Acme Motors, Inc., t/a Acme Datsun *and* Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America. Case 22-CA-9980

August 19, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 17, 1982, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein and set forth below.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified, and hereby orders that the Respondent, Acme Motors, Inc., t/a Acme Datsun, Highland Park, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union activities.

(b) Threatening employees with discharge for engaging in union activities.

(c) Creating the impression of surveillance of such activities.

(d) Conditioning employment on voting against the Union.

(e) Informing employees that it would be futile for them to select the Union as their bargaining representative.

(f) Informing employees that it would be futile for them to seek to use National Labor Relations Board processes or to seek its protection.

(g) Discouraging membership in or activities on behalf of Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, by billing employees for maintenance or repair to demonstrator automobiles in retaliation against their union activities, or by suspending them and thereafter failing and refusing to reinstate them because of their union activities, or by otherwise discriminating against them with respect to their terms and conditions of employment, because of such activities.

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

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

(a) Offer Lloyd Wallace full reinstatement to his former position or, if such position no longer exists,

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

Respondent contends that the Administrative Law Judge's interpretation of the evidence and his credibility findings showed bias and prejudice. Upon careful examination of the Administrative Law Judge's Decision and the entire record, we are satisfied that the contentions of Respondent in this regard are without merit.

The Administrative Law Judge found Respondent had billed employee Wallace for nonexistent or minor damage to his demonstrator automobile in retaliation for his union activity. The Administrative Law Judge failed specifically to find, however, whether the billing was unlawful. We hereby find and conclude that because the bill was given as a reprisal for engaging in union activity Respondent violated Sec. 8(a)(3) and (1) of the Act by such conduct.

[2] In agreeing with the Administrative Law Judge that Respondent unlawfully suspended employee Wallace on May 13, 1980, because of his union activity, we find no need to rely on the "small plant doctrine" of *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959), to establish Respondent's knowledge of Wallace's activity. The credited evidence clearly establishes that Respondent had knowledge of Wallace's union activities. For example, General Manager Weissbord admitted to Wallace that Respondent's treatment of him concerning his demonstrator automobile was due to his union activity, adding that Wallace was going to blow a good job because of his union activity. Further, Respondent's secretary-treasurer, Jaskowski, told Wallace on April 28, 1980, that he knew that Wallace and employee Salit had started the union campaign and that Wallace was the leader. And on April 29, 1980, Weissbord told Wallace to tell the other employees to forget about the Union, that it would not do them any good. Indeed, the Administrative Law Judge found that these statements of Weissbord and Jaskowski violated Sec. 8(a)(1) of the Act.

[3] The Administrative Law Judge recommended that the Board issue a broad cease-and-desist order requiring Respondent to cease and desist from violating the Act "in any other manner." However, we do not find Respondent's conduct in this case egregious enough to warrant the issuance of such an order. Consequently, we shall substitute the Board's narrow language, requiring Respondent to cease and desist from violating the Act "in any like or related manner," for the provision recommended by the Administrative Law Judge. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Member Jenkins would retain the broad order recommended by the Administrative Law Judge. He notes that Respondent's unlawful conduct included interrogation, threats of discharge, creating the impression of surveillance, informing employees that it would be futile to seek union representation or to use the Board's processes, conditioning employment on voting against the Union, and billing an employee for damages and suspending him in retaliation for his union activities. Member Jenkins would find that Respondent's misconduct was sufficiently widespread to demonstrate a general disregard for employees' fundamental statutory rights.

Although the Administrative Law Judge specifically found that Respondent violated Sec. 8(a)(1) by conditioning ex-employee Reese's employment on voting against the Union, he failed to include said finding in his Conclusions of Law, recommended Order, or notice to employees.

to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered, in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(b) Expunge from its files any references to the suspension of employee Wallace on May 13, 1980, and notify him in writing that this has been done and that evidence of this unlawful disciplinary action will not be used as a basis for future discipline against him.

(c) Cancel the April 23, 1980, bill requiring Wallace to pay for damages to his demonstrator automobile.

(d) Preserve and, upon 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 necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Highland Park facility copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by the appropriate representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT threaten employees with discharge for engaging in union activities.

WE WILL NOT create the impression of surveillance of union activities.

WE WILL NOT condition employment on voting against the Union.

WE WILL NOT discourage membership in or activities on behalf of Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, by billing employees for maintenance or repair to demonstrator automobiles in retaliation against their union activities, or by suspending them and thereafter failing and refusing to reinstate them because of their union activities, or by otherwise discriminating against them with respect to their terms and conditions of employment, because of such activities.

WE WILL NOT tell employees that it will be futile for them to select the Union as their bargaining representative.

WE WILL NOT tell employees that it will be futile for them to seek to use the processes of the National Labor Relations Board or to seek its protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the act.

WE WILL offer to Lloyd Wallace full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered, plus interest.

WE WILL expunge from our files any references to the suspension of employee Wallace on May 13, 1980, and notify him in writing that this has been done and that evidence of this unlawful disciplinary action will not be used as a basis for future discipline against him.

WE WILL cancel the April 23, 1980, bill requiring Wallace to pay for damages to his demo.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

ACME MOTORS, INC., T/A ACME DATSUN

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard before me on February 9 and 10, 1981, in Newark, New Jersey. The charge was filed on May 16, 1980, by Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America[1] and thereafter complaint[2] issued alleging violations of Section 8(a)(1) and (3) by Acme Motors, Inc., t/a Acme Datsun (herein called Respondent). More specifically, the complaint alleges that Respondent suspended employee Lloyd Wallace and refused to reinstate him because of his activities on behalf of the Union in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended; interrogated and threatened employees with discharge and other reprisals because of their activities on behalf of the Union; created the impression of surveillance of employees' union activities; informed employees that it would be futile for them to select the Union as their bargaining representative or to seek the protection of the National Labor Relations Board; and conditioned an offer of reemployment upon an employee's promise not to support the Union, all in violation of Section 8(a)(1) of the Act. The answer denies the commission of any unfair labor practices.

All parties were represented at the hearing and were afforded full opportunity to be heard and present evidence and argument. Briefs were filed by the General Counsel and Respondent. Upon the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a New Jersey corporation with its principal office and place of business in Highland Park, New Jersey, where it has been, at all times material, continuously engaged in the business of buying and selling new and used automobiles and related products and providing related services. In the course and conduct of its business operations during the 12-month period immediately preceding issuance of complaint, Respondent derived gross revenues in excess of $500,000. During the same period, Respondent purchased and received, at its Highland Park place of business, automobiles valued in excess of $50,000, which automobiles were shipped and transported to New Jersey directly from States of the United States other than New Jersey and from foreign countries. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

On February 2, 1980,[3] Lloyd Wallace, an automobile salesman, returned to work for Respondent under terms of employment more favorable than those enjoyed by other salesmen.[4] This was so because of Wallace's greater experience as a top salesman working for Respondent on a previous occasion and for other automobile dealers.

These more favorable terms of employment included, according to Impellezzeri, $100 per week salary, use of a company demonstrator (herein called demo) with free upkeep and maintenance, with a stipulation that Wallace would not have to pay the monthly charge for the demo that other employees had to pay, and free hospitalization and major medical insurance. Other salesmen were paid between $15 and $20 less per week, were charged from $60–$80 per month for their demos, and had to pay half of their hospitalization. Thus, the record indicates, as Respondent admits, that Wallace was considered a superior salesman and a very valuable employee, not only to Respondent generally but to Impellizzeri whose income was

[1] Herein called the Union.

[2] July 15, 1980.

[3] Hereinafter all dates are in 1980, unless otherwise specified.

[4] Wallace had initially gone to work for Respondent in May or June 1979 and proved to be an excellent new-car salesman. At his own request, he was made used-car manager and held that position for 2 months, August and September. The position of used-car manager did not, however, work out for Wallace and he returned to the new-car sales department at that time, once again to work for Anthony Impellizzeri, the sales manager who had advised him in the first place against going into the used-car sales management field. After a week of working for Impellizzeri back in the new-car sales department, Wallace was called into the office on September 30, 1979, and told that things were not working out and that he was being let go. Impellizzeri told Wallace that the two could no longer work effectively or efficiently together. Wallace left and shortly after obtained employment with another automobile agency selling cars. Impellizzeri testified that during Wallace's last week working for Respondent in September 1979, Wallace was bitter and pouted, apparently over his failure to make the grade as used- car sales manager. According to Impellizzeri, this attitude of Wallace's gave rise to constant clashes over Impellizzeri's authority as sales manager. For this reason Impellizzeri fired Wallace. Although Wallace testified that he did not know why he had been fired on September 30, it is quite apparent that a personality clash existed between Impellizzeri and himself.

Nevertheless, about 1 month after his termination, Wallace received a telephone call from Charles Weissbord, the general sales manager, Impellizzeri's supervisor, who asked Wallace to consider returning to work for Respondent. Wallace at first refused because he really did not understand why he had been terminated the first time. Thereafter, Weissbord called Wallace weekly, asking him each time to return, and advising him that they needed him. Finally, during one of these calls in January 1980 Wallace agreed to sit down and discuss the matter over lunch with Impellizzeri.

During the luncheon conversation Impellizzeri asked Wallace to return to work for Respondent, advising him that sales had been falling off recently and the Company needed a good salesman. After a discussion of the terms of employment, Wallace finally consented to return to work for Respondent.

partly derived from the sales that Wallace and other salesmen made.

According to Wallace, he was also told either at the time he was rehired or sometime thereafter that, unlike other salesmen, he would not be subject to the $250 deductible policy which covered all demos. Impellizzeri specifically denies that this was ever made a condition of Wallace's employment. I credit Impellizzeri.

After Wallace returned to work for Respondent he found that conditions were not exactly as he expected them to be. He felt that his income was somewhat diminished because although he still received a certain percentage of the total profit just as he had before when he worked for Respondent in 1979, the amount deducted from the total profit for advertising and other expenses before it was distributed had been increased, thus cutting somewhat into Wallace's own income. Despite his dissatisfaction over this fact, Wallace sold cars and quickly became Respondent's top salesman, receiving an award in March for selling the most automobiles.

On February 14, General Manager Charles Weissbord decided to put into writing the longstanding company policy of requiring all of its employees to pay for the first $250 damage to any demo, in accordance with the insurance plan covering the vehicles. A memorandum was drawn up by Impellizzeri to this effect on that day, and each of the salesmen were required to sign it during one of the Company's regularly scheduled sales meetings.

According to Weissbord, although the $250 deductible company policy on demos[5] was first put in writing on February 14, it had been the company policy long before that date. Impellizzeri testified that the policy had been in existence since May 1979. In support of this assertion, Respondent offered a number of repair bills as evidence to prove that prior to February 14 employees were required to pay for damage to their demos whether or not the damage was through their own fault. Thus, employee Carlos Santa Cruz, the manager of Respondent's predelivery inspector department (herein called PDI) ran a company car into a pole doing over $800 in damage to the vehicle. This accident occurred in September 1979 and Santa Cruz authorized deductions from his paycheck to pay for the damage to the demo[6] to the extent of the $250 deductible. Similarly, employee Michael Qualiano, one of Respondent's salesmen, was involved in an accident in December 1979 and authorized deductions from his commissions to the extent of $250 to pay for the $2,000 damage to his demo. Unlike the accident involving Santa Cruz, there is no indication that Qualiano's accident was due to his own carelessness.

The Santa Cruz and Qualiano accidents were very serious with extensive damage caused to the cars they were driving. With regard to the general enforcement of the $250 deductible policy by the Company, prior to February 14, however, Weissbord testified that the policy:

> . . . was followed by the company but it wasn't closely adhered to. There were cases where small scratches and things would go by the boards and I'd hear about it after the fact.

Likewise, Impellizzeri testified that if a demo received a dent or a scuff on the side of a door the vehicle would be taken over to PDI where it would be buffed out if possible. If successfully repaired, there would be no charge.[7] If PDI were unable to make the repair, the car would be sent to the repair shop located across the street and the employee would be charged for parts and labor. The $250 deductible policy was put into written form on February 14 to curb neglect, misuse or abuse of the cars, not to change policy as it stood.

According to Impellizzeri, at the meeting on February 14 when the memorandum was distributed for signature, he explained to those present that if there were just minor damages that could be taken care of by the PDI department without additional labor, it would not cost anyone anything, that the purpose of the memorandum was to take care of major damages that were expensive to repair. Everyone present at the meeting signed the document including Wallace[8] and, according to Impellizzeri, no one made any comment about being required to sign the memorandum except salesman Barry Salit who asked, "What if my car is in the parking lot and somebody hits it. Am I responsible?" Impellizzeri replied that he was. Salit then asked what would happen if he did not sign the memorandum and Impellizzeri replied that in that case Salit would have to turn in his demo.[9] He pointed out that all of the salesmen were driving nice new expensive cars of their choice as demos and for that reason he did not feel that it was fair that the Company and he,[10] personally, had to pay out hundreds of dollars each month to repair the damage to the demos.

Wallace testified that on February 14 there was the usual salesmen's meeting called by Impellizzeri. All the salesmen were present. General business topics were discussed but no mention was made of the $250 deductible. About 10 a.m., after the salesmen's meeting was over, Impellizzeri came over to Wallace's desk and threw the memorandum down and told him to sign it. The two were alone. Wallace refused, stating that he had not even read it yet and would not know what he was signing. Impellizzeri explained that it concerned responsibility of salesmen for the first $250 damage to their demos. He assured Wallace that the purpose of the memorandum was to enable Respondent to charge another[11] employee for

[5] Weissbord testified that employees were responsible for their demos whether or not the damage done to them was the fault of the employee himself.

[6] The demo had not been assigned to Santa Cruz at the time but he was servicing it when the accident occurred. Under a verbal agreement made at the time of his hire, he agreed to pay the $250 for damage done due to his carelessness.

[7] PDI employees are hourly paid and are used to get new cars ready for sale. There is therefore no additional cost to Respondent to take care of minor dents or scratches in demos.

[8] Later, as new salesmen were hired, they were required to sign and date this document or similar ones.

[9] Impellizzeri testified that not all salesmen are assigned demos. They can and do sell cars without having their own personal demo.

[10] Since payments to the repair shop were deducted from the profits before distribution, Impellizzeri personally lost money through damage to demos.

[11] This "other employee" was apparently not named.

demo damage and that Wallace would never be charged a dime for any damage even if he did sign the memorandum. He told Wallace to sign the document, that it was only a piece of paper and reminded him that he had been hired under different circumstances.[12] When Wallace still refused to sign the document, Impellizzeri told Wallace that if he did not sign the memorandum, he would be fired. Wallace then stated he would sign the document but only under duress. He then did so. According to Wallace, he signed the February 14 memorandum because he was promised that it would never cost him a dime, because he had been hired under special circumstances, and because he was threatened with being fired if he did not do so.

With regard to the events of February 14, Salit testified that at the regular salesmen's meeting called by Impellizzeri that day, the salesmen present were presented with the $250 deductible policy memorandum immediately following a general discussion of business matters. Impellizzeri explained its contents and told those present to sign the document. Salit objected and asked what choice the employees had in the matter. Impellizzeri replied, "If you want to work here, you are going to sign it. If you don't sign it, you don't work for Acme Datsun."

From the weight of the evidence and from the testimony of Impellizzeri, Wallace and Salit, I find that there was a salesmen's meeting on February 14 and at this meeting attended by five salesmen,[13] the $250 deductible memorandum was introduced and discussed, just as Impellizzeri and Salit testified, contrary to the testimony of Wallace. I find further, in accordance with Salit's testimony, that Impellizzeri threatened him and the others with discharge if they refused to sign the document, and that faced with this threat all five salesmen signed the document.[14] Finally, I conclude that the memorandum of February 14 was merely a matter of putting into writing the policy already in effect, requiring employees who suffer *serious* damage to their demos or other company cars to pay for such *extensive* damage to the limited extent of the insurance coverage; i.e., $250. I also find that it was not the policy of Respondent, prior to February 14[15] to charge employees for minor scratches, scuffs, or dents which could be repaired by PDI employees.

Starting with the February 14 meeting and Impellizzeri's threat to discharge employees who failed to sign the $250 deductible memorandum, the relations between Respondent and its employees went steadily down hill. During morning meetings Impellizzeri, according to Wallace, would make statements concerning the operation of the business and tell the employees that if they did not like it, they could leave. This occurred in March. On April 2 Wallace, dissatisfied with working conditions, contacted Joseph Cravotta, business representative for the Union, by telephone and asked him to organize the employees of Respondent. The two arranged for a meeting at which Cravotta was to explain to Respondent's employees the function of the Union and to proceed with the organizing campaign.

On April 8 the meeting took place at a diner in Edison, New Jersey. Between 15 and 18 employees of Respondent's sales, service, and PDI departments attended. Cravotta explained the organizing procedure and signed up a number of the employees who were present. Wallace was put in charge of organizing the salesmen, and employee Eugene Peppe[16] was put in charge of organizing the service department. A few union cards were signed by employees that night which were insufficient in number to proceed. A few other employees took cards with them with the intention of deciding later whether they wished to sign. They were told to return their signed union cards to Wallace. Wallace took several cards with him at the close of the meeting to distribute to employees who did not attend. Cravotta instructed him to call back once he obtained sufficient additional signed cards to enable the Union to proceed.

The following day certain of the employees who had attended the meeting but had not signed union cards did so later and returned them to Wallace while at work. Still others who had not attended the meeting received union cards from Wallace while at work and were requested by him to sign them. Some complied and returned the signed cards to him. Much of this activity occurred in or around Wallace's office and was witnessed by other employees.

On the morning of April 10 Wallace met with Cravotta and gave him the additional signed union cards

[12] Impellizzeri testified that at no time was Wallace told that the $250 deductible did not apply to him.

[13] Three salesmen, Alan Zarak, Leonard Reese, and Arnold Canape, who were present at the February 14 meeting were not requested to testify concerning the meeting although Reese, one of the General Counsel's witnesses, was present at the hearing and testified on other matters.

[14] Wallace's description of how he signed the document after the meeting was over is unsubstantiated and unworthy of crediting for the following reasons.

1. Wallace's name appears on the document as the second of the five who were present that day and whom Impellizzeri credibly testified signed the document. There is no space between any of the names on the document. It is therefore more likely that Wallace signed after Salit and before the other three salesmen than that he signed after the meeting.

2. Wallace's statement that the document was not mentioned at the meeting flies in the face of Impellizzeri's and Salit's contrary testimony and Salit was a witness for the General Counsel, as was Wallace.

3. Wallace's testimony that Impellizzeri insisted on him signing the document in order to charge a third employee for demo damage strikes me as illogical. I do not understand why Wallace's signature would be an asset in such a plan. Moreover, Wallace did not reveal the name of this other employee if, indeed, it was divulged to him and there is no record evidence of any other employee being required to pay for a damaged demo on or about February 14.

4. If Wallace had a special deal concerning his not being responsible for severe damage to his demo, why would Impellizzeri insist on his signing the document at this time.

5. It is patently clear that Respondent considered Wallace a top salesman and hired him back with special privileges in order to obtain his admitted superior talents. It is incredible to believe that Respondent would risk losing this talent by telling Wallace on February 2 that he would not be responsible for serious damage to his demo, then on February 14, 12 days later, going back on its word and threatening Wallace with discharge unless he agreed to such responsibility.

In my opinion, Wallace concocted the story of his later private signing of the document in order to explain away his failure to object to his having to sign the document at the earlier meeting. Wallace on this and several other occasions tried to pad his case.

[15] Evidence to the contrary was not forthcoming.

[16] Though Peppe was put in charge of organizing the service department it appears that Wallace did the actual organizing there too. Peppe is still employed by Respondent.

which he had obtained the day before. Later that day Cravotta called Wallace and told him that there would be a meeting in the showroom. He requested Wallace to round up the men and tell them to be prepared to be at Weissbord's office. Wallace agreed to do so as soon as Cravotta arrived in the showroom. When Cravotta arrived, Wallace went over to the PDI department, accompanied by Salit. Wallace and Salit brought the men out of the PDI building over to the mechanical shop, got all the mechanics and salesmen and brought them into the hallway where Weissbord's office is located. The employees and Cravotta entered Weissbord's office where Cravotta placed the union authorization cards on Weissbord's desk, upside down so that the signatures could not be seen. Cravotta introduced himself, stated that he represented Respondent's employees, demanded recognition and requested that negotiations begin. Weissbord refused. There is no indication that Respondent, before April 10, was aware that there was union activity among its employees. After the demand of April 10, Weissbord advised Paul Jaskowski, the owner, that there were people from the Union who were soliciting. That afternoon Cravotta filed his petitions with the Labor Board to represent the sales and service department employees of Respondent.

About April 11 Weissbord approached Salit while both were out on the selling floor and initiated a conversation.[17] Other salesmen, including Wallace, were nearby. Weissbord complained:

> Hey Barry, why do you have to start this union business? Why all of these problems with the Union? I don't understand. How come you are not man enough to stand on your own two feet? How come you have to hide behind the herd? What is the matter with you guys? You can't come up to me like a man and say what you mean? You have to go through this union rep? He is not going to help you. Why don't you stand on your own two feet? How come you guys have to go sneaking off to a diner to have a meeting? Why couldn't you hold the meeting right here at the place of work? Why did you have to go to a diner like a sneak behind our backs and hold a union meeting?

Salit objected:

> You know as well as I do, it is illegal for an employee to organize a union on company property. You are the general manager of the corporation, I am just an employee. That is why we went outside of the premises to have a meeting. It is only logical that we couldn't have a private meeting with you guys around all the time looking over our shoulders.

Though Weissbord denied that this conversation ever took place, I find to the contrary and find further that Respondent, through Weissbord, interrogated the employees present in violation of Section 8(a)(1).

On April 12, Leonard Reese, an exemployee of Respondent, received a telephone call from Impellizzeri who asked him if he would like to work for Respondent again. Reese acknowledged that he would. Impellizzeri then told Reese that there was a union organizational drive going on at the time and that if he came back to work for Respondent, it would be on condition that if there were a union election, Reese would have to vote against the Union. Reese replied that he would get in touch with Impellizzeri later but he never did. Impellizzeri testified that he did, in fact, call Reese but that the call concerned only a deal that Reese had had involving a pickup truck when he worked for Respondent. Impellizzeri denied that he offered Reese his job back in return for voting against the Union and stated that it was Reese who mentioned that he had heard from another employee of Respondent, John D'Imperio,[18] that the Union had filed a petition and that when he did so, Impellizzeri made no comment. Impellizzeri testified that Weissbord had informed him of the petition being filed and that a few days later Respondent's attorney, Julius Steiner, laid down guidelines for Impellizzeri to follow, namely, that he was not to spy, interrogate, promise, or threaten. It was, according to Impellizzeri, because of Steiner's advice that he did not continue the conversation with Reese about the Union, but remained silent.

With regard to this conversation, I find that it occurred as Reese described it and do not credit Impellizzeri.[19] Consequently, I find that by conditioning Reese's employment on a vote against the Union Respondent, through Impellizzeri, violated Section 8(a)(1) of the Act.

[17] Counsel for the General Counsel supplied the date May 11 while adducing testimony from this witness. The subject matter—the meeting at the diner—and the fact that by May 11 the election had been cancelled convinces me that this discussion took place much earlier. From the tenor of the conversation it is quite clear that it took place early during the organizing campaign, very possibly shortly after Cravotta demanded recognition, since the question of the "union rep" was brought up by Weissbord during the discussion.

[18] D'Imperio was not called to testify by either Respondent or the General Counsel.

[19] Though Impellizzeri stated at one point that he did not reply to Reese's bringing up the subject of the Union, in another part of his testimony he stated that he told Reese, "Yes, I'm not allowed to discuss it. Period!" This inconsistency is noted. Elsewhere in his testimony the following exchange took place with regard to the Reese/Impellizzeri conversation:

> Q. Well, what happened already with regard to the Union at that time?
>
> A. I don't know.
>
> Q. Well, why did you say "yes?" I mean, had something happened?
>
> A. You asked me a question. It's a beautiful day, yes.
>
> Q. I know, but what happened with regard to the Union? Had a petition been filed? . . .
>
> A. I don't know.

Thus, Impellizzeri contradicts himself once again. In one breath he testifies he had received advice from the lawyer and in the next he says he did not know whether a petition had even been filed. My crediting Reese over Impellizzeri is based on Reese's demeanor being more convincing than Impellizzeri's, on the inconsistencies outlined herein and on the fact that the petition was filed on April 10 and it is highly unlikely that by April 12 Respondent had already received a copy of the petition and had time to contact a lawyer and have that lawyer already visit its establishment and make an advisory speech to management employees. It is also more likely that Impellizzeri knew about the petition and brought up the subject than that Reese who did not even work for Respondent was told about it by a third party and brought the subject up for no apparent reason during his conversation with Impellizzeri.

On April 14 Jaskowski entered Wallace's office while no one else was present.[20] He asked Wallace what he knew about the Union and who started the Union. Wallace replied that he knew nothing about the Union and refused to discuss it. Jaskowski stated that if he found out who started the Union that he would be fired immediately. He added that he had ways of finding out because his brother was a union president. Wallace informed Jaskowski that it is "against the rules of the National Labor Relations Board to fire anybody" for that reason, whereupon Jaskowski replied, "F— the National Labor Relations, I paid them off before and I will pay them off again. I dealt with the National Labor Relations Board 3 years ago.[21] I paid them off and won." Wallace replied, "That's impossible!" Jaskowski stated, "Nothing is impossible, I hold the keys to this place and there is no outsider ever coming into this place." Wallace replied, "Don't bet on that, Paul."

I find that Respondent violated Section 8(a)(1) of the Act on April 14 by Jaskowski's interrogation of Wallace as to what he knew about the Union and about who started the Union; by his threat to Wallace and other employees that if he found out who started the Union, that employee would be fired immediately; by his statement that he had ways of finding out who started the Union because his brother was a union president inasmuch as this statement clearly gave the impression that he intended to place the employees' union activities under surveillance;[22] by his statement that he had paid off the National Labor Relations Board and would do so again, which statement clearly implies that it would be futile for Respondent's employees to select the Union to represent them, to seek to use the processes of the Board, or to pursue the right of its protection; and by his statement, "I hold the keys to this place and there is no outsider ever coming in this place," which statement similarly implies that it would be futile for Respondent's employees to select the Union to represent them.

Also on April 14 Jaskowski approached Salit and engaged him in conversation.[23] Other salesmen, including Wallace, were on the selling floor present or nearby. Jaskowski began the discussion by saying, "Let's go to church, who started all this? Let's go to confession." He continued:

> I want to know who started this business with the Union. Who started it? Was it you? Was it Lloyd? I want to know, tell me, come on. Look me in the eye, I am talking to you. I want to know who started this union business. Now tell me, come on, come on. Let's go. Did you start it? Who started the union business?

To this Salit simply replied that he did not know.

Respondent, by Jaskowski's interrogation of Salit during this conversation, clearly violated Section 8(a)(1) of the Act and I so find.

Later the same day, another conversation[24] occurred which Salit overheard but in which he was not initially involved. Salit was sitting at his desk which is located just outside of Wallace's office, the door to which was open at the time. Inside the office were Jaskowski, Weissbord, and Wallace. They were talking about the Union and who started it. Salit overheard the question asked, "Why did you guys go to the Union?"

Jaskowski then came out and told Salit to come into Wallace's office because he wanted to talk to him. Salit stated that he really did not wish to get involved because he knew it would lead to no good. Jaskowski told Salit to come in anyway. When Salit got into the office, Jaskowski asked, "Who started this? What have you guys started? What did you do this for? If you have problems, you can come to me, that is what I am here for. I am here if you have any problems. We don't need any outsiders. We don't need any union." Then Jaskowski turned to Salit and said, "If there were problems and there was no communication with management, why didn't you come to me?" Salit replied that when he had done so in the past, it had been to no avail.

I find the interrogation contained in this conversation violative of Section 8(a)(1) of the Act.

On April 15 a second union meeting was held with a larger number of Respondent's employees present, including Wallace. The purpose of the meeting was to advise those who had signed cards what procedure would be followed thereafter. Cravotta told them that the NLRB would again be contacted in order to schedule an election date. He also answered questions posed by the employees concerning such matters.

On April 17, Wallace put the demo which he had been assigned into the repair shop to have an antifreeze leak fixed. Other than the leak, the car was, as far as Wallace knew, in perfect condition. Sometime thereafter, in mid-April Salit got into a conversation with Pat Chrinko[25] outside the PDI department where Salit had gone to check on a car.[26] Present also were three individuals who worked for the PDI department—Robby, Robert, and Stevie. The three PDI employees were standing around Wallace's demo looking at it and laughing. Chrinko, who was standing by the windshield, was also laughing. He said to Salit, "Look at this car!" Salit asked, "What is the matter with the car?" Chrinko replied, "They are trying to say that Wallace had extensive

[20] The description of this incident is based on Wallace's credited testimony. Jaskowski's version of this conversation and his denials are not credited.

[21] Jaskowski admitted that there had been an earlier union organizational campaign about 5 years before.

[22] At the close of the hearing the attorney for Respondent moved for the dismissal of par. 11 of the complaint which alleges, among other things, that on April 14 Charles Weissbord created the impression of surveillance. Clearly, it was Jaskowski who created the impression of surveillance as noted above. To the extent that the allegation involves Weissbord, the motion is granted. To the extent that Jaskowski was involved in the incident described above, since the occurrence of the incident was fully litigated at hearing, the motion is denied and the violation found.

[23] The description of this incident is based on the credited testimony of Salit. Jaskowski's denials are not credited.

[24] The description of this incident is based on the credited testimony of Salit.

[25] Chrinko was at one time the PDI manager. Later, after the petition was filed, he was made a salesman. His name also appears as Patrick Chrinkle in the record.

[26] The description of this incident is based on the credited testimony of Salit.

damage on the car." Salit looked at the car and said, "Where is the damage?" Chrinko answered, "That is what we are trying to say." The four PDI employees continued to laugh and one[27] of them commented, "Boy, these guys are really going fishing. They are really on a fishing expedition. They are trying to find something to bag him." When Salit asked what the matter was with the car, Chrinko said something about "around the windshield." Salit looked at the place indicated and noted that there was a hairline scratch approximately an inch or an inch-and-a-half in length on the right windshield pillar which looked, according to Salit, like any kind of a scratch a car might get at a car wash or anywhere. The scratch was the only thing he saw wrong with the car other than some water spots on the hood.

Salit's description of this incident is fully credited. Although it would have been, as far as the record indicates, a simple matter to call one or more of the PDI employees, including Chrinko,[28] the PDI manager, to dispute Salit's testimony, Respondent failed to do so.

According to Impellizzeri, on Monday morning, April 21, he arrived at work about 8:50 a.m. As he was walking toward the main building he was called over by Pat Chrinko, whom Impellizzeri referred to as the PDI supervisor. Chrinko told Impellizzeri to look at Wallace's demo. When Impellizzeri did so, Chrinko allegedly pointed out damage which had been done to it. Impellizzeri testified that Wallace had been instructed to use the car over the weekend of April 19 and 20, after which he was to turn it in since it had been sold. When he saw the damage to Wallace's car, he went into the office and approached Wallace on the subject. Wallace replied that he did not know anything about it. He went across the street, looked at it, and came back to the office. Impellizzeri said, "We'll see what we can do."

According to Impellizzeri another conversation took place between Impellizzeri and Wallace when Wallace's demo was between the PDI department and the body shop. During this conversation, Impellizzeri told Wallace that he would try to get the work done as cheaply as possible, that he was not out to hurt him. Wallace, however, turned a deaf ear toward Impellizzeri and did not want to know anything about it. Wallace, Impellizzeri testified, took the position that the problem of the demo was Impellizzeri's, not his own and indicated an unwillingness to take responsibility for the damage.

Wallace's testimony concerning communications between himself and Impellizzeri with regard to his demo differ markedly from Impellizzeri's. Wallace testified, as noted earlier, that when he put his demo into the repair shop on or about April 17 to get the leak fixed, it was in perfect condition except for the leak. He did not drive it again thereafter and never saw the car in a damaged condition. Thus, he implicitly denies that the conversations with Impellizzeri, which Impellizzeri stated took place on April 21 or 22, ever occurred. He denies that Impellizzeri showed him damage to the demo and indicated that he knew nothing of any damage to the demo until he was presented with the bill on April 24.

With regard to this credibility issue concerning whether or not Impellizzeri showed the demo damage to Wallace and discussed it with him on three different occasions before it was repaired, I credit Wallace and find that no such conversations ever took place.

According to Impellizzeri, after his conversation with Wallace about the demo damage he talked to Weissbord and informed him of the situation. Weissbord[29] came out and physically inspected the car with Impellizzeri showing him the damage. At this point no work had been done on the car. Weissbord and Impellizzeri then tried to figure out the least expensive way to repair the damage. The car was sent over to the PDI department where, according to Impellizzeri, they tried extensively, all morning until lunchtime, to compound and buff off the damage marks, but this proved unavailing. At that point, Impellizzeri testified, he realized that the car would have to go to the body shop and he sent it over there. The body shop reported that the car needed extensive work and was then given the okay to start working on it.

With regard to the damage to Wallace's demo, Respondent called Thomas Nicastro, body shop manager, an admitted supervisor under the Act, to testify. Nicastro testified that Impellizzeri brought the car in question over to the body shop to be repaired and identified an exhibit offered to him for identification as the bill for repairs[30] done to Wallace's[31] car by the body shop. He testified that he inspected the vehicle and noted that it had had damage done to it and foreign matter deposited upon it. Nicastro stated that from the damage done to the car, it appeared as though it had been following a truck down a highway which splattered it with a substance which he could not remove. He testified that the finish, where damaged, had to be wet sanded and clear coated, then compounded and polished. Nicastro added that there had been molding damage which he had been able to correct by polishing so that the bill which had initially been higher, was subsequently reduced. He noted that there had been a scratch on the door glass on the right. The final bill was for $192.60 as opposed to $219 which was the total for the initial bill. The final bill received into evidence reflects the work which Nicastro claims was done. Nicastro admitted that he never discussed the damages to Wallace's demo with Wallace.[32]

[27] It is not clear from the transcript which of the four employees made these comments.

[28] There is some indication that Respondent's attorney may have spoken to Chrinko while preparing for the hearing. See the testimony of Lunardelli.

[29] Weissbord did not testify with regard to this alleged conversation.

[30] Although at one point it appeared as though Nicastro was claiming that he had done the repairs himself, at another point it was clarified that he had not.

[31] Although the car had been assigned to Wallace, Nicastro admitted that he, himself, had been using it at the time. Thus, it is quite possible that whatever little damage might have been done to the car may have occurred while Nicastro was using it. The point was not pursued by counsel.

[32] If one were told that he was going to be billed for damages to an automobile as Impellizzeri claims he told Wallace before repairs were actually made, I would assume that the person to be billed would be interested enough to check into the matter with the individual doing the repairs before or while they were being done, since the repairs were being done where both Wallace and Nicastro were working, right there across the street from each other. Nicastro admitted that he never had any conversations with Wallace concerning the damage to the car or about the

Continued

In contradiction to Salit's testimony concerning the damage to the car, Nicastro stated that there were no watermarks on the car and that the damage assessed had nothing to do with watermarks. By so testifying he indicated an affirmative knowledge of the subject matter, that is, of what damage there was or was not, insofar as Wallace's car was concerned. Yet, Nicastro also testified that he had not worked on Wallace's car personally and could not recall who had done so. The fact that Nicastro could recall that there were no waterspots on the automobile but could not recall who worked on the car gives me pause. I have difficulty crediting Nicastro on this issue on two grounds. First, the repairs, if made at all, were allegedly made on April 21 or 22; the bill is dated April 23; a hassle over the demo damage and bill occurred immediately thereafter, if not before (according to Impellizzeri); Wallace refused to pay the bill and was suspended on May 13; and finally the unfair labor practice was filed based on his suspension on May 15. All of these occurrences indicated or should have indicated to Respondent that the facts surrounding Wallace's suspension were important enough to keep track of. Yet Respondent did not do so. It could not even come up with the name of the mechanic who supposedly worked on the car.

Secondly, in the ordinary course of business, a mechanic reports his hours on each job to his superior. This must be done in order to charge a customer for labor. Indeed, the bill for the damage to Wallace's demo was marked $105 for labor, then changed to $103 for labor.[33] If this work was actually done, Respondent would necessarily have records to show which employee worked on the car and put in $103 worth of labor. Respondent would know from these records who worked on this car, if indeed anyone did, yet it failed to put that employee on the stand. I conclude that either no one worked on Wallace's car because the damage was virtually nonexistent or whoever worked on the car did very little and was not produced to testify for fear that he would accurately state that there was virtually no damage.

The bill for $192.60[34] for the alleged repair of Wallace's demo was given by Nicastro to Impellizzeri, probably on April 24. On that day, according to Wallace, Weissbord came into his office and asked him if he would pay for the damage to his demo. Wallace asked, "What demo damage?" and added that he was unaware that there was any damage to his demo. Weissbord stated, "Well, you are now, and I will show you the bill!" Weissbord then described the damage as a scratch on the glass, a scratch on the chrome, and some spots on the paint. Wallace said, "Show me the demo damage!" but Weissbord replied that the car was over at the body shop, inside the building, that it was impossible for Wallace to see it at that time, and that in any event, he thought it had already been repaired. Wallace demanded, "How do you repair something and then try to charge me for it, without my consent. I have never paid a bill in my life unless I authorized it." Weissbord demanded, "Then you are refusing to pay this bill?" and threw it on Wallace's desk. Wallace became angry[35] and refused to look at the bill. Weissbord told Wallace that he wanted him to sign a payroll deduction slip to have money deducted from his pay for the damage. Wallace refused. He stated that he had been hired under more favorable terms than the other employees, that under these terms he was not responsible for demo damage and that moreover the $250 deductible policy was for damage due to accidents, not for maintenance upkeep. Weissbord replied that if Wallace did not pay for the damage he would take his demo away. Wallace replied that if Respondent took away his demo, he would have to rent one at Respondent's expense. Wallace then asked Weissbord if he was receiving this treatment because of his involvement with the Union and Weissbord replied, "What else?"[36] Weissbord said that the "thing with the Union" was getting him down and told Wallace that he was going to blow a good job with "this union activity business."[37]

Weissbord testified concerning the April 24 conversation that he did, in fact, have a conversation on that date with Wallace after hearing from Impellizzeri about the damage to Wallace's demo. He determined that he would speak to Wallace about it and did so. During the conversation, according to Weissbord, he pointed out to Wallace that he had signed an agreement to pay for damages to his demo, and that he obviously had sustained such damages. He argued that it was company policy to require payment for such damages, that in the past the Company had required other employees to pay for damages to their demos, and that in the future he could not ask other employees to pay for similar damages if Wallace were not required to pay for his damages. He added that if Wallace refused to pay for the damage to his demo, Weissbord would have to suspend him until he did pay. He then added, "I don't want to do anything at this time. Let's think about it. Let's let a week or so go by and we'll talk about it later on." Wallace replied that he had checked with his lawyer and had been told that what Respondent was doing was illegal and that he did not have to pay for the damages to the demo. Weissbord specifically denied that Wallace asked, during this conversation, whether he was being charged for the demo damage because of his union activity. He likewise denied making the response, "What else?"

With regard to the bill for the damage, Weissbord stated that he just assumed on faith that the billing was correct and that Nicastro charged employees at a lesser

car in general. This fact is, in my opinion, an additional reason for concluding that Wallace, contrary to Impellizzeri's testimony, was never told that work was being done on the vehicle before he was presented with the bill.

[33] Nicastro testified that this sum represented "a good 8 hours." He also testified that labor is $18 per hour. Nicastro's arithmetic is wanting.

[34] Between the descriptions of the damage to Wallace's demo as given by management witnesses and by Salit, I credit Salit's description and conclude that it was extremely negligible. I also credit Salit's testimony to the effect that he, himself, had had scratches and nicks in his demos from normal usage and Respondent never attempted to force him to pay for such damage nor applied the $250 deductible policy in those instances.

[35] Wallace testified at first that he had become "quite heated" but on cross-examination later denied it. I found Wallace generally credible but not totally frank at all times.

[36] Weissbord specifically denied making this statement.

[37] The order in which the subjects of demo damage and union activity were brought up by Weissbord during this discussion is unclear from the record.

rate than customers. He did not, however, discuss the bill with Nicastro. Weissbord testified that the April 24 conversation with Wallace was the first conversation which he had with him concerning the damage to his demo.

Of the two versions of this conversation I credit Wallace's and find that it took place just as Wallace described. In short, Weissbord admitted that Respondent was billing Wallace for nonexistent or minor damage to his demo in retaliation for his union activity or suspected union activity.

On April 28, a conference was held and agreements reached on the date, time, and place for holding the representation elections. That evening, perhaps sparked by the events of the day, Jaskowski visited Wallace in his office and brought up the subject of the Union. The discussion continued as they both walked out onto the showroom floor where other salesmen were present.[38] Jaskowski stated that he had found out that it had been Wallace and Salit who had started the Union, and that Wallace was the leader. He continued, "I told you before that I would fire the leader of the whole thing, and I would fire everybody that was involved in this union thing." Wallace reminded Jaskowski once again that firing employees for engaging in union activities was "against the NLRB rules." Jaskowski stated, "It is just a matter of time before it is all over for you guys." He added that Wallace and Salit were both on countdown time, as of that time, whether the Union got in or not. He stated that they had 60 days, that they had crossed the river, and there was no turning back. Jaskowski said that if the Union did not get in, they would have 60 days and if the Union did get in, he would take his time and find a way to get rid of both of them. He told Wallace that he should never have gotten involved and if he had not gotten involved, "he would not be in this hot water."[39]

I find Jaskowski's threats, in their various forms, to discharge Wallace and Salit clear violations of Section 8(a)(1) of the Act.

On April 29 Wallace came in to deliver a car on his day off. The automobile was to have a sunroof installed by the PDI department. This had not been done. When Wallace asked Impellizzeri about the matter, Impellizzeri sent Wallace to talk with Weissbord about it. According to Wallace, when he brought up the subject of the sunroof not being installed on time with Weissbord, the latter stated that had Wallace not been the leader of this union activity, there would not be a slowdown by the men in the PDI department. Weissbord then told Wallace that he should go over and talk to the men and tell them to forget about the Union, because if the Union gets in, it would not be any good for them anyhow. Wallace replied that it was up to the men. In his testimony regarding this incident, Wallace stated that he did not know whether or not the PDI employees were actually engaged in a slowdown.

The General Counsel contends that Weissbord's statement is a threat of reprisal but offers no argument as to why it should be regarded as such. On its face it would appear that Weissbord thought that the sunroof was not ready because he suspected the PDI employees were engaged in a slowdown, and the slowdown was connected to the union activity which was by then common knowledge. Weissbord merely stated his opinion and I find no threat therein. Similarly, the General Counsel's contention that the statement gives an unlawful impression of surveillance of union activity is not supported by argument of any kind in the submitted brief. However, I do find that Weissbord's telling Wallace to go over and tell the PDI employees "to forget about the union because if the Union gets in, it wouldn't be any good for them anyhow" is interference proscribed by Section 8(a)(1). Though not specifically alleged in the complaint as a violation, the matter was fully litigated at the hearing with Weissbord[40] denying that the incident ever happened. I find, on the contrary, that it occurred just as described by Wallace and that Weissbord's statement was in violation of Section 8(a)(1).

During the hearing Respondent called as one of its witnesses Hans Grasso,[41] a body shop employee who works for Nicastro. Though clearly not called to testify concerning this incident, Grasso stated that in April and May Nicastro spoke with him about the Union and asked him if he "would like the union," or "felt like having a union."

Following the close of the hearing, the General Counsel moved to amend the complaint to add the allegation that Respondent, through Nicastro, had unlawfully interrogated Grasso in violation of Section 8(a)(1). Inasmuch as Respondent had the opportunity at the hearing to call Nicastro to deny that he ever interrogated Grasso, and Nicastro was, in fact, called and did deny asking Grasso about his union sympathies, I find that the matter was fully litigated and therefore grant the motion to amend. I also credit Grasso's testimony and reject Nicastro's denial of the interrogation. Consequently, I find that Respondent violated Section 8(a)(1) through Nicastro's interrogation of Grasso.

Meanwhile, according to Impellizzeri, in early May, it became harder and harder to work with Wallace. Jaskowski criticized his motivation. Wallace, on the otherhand, testified that his sales continued to be high. Inasmuch as Respondent must have sales records and could have produced them to disprove Wallace's claims and failed to do so, I credit Wallace's testimony that he con-

[38] The description of this incident is based on the testimony of Wallace and Salit. Wallace testified that Jaskowski, in addition to the statements described herein, also repeated some of the remarks he had made during the April 14 conversation. Though Wallace is credited on this point, repetition of these remarks here would merely prolong this decision and add nothing to the recommended remedy.

Though Respondent called several employees as witnesses to testify that they attended meetings where management discussed the Union in a rather innocuous fashion and did nothing more than hand out booklets, these employees were all mechanics or service people and it is interesting that Respondent did not call any of the other salesmen who were present when Jaskowski allegedly threatened Wallace and Salit to deny that such threats took place.

[39] Jaskowski denied that this conversation ever took place. Wallace and Salit are fully credited. Jaskowski's denial is not.

[40] Impellizzeri could not recall his part in the incident.

[41] This individual's name appears elsewhere as Johann Grassl. Inasmuch as the parties referred to this person in their briefs as Grasso, I shall do the same herein in order to avoid confusion.

tinued to be one of Respondent's top salesmen during the first 2 weeks of May.

According to Wallace, on or about May 7[42] Jaskowski approached him once again on the showroom floor in the presence of Salit and other salesmen. Weissbord also passed by from time to time. Jaskowski said he knew who started the Union and that Wallace was the leader. He added that whatever the outcome of the voting, both Wallace and Salit would be discharged along with all of the other people involved in the union activity. Once again, Wallace testified that he told Jaskowski that this would be "against the NLRB rules to discharge anybody" and once again Jaskowski replied, "F— the NLRB!" Jaskowski reiterated how he had been involved with the Union 3 years before.

Jaskowski denied that this conversation took place and added that he was at a navy reunion in Boston between May 1 and 11 and was not present at the dealership during this period.[43] Weissbord denied that any such conversation took place. Salit who supported Wallace's testimony with regard to previous incidents did not do so in this case.

Inasmuch as virtually everything that Jaskowski supposedly said on this occasion had been said by him, almost word for word before on previous occasions, I doubt seriously that they were reiterated as Wallace described, for a second or even a third time. In the total absence of corroboration by Salit or anyone else, I conclude that Wallace was in error in testifying about the May 7 incident and find, rather, that these things happened during the earlier confrontations concerning which he credibly testified.

According to Weissbord, he called Respondent's attorney sometime in April, presumably late April, and told him that Wallace had signed the memorandum accepting responsibility for any damage to his demo and was now refusing to pay for damage which had occurred. He suggested that it would be a good thing if he suspended Wallace but because of the union campaign he was unsure of what he should do. He was advised to do whatever he would have done in the absence of the Union. Weissbord told the lawyer that but for the presence of the Union he would have suspended Wallace. He was then told that he should then go ahead and suspend him.

The election, which had been scheduled for May 12, was canceled on May 9 after the Union filed a motion to withdraw its petitions. On May 13[44] Wallace was called into Impellizzeri's office where he found Weissbord and Impellizzeri waiting. Weissbord asked Wallace if he still refused to pay for the damage to his demo and Wallace replied that he did. Weissbord then asked if Wallace still refused to sign the payroll deduction slip which he then showed him and Wallace again replied that he did. Weissbord then asked Wallace if he would pay for the damage on a monthly basis like the rest of the employees and Wallace replied that he had been hired under different, more favorable terms. Wallace then asked Weissbord if he was trying to build a case against him because of his union activity and Weissbord admitted that he was. Wallace asked Weissbord if he knew that such a firing would be illegal and Weissbord replied that he was suspending Wallace as of that moment because without a demo Wallace could not work for Respondent and he was taking his demo away.[45] Wallace then left after being told to do so by Weissbord.

Impellizzeri testified that he was present in his office on May 13 when Weissbord discussed with Wallace the damage to Wallace's demo. Before this meeting Weissbord told Impellizzeri that he had come to a decision on how to handle the problem of Wallace's demo damage and was going to speak to him. He stated to Impellizzeri that the problem was interfering with business as usual.

According to Impellizzeri, the meeting began when Weissbord and Wallace arrived at Impellizzeri's office at the same time. Weissbord asked Wallace how to solve the problem of the damage to his demo. He told Wallace that he was backing him (Weissbord) against the wall. Weissbord said, "We've got to run the company and you're breaking it, you know, you're breaking the rules and the agreement." Wallace replied that he had signed the agreement under duress and that the agreement did not apply to him. He stated that he was the best salesman and for that reason he should get special treatment. Weissbord acknowledged that Wallace was the best salesman but nevertheless insisted that he pay the bill either in a lump sum or in payments. Weissbord, according to Impellizzeri, suggested that if Wallace did not want to pay for the damage his demo would have to be taken away but he could still keep his job. Impellizzeri agreed but Wallace replied that he would not work there without a car because he needed a car. He offered to rent a car and send the bill to the Company. When this offer was apparently rejected, Wallace then threatened to take the Company to court. When Impellizzeri was asked if there was any discussion concerning the Union during this conversation, he replied, "I don't think so." Then Impellizzeri was led by Respondent's counsel as follows:

> Q. Did Wallace contend during this conversation that this was just a ploy to get him because of his union activity?
>
> A. You have to give me a definition of "ploy."
>
> Q. That this was a setup . . . .
>
> A. Yes.
>
> Q. . . . merely designed to . . . .
>
> A. Yes.
>
> Q. . . . get rid of him because of his union activities?

[42] The date was supplied by counsel for the General Counsel during her examination of the witness.

[43] Employee Thomas Moffa testified that he worked for Respondent during April and May 1980 during the organizational campaign when the election notices were posted on the bulletin board and saw Jaskowski there every day. He could not recall any time when Jaskowski was absent for an extended period of time. Thus, Moffa contradicted Jaskowski's story about being out of town between May 1 and 10.

[44] This incident appears as described by Wallace.

[45] There was some testimony that salesmen could work without demos but I do not find this testimony controlling since in any case Wallace had already indicated an unwillingness to work without a demo, the free use of which had been one of the conditions of his employment prior to his involvement with the Union.

A. Yes.

Q. He did say that?

A. Oh, yes.

Q. And what reply was made to that and by who, when he did say it?

A. I shook my head and said no. Charlie answered him directly, no. I said, come on, we know each other too many years, this is not our level. But here again it was like, I'll get you in court.

Q. By the way, were Wallace's union sympathies known to you?

A. No.

Q. You didn't know whether he was for the Union or against the Union during the time the union campaign was going on?

A. Lloyd was very careful, as myself, not to get in discussions.

According to Weissbord, he called for the meeting with Wallace on May 13 and asked Impellizzeri to set it up. Weissbord testified that at the meeting, he said to Wallace, "Lloyd, you've had time to think about it and I've had time to think about it." Wallace asked, "Think about what?" Weissbord explained, "We're going back to the demo damage. I've had time to think about it and I have to enforce it and I must ask you to pay. I have the document typed up for you to sign, authorizing us to deduct it from your pay. If that doesn't suit you, we can do it anyway you can work it out, but it has to be paid." Wallace replied, "I'll tell you one more time, I'm not going to pay it." Weissbord offered to show Wallace both the bill for the demo damage and the payroll deduction authorization but Wallace refused to look at them. Wallace then claimed that he had signed the $250 deductible memo on February 14 under duress and that the documents were illegal. Weissbord testified that he was shocked by this statement and asked Wallace why he felt that he had signed under duress. Wallace replied that Impellizzeri had told him that he had to sign the memo or else he could not work for Respondent. Weissbord then asked Impellizzeri "if he had said any such thing and he replied in the negative."[46] Weissbord testified that he then offered Wallace the chance to work without a demo but Wallace replied that he would rent a car and charge Respondent. Weissbord then offered Wallace the choice of paying for the damage in lump sum or over a period of time but Wallace rejected these options. Weissbord then stated, "I'm sorry but I'm going to have to suspend you and you're going to have to stay suspended until you agree to pay for the demo."

Between Wallace's version of what occurred on this date and Impellizzeri's and Weissbord's version, I credit Wallace's. Granted, at first blush, it is difficult to believe that Weissbord would brazenly admit to building a case against Wallace for engaging in union activities, the history of 8(a)(1) threats and the timing of this incident make acceptance of Wallace's testimony more palatable. For Respondent, through Jaskowski, it has been found, threatened to get rid of Wallace on more than one occasion whether or not the Union got in. When the election scheduled for May 12 was canceled, thus assuring Respondent that the Union had been beaten, it is not difficult to believe that the very next day, May 13, Respondent would take the action it had earlier threatened to take. Since the earlier threats to discharge Wallace had been made overtly, there is no reason to believe that in the flush of victory, Respondent would be less blatant in its declaration as to the reasons for the action it was taking against Wallace. I therefore credit Wallace's description of the events surrounding his suspension on May 13.

On May 14 Wallace went to the unemployment office but the unemployment office refused to accept the fact that he was unemployed because Wallace told them that he had been suspended and this could have meant temporarily suspended. Wallace therefore called Weissbord[47] to find out what he had meant by suspension. Weissbord told Wallace that his suspension was indefinite or until he signed the payroll deduction slip. On May 15, Wallace received written notice from Weissbord of his indefinite suspension due to his refusal to pay the demo damage bill.

Respondent maintains that its treatment of Wallace was no different than its treatment of its other employees, that its demand that Wallace pay for the damage to his demo was no more than it demanded of other employees. I have found, however, that prior to April 23 when Wallace was billed, only two other employees had been billed for damages to company cars and in both instances it was for serious damage to those automobiles which had resulted from collisions. Respondent, however, in order to show a pattern, offered into evidence a number of instances occurring after April 23 wherein employees were billed for damages sustained to their demos and where moneys were deducted from their salaries or commissions. These later examples of the application of the Company's $250 deductible policy are of limited value as evidence simply because they occurred after Wallace was billed and may well have been initiated to create the impression that a pattern existed where, in fact, one had not, prior to Respondent's billing Wallace. Nevertheless, the following examples of charges against employees for damage to company cars were offered by Respondent in support of its case and have been analyzed.

1. Thomas Moffa testified that he was employed by Respondent from August 1979 until December 1980. On or about April 18 Impellizzeri advised Moffa that there was a scratch on his demo and that he should bring it into the body shop. Nothing was said at the time concerning Moffa's liability for payment for repairs.

On April 18 a bill for damage to Moffa's demo was drawn up, charged to Acme Motors for $75. Repairs done that day were minimal—repair left door, replace stripe, and paint damage with two stage paint. Moffa was not asked to pay this bill when the work was done nor was he shown the bill at that time.

[46] Note that I have already found that during the meeting of February 14 Impellizzeri told the salesmen in reply to Salit's question that, unless they signed the document, they could not work for Respondent. This obviously included Wallace.

[47] Weissbord denied that this conversation with Wallace ever took place. I credit Wallace.

On May 13, the same day that Wallace was suspended for failing to pay for the damage to his demo, Moffa was given an authorization form for the deduction from his weekly paycheck for the amount of $75 and was asked by Weissbord to sign it. It was the first time Moffa had ever seen that document and the first time that he had ever been told about the regulations regarding demo damage. At Weissbord's bidding, Moffa signed the authorization and immediately gave him a check for $75. He was then given the bill dated April 18, which until that time he had never seen.

About a week after Moffa gave Weissbord the $75 check, Moffa asked Impellizzeri whether the Company intended to cash his check. Impellizzeri replied that he did not know whether it would or not.[48] The check was, in fact, deposited to Respondent's account but not until June 18, over a month after Moffa gave it to Weissbord. The length of time that it took for Respondent to cash the check, however, was explained away by Impellizzeri who testified that Moffa told him that he was short at the time and Impellizzeri offered to hold the check for as long as he could before depositing it.[49] He then put the check in the file cabinet and forgot about it until reminded of it by Weissbord.

Moffa was never requested to sign a $250 deductible liability memorandum of the February 14 type until October 22, 1980. There is no explanation for this fact except Weissbord's testimony that this is when he was hired. All available evidence indicates Weissbord's testimony on this point is in error.

2. John D'Imperio was not called to testify. Documents indicate, however, that D'Imperio was, like Moffa and Wallace, required to sign a deduction authorization for $100 on May 13, 1980. Body shop records indicate that work done on D'Imperio's car involved straightening the right quarter panel, painting it, and replacing the decal. I conclude from the description of repairs that D'Imperio had been in an accident which caused the damage to the company car. He paid the body shop bill on May 13.

3. Gary Sinay was required to sign a memorandum dated April 29 *at the top* of the document, in which he acknowledged responsibility for an accident in which he was involved and which caused in excess of $250 damage to the vehicle he was driving. By signing the memorandum he agreed to have the $250 deducted from his monthly commission check. There was no body shop bill submitted with this but Weissbord testified that repairs were in excess of $1,100. The date on which Sinay was required *to sign* this memorandum is not indicated on the document itself, unlike the memoranda signed by Moffa and D'Imperio. Sinay was not called to testify but Weissbord admitted that no salesmen had the $250 deductible policy outlined in the February 14 memo enforced against them until May 13. I conclude therefore that Sinay was required to sign the April 29 memorandum on May 13.

4. Ernest Colentino signed a memorandum dated October 17 in which he agreed to waive a particular commission in exchange for Respondent's agreement to release him from any monetary obligation due to the loss of a sunroof from his demo. The value of the sunroof is not indicated.

5. Lynn Costello signed a memorandum dated January 16, 1981, in which he agreed to pay for damage to his assigned truck out of his commissions. The attached estimate, also dated January 16, was for $212.50 and listed work on the right front fender and right door panel.

From the documentary evidence submitted by Respondent offered to indicate that all employees were treated equally with regard to charges for damage to their demos, I find that until May 13 no one was charged for such damage unless it was serious and extensive damage due to accidents. I find further, from Moffa's testimony and the documentary evidence, particularly the length of time that passed between the date of the repairs, April 18, and the date he was requested to pay for the repairs May 13, that Respondent did not initially intend to require Moffa to pay for these repairs. Since I have found from the testimony of Wallace and Salit that Wallace'e demo had not been damaged, except to the extent that any vehicle undergoes wear through ordinary usage, that Wallace was the only employee billed, and billed excessively for maintenance costs and/or for work that was never done. Finally, I conclude that Respondent pressed Wallace for payment of the bill on May 13 because the union election had been canceled on May 12, the Union was gone and it felt free at that point to carry out its threats made earlier to rid itself of Wallace because of his activity on behalf of the Union. In connection with this date, I find that Respondent's decision to bill Moffa and D'Imperio on that date was not mere coincidence but an attempt to disguise the disparate treatment which it was meting out to Wallace by making it appear that he was just one out of several employees who were regularly billed for damage to their demos. Clearly all subsequent billings of employees for damages were justified[50] and differed from Wallace's case because there were actual damages involved due to accidents not to ordinary wear, and if Wallace had been involved in an accident with serious damage to his vehicle for which he refused to pay, I would reach a different conclusion than I do herein.

In short, with regard to Wallace's suspension, I find that the evidence clearly warrants the conclusion that it was motivated by considerations violative of the Act. Thus, the evidence indicates that Wallace was a superior salesman whose talents were particularly valued by Respondent; these talents were so valued that Respondent hired him back at more favorable terms than any other of its salesmen enjoyed including the free use of a demo with maintenance and upkeep provided; Wallace justified Respondent's faith in him by quickly becoming their top salesman; Wallace then contacted the Union and became the most active employee soliciting on its behalf; Respondent rejected the Union's demand and revealed its union animus by its interrogation and threats against those employees responsible for the advent of the Union;

[48] Impellizzeri denied making this statement. I credit Moffa.

[49] Moffa testified that he could not recall this discussion but admitted that it could possibly have happened.

[50] The billing for the loss of the sunroof was likewise clearly justified.

Respondent quickly learned of Wallace's involvement[51] and immediately took action against him in the form of presenting him with a bill of close to $200 for damage to his demo which damage was either nonexistent or extremely negligable and due solely to ordinary wear; though Respondent did not immediately demand payment of the bill since it was in the middle of the Union's campaign, it continued its campaign of interrogation and threats, admitting, through Jaskowski, that it was aware that Wallace was one of the leading union proponents and advising him that eventually he would be discharged, the exact time being dependent on the success or failure of the Union's organizational drive; when the Union withdrew and the May 12 election was canceled, Respondent the very next day demanded that Wallace pay the bill for the alleged demo damage; and when he refused, it suspended him. I thus find the suspension discriminatorily motivated and a clear violation of Section 8(a)(3) and (1). Respondent's argument that Wallace could have kept working by simply paying the bill is without merit for it is quite apparent that if Respondent could frame Wallace as it did the first time, it was certainly in a position to do so a second and third time, thus making his position untenable.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operation described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[51] Wallace's overt solicitation of Respondent's employees permits a presumption of company knowledge of his activities under the circumstances present in this case. *Wiese Plow Welding Co., Inc.*, 123 NLRB 616 (1959).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(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 interrogating its employees concerning their activities on behalf of the Union; threatening employees with discharge for engaging in such activities; creating the impression of surveillance of such activities; informing employees that it would be futile for them to select the Union as their bargaining representative and/or to seek to use National Labor Relations Board processes or to seek its protection; and by otherwise interfering with its employees' Section 7 rights, Respondent has violated Section 8(a)(1) of the Act.
4. By suspending employee Lloyd Wallace and thereafter failing and refusing to reinstate him because of his union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, as I have found that employee Lloyd Wallace was discriminatorily suspended, I shall recommend that Respondent be required to offer him full and immediate reinstatement, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[52]

[Recommended Order omitted from publication.]

[52] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).