, principally on cross examination, about whether liquor would be served at the event (it wouldn't, but people could bring their own) and the size of, and facilities at, the building compared the nature of the event and the number of people expected to attend. I find that both subjects are irrelevant to the ultimate determination here, the former because Saiz' objection was not to the fact that there might be liquor at the event (it wasn't even mentioned in his call to Peterson), and the latter because the Union's event was going to be in tents set up outside the building, and the food was going to be cooked elsewhere or catered so that the size of the building, and the limited facilities in the building, were not relevant factors.

the use of the property was the result of disparate treatment caused by the Union's organizational purpose at the property.

D'Alessandro's, Inc., 292 NLRB 81, 84 (1988), stated that an employer may prohibit certain postings on its property as long as it does not discriminate against the union by allowing other distributions. In *Davis Supermarkets,* 306 NLRB 426 (1992), the Board found that the employer violated the Act because of its disparate treatment of denying access to the union while permitting access to others. And in *Columbia University*, 225 NLRB 185 (1976), clearly relevant to the facts here, the Board found that the university violated the Act by denying access to an organizing committee composed solely of its employees, while allowing recognized union groups, and outside groups, to use the denied facility for a variety of purposes. Also on point is *Dow Jones and Co.,* 318 NLRB 574 (1995) where the union, which represented about 2000 of the employer's employees nationwide, proposed to its membership that rather than being an independent union, they affiliate with the Communications Workers of America, and the employer openly and actively opposed this affiliation. Although the employer had allowed other groups (groups composed of minority employees and female employees, smoke-ending programs and weight reduction programs) to meet on their premises, they refused to allow the union and CWA representatives to use its facilities to solicit support for the proposed affiliation. The Board affirmed the judge's finding that the employer violated the Act because of its disparate treatment of denying access to the union, while granting it to others. Clearly, that is also the situation here. The in-house unions regularly had meetings at the firehouse; in fact, Peterson initially told Singletary that the Union could have their party there. The first time that such a meeting was prohibited was when Saiz called Peterson on September 11, and told him not to allow the Union to have the party. Clearly, there was no reason for this prohibition other than the fact that, in this situation, the Union was attempting to organize the Respondent's employees. *Whitesell Corp.*, 352 NLRB 1196 (2008). This obvious disparate treatment violates Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

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

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

3. The Respondent violated Section 8(a)(1) of the Act when Cromwell interrogated Bush on about September 11.

4. The Respondent violated Section 8(a)(1) of the Act when Schroller told Bennett that the Respondent would probably make his position salaried if the Union were voted in.

5. The Respondent violated Section 8(a)(1) of the Act by denying the Union the use of the Fire Department property for its organizational party on September 13, 2012.

6. The Respondent did not violate the Act as further alleged in the complaint.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In that regard, Respondent shall notify the Union and the Fire Department, in writing, that it has no objection to the Union, or any other labor organization, using the property for any purpose that does not conflict with the Fire Department's purpose.

Upon the foregoing findings of fact, conclusions of law, and on the entire record, I hereby issue the following recommended[3]

ORDER

The Respondent, Phillips 66, Old Ocean, Texas, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Refusing to allow the Union, or any other labor organization, equal and nondiscriminatory access to the Old Ocean Volunteer Fire Department property, or any other property owned or maintained by the Respondent.

(b) Interrogating its employees regarding their union activities, or threatening employees with adverse working conditions if they chose the Union as their collective bargaining representative.

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

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

(a) Notify the Union and the Fire Department, in writing, that it has no objection to its use of the Old Ocean Volunteer Fire Department property for regular union meetings or for meetings with an organizational purpose and that, it will allow the use of its facilities on a nondiscriminatory basis.

(b) Within 14 days after service by the Region, post at its Sweeny Refinery, and all refineries in the United States, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 16, 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 the 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 September 11, 2012.

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[3] 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.

[4] 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."

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

(d) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.