

GCC Beverages, Inc., d/b/a Pepsi-Cola Bottlers of Atlanta and William T. Cochran and Ralph H. Thomason and Clay J. Donaldson and Julian T. Hughey. Cases 10-CA-17557, 10-CA-17611, 10-CA-17613, and 10-CA-17689

26 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 30 December 1982 Administrative Law Judge Lawrence Cullen 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 briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.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 and hereby orders that the Respondent, GCC Beverages, Inc., d/b/a Pepsi-Cola Bottlers of Atlanta,

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*, 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.

² We agree with the Administrative Law Judge's conclusion that a prior charge which is dismissed does not constitute an adjudication on the merits and no *res judicata* effect can be given to the action. See *Walter B. Cooke, Inc.*, 262 NLRB 626 (1982). However, in adopting his finding that Cochran's second charge is not barred because his first charge was administratively dismissed, we disavow his reliance on *Silver Bakery*, 150 NLRB 421 (1964), which we recently overruled by *Winer Motors*, 265 NLRB 1457 (1982). In *Winer*, we held that a charge withdrawn by a party may not be reinstated beyond the 6-month period prescribed in Sec. 10(b) of the Act. However, the instant case is distinguishable from *Winer*, in that Cochran's subsequent charge was filed within the applicable 10(b) period.

Member Jenkins finds that, absent exceptions, the demotions of Supervisors Hughey and Thomason to rank-and-file positions were lawful. Cf. his concurring opinion in *Parker-Robb Chevrolet*, 262 NLRB 402 (1982).

In adopting the conclusions of the Administrative Law Judge, that the discharges herein violated Sec. 8(a)(3) and (1) of the Act, Member Jenkins does not rely on *Wright Line*, 251 NLRB 1083 (1980). That decision concerns identifying the cause of discharge where a genuine lawful and a genuine unlawful reason exist. Where, as here, the asserted lawful reason is found to be a pretext, only one reason remains—the unlawful one. To attempt to apply *Wright Line* in such a situation is confusing and inappropriate.

³ We have modified the Administrative Law Judge's notice to conform with his recommended Order.

Atlanta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted 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

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 or threaten our employees concerning their union sympathies or activities.

WE WILL NOT solicit our employees to solicit the withdrawal of other employees' support on behalf of the Union.

WE WILL NOT offer benefits to our employees if they withhold their support for the Union.

WE WILL NOT discharge our employees for engaging in union activities or other lawful concerted activities.

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

WE WILL offer William T. (Sam) Cochran, Julian T. Hughey, and Ralph L. Thomason immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered by reason of the discrimination practiced against them, plus interest.

WE WILL expunge from our files any reference to the discharges of William T. (Sam) Cochran, Julian T. Hughey, and Ralph L. Thomason and notify them, in writing, that this has been done and that their unlawful discharges will not be utilized as a basis for future personnel action concerning them.

GCC BEVERAGES, INC., D/B/A PEPSI-COLA BOTTLERS OF ATLANTA

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge: This consolidated case was heard before me on August 10 and 11, 1982, at Atlanta, Georgia, pursuant to an order by the Acting Regional Director for Region 10 consolidating Cases 10-CA-17611, 10-CA-17689, 10-CA-17557, and 10-CA-17613. The complaint, as amended at the hearing, in Case 10-CA-17613 was issued December 17, 1981, by the Acting Regional Director for Region 10, and alleges that GCC Beverages, Inc. d/b/a Pepsi-Cola Bottlers of Atlanta (hereinafter referred to as Respondent) committed violations of Section 8(a)(1) of the National Labor Relations Act (hereinafter referred to as the Act), by interrogating "its employees concerning their union membership, activities and desires and the union membership, activities and desires of other employees," by promising "its employees a wage increase if the employees refrained from joining or engaging in activities on behalf of the Union," by promising "its employees a wage increase with backpay if the employees refrained from joining or engaging in activities on behalf of the Union," by threatening "its employees with reprisals if its employees joined or engaged in activities on behalf of the Union," and by soliciting "individual employees to solicit other employees to withdraw their support for the Union." The charge in Case 10-CA-17613 was filed on November 3, 1981, by Clay J. Donaldson, an individual. The complaint in Case 10-CA-17613 is joined by Respondent's answer filed December 24, 1981, wherein it denies the commission of any violations of the Act. The complaint, as amended at the hearing, in Case 10-CA-17557 was issued by the Acting Regional Director for Region 10 on December 24, 1981, and alleges that Respondent committed violations of Section 8(a)(3) and (1) of the Act by discharging and "thereafter failing and refusing to reinstate its employee William T. Cochran because of his membership in, and activities on behalf of the Union, and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection." The charge in Case 10-CA-17557 was filed on October 19, 1981, by William T. Cochran, an individual. The complaint in Case 10-CA-17557 is joined by Respondent's answer filed January 6, 1982, wherein it denies the commission of any violations of the Act. The complaint, as amended at the hearing, in Case 10-CA-17689 was issued by the Acting Regional Director for Region 10 on December 31, 1981, and alleges that Respondent violated

Section 8(a)(1) of the Act by prohibiting "its employees from discussing with other employees wages, terms and conditions of employment at Respondent's Atlanta, Georgia southside facility," and by discharging and thereafter failing and refusing to reinstate its employee Julian T. Hughey "because of his membership in and activities on behalf of, the Union, and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid or protection." The charge in Case 10-CA-17689 was filed on November 25, 1981, by Julian T. Hughey, an individual. The complaint in Case 10-CA-17689 is joined by Respondent's answer filed January 14, 1982, wherein it denies the commission of any violations of the Act. The complaint, as amended at the hearing in Case 10-CA-17611, was issued by the Acting Regional Director for Region 10 on January 19, 1982, and alleges that Respondent committed violations of Section 8(a)(1) of the Act by discharging and thereafter failing and refusing to reinstate its employee Ralph L. Thomason "because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection." The charge in Case 10-CA-17611 was filed on November 3, 1981, by Ralph L. Thomason, an individual. The complaint in Case 10-CA-17611 is joined by Respondent's answer filed February 2, 1982, wherein it denies the commission of any violations of the Act.

Upon the entire record in this case, including my observations of the demeanor of the witnesses and after due consideration of the briefs filed by counsel for the General Counsel and Respondent, I make the following:

FINDINGS OF FACT AND ANALYSIS¹

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits in its answer, and I find that Respondent is, and has been at all times material herein, a Delaware corporation with an office and place of business located at Atlanta, Georgia, where it is engaged in the bottling and distribution of soft drinks. The parties stipulated at the hearing, and I find, that Respondent, during the last calendar year, which period is representative of all times material herein, purchased and received at its Atlanta, Georgia, facility products valued in excess of \$50,000 directly from customers located outside the State of Georgia. On the basis of the foregoing admissions and stipulated facts, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, the parties stipulated at the hearing, and I find that Teamsters Local 728 (hereinafter

¹ The following includes a composite of the testimony of the witnesses which testimony is credited except as specific credibility resolutions are hereinafter made.

referred to as the Union) is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The General Counsel contends that in response to a union organizational campaign among its employees, commencing in early 1981,² Respondent embarked upon a course of conduct to stem the campaign in the spring of 1981, which included the discharge of employee William T. (Sam) Cochran in May, additional violations of Section 8(a)(1) directed toward employee Clay J. Donaldson in August, and the discharge of employees Julian T. Hughey and Ralph H. Thomason in October. Respondent's operations in Atlanta, Georgia, are comprised of its Northside sales branch facility where Respondent's general business offices are also located, its Southside sales branch facility, and its Omega sales branch facility.

The General Counsel contends that Respondent became aware of the union organizational campaign; and, through meetings held by its sales division manager, Melvin R. Laszewski, with its supervisors, Respondent directed its supervisors to observe employees for union involvement and report back to Respondent concerning their identity and activities. On May 8, employee Cochran was discharged by Branch Manager Morris. Cochran testified that he initiated the first contact with the Union, was active in discussing the Union among Respondent's employees at its Southside facility, and in soliciting union cards. On the same day (May 8) Supervisors Hughey and Thomason were demoted from the supervisory positions of route managers in the Southside branch and sent to the Northside branch to work as rank-and-file employees. The General Counsel contends that Respondent thereafter engaged in additional 8(a)(1) violations directed toward Clay J. Donaldson, a route salesman, at Respondent's Northside facility in August, and that Respondent terminated employees Hughey and Thomason (who were then rank-and-file employees) in October in order to further its antiunion campaign and thereby violated Section 8(a)(3) of the Act.

Respondent denies having committed any violations of the Act and contends that it had no knowledge of employee Cochran's participation in the union campaign, and that his termination was a resignation rather than a discharge and was occasioned by his refusal to reconcile a discrepancy in an account, and alternatively contends that, if his termination were a discharge, it resulted from his refusal to cooperate in the reconciliation of the account discrepancy. Respondent contends that the discharge of Hughey and Thomason resulted from its reorganization of its operations and personnel in order to improve its competitive edge in the marketplace in the face of a declining market share in the Atlanta area, and its determination that Hughey and Thomason were not competent route managers, and that, at the time of their demotion to rank-and-file positions, it was anticipated that they would be terminated but that this action was

withheld until October in order to cushion the impact of other organizational personnel changes at the Southside branch among its remaining employees.

B. The Alleged 8(a)(1) Violations

1. The alleged interrogation of employee Clay J. Donaldson by Route Manager Fred Godfrey³

Donaldson testified as follows: He was employed as a route salesman by Respondent on August 27, 1979, was discharged by Respondent on September 22, 1981, and became aware of the Union's campaign in late July 1981. During the first week of August 1981 he was questioned by Route Manager Fred Godfrey, in the sales room at Respondent's Northside facility, whether he (Donaldson) had "heard anything at all about a Union," to which he replied, "No." The following day at the Northside facility Godfrey again asked Donaldson whether he had "heard anything at all about a Union whatsoever, and I, again, told him no." Shortly thereafter on the same day, as Donaldson was preparing to leave, he was called to Godfrey's desk and was asked again by Godfrey whether ". . . was I sure that I hadn't heard anything about a Union, to which I replied, 'No,' and asked him why." Godfrey then asked Donaldson what he had been "talking to another employee about," to which Donaldson replied he had been talking about a football game. A "few days later at Warehouse Groceries in Marietta, Georgia," Godfrey again asked Donaldson whether he had heard anything about a union and told Donaldson "that there was a lot of talk going on about a Union." Donaldson "sarcastically answered him," that he had not heard anything about a union but that it seemed like a good place for one and asked how "could I get one started?" They both laughed and terminated the conversation.

Godfrey did not testify. Respondent's current Northside facility sales manager, Mike Leonard, testified that Godfrey has been incapacitated by a stroke and was unable to testify. This testimony was not disputed by the General Counsel. I accordingly draw no adverse inference against Respondent's position from Godfrey's absence. However, Godfrey's absence leaves un rebutted the testimony of Donaldson. Donaldson was terminated by Respondent in September. Respondent contends that his testimony concerning this and other instances of alleged violations of the Act should not be credited. However, I find that Donaldson was a credible witness who testified in a sincere and forthright manner with good recall of the events of August 1981. I credit Donaldson's testimony concerning the above instances of interrogation by Godfrey concerning Donaldson's knowledge of union activities among Respondent's employees. I find that the inquiries by Godfrey were coercive in nature

³ The complaint alleges, Respondent admits in its answer, and I find that Fred Godfrey, Melvin R. Laszewski, Mike Leonard, and William L. Schilling were at all times material herein agents of Respondent, acting on its behalf, and supervisors within the meaning of Sec. 2(11) of the Act. I also find on the basis of the undisputed testimony that James L. Morris was an agent of Respondent and acted on its behalf and was a supervisor within the meaning of Sec. 2(11) of the Act at all times material herein during his tenure as Southside branch manager until his transfer from that position on May 11, 1981.

² All dates are in 1981 unless otherwise stated.

and had a tendency to restrain Donaldson in the exercise of his rights under Section 7 of the Act. This is particularly evidenced by the persistence with which Godfrey pursued his inquiry of Donaldson. *TRW-United Greenfield Division*, 245 NLRB 1135 (1979), *enfd.* 637 F.2d 410 (5th Cir. 1981).

I accordingly find that Respondent violated Section 8(a)(1) of the Act by its interrogation of Donaldson by Godfrey concerning Donaldson's knowledge of union activities among its employees in each of the above instances.

2. The alleged interrogation and threat of employee Donaldson by General Sales Manager Melvin R. Laszewski

Donaldson further testified that on August 8 he was questioned on two occasions by General Sales Manager Melvin R. Laszewski during a company sponsored golf event. On the first occasion Laszewski asked Donaldson if he had a problem, and Donaldson replied that he had, as a result of Respondent's failure to fulfill a promise made to Donaldson regarding an adjustment in his pay to protect him from loss of salary as a result of the assignment of an experimental sales route to him sometime prior thereto. Donaldson testified that Laszewski replied, "I told you I would do something about that, but right now, I need a favor," and then said, "There's a lot of talk going on about a Union, have you heard anything?" Donaldson replied that he had not heard anything. Shortly thereafter on another occasion during the same afternoon Laszewski told Donaldson, "You know, you have a bright future with this Company if you choose to make the right decisions," and then said, "I know you had to have heard something about a Union." Donaldson again denied knowledge of the Union and Laszewski again reminded Donaldson "about my career possibilities if I choose to make the right decisions." Laszewski testified that he was aware of rumors of union activity at the time of his conversation with Donaldson but did not threaten Donaldson in any way, and did not recall whether he had inquired of Donaldson concerning union activity.

I credit Donaldson's specific testimony concerning these two meetings with Laszewski rather than Laszewski's lack of recall of these incidents. Accordingly, I find that Respondent, by Laszewski's interrogation of Donaldson concerning Donaldson's knowledge of union activities, violated Section 8(a)(1) of the Act. I also find that Laszewski's statement to Donaldson that he had a bright future with Respondent if he chose to make the right decisions was an unlawful threat of reprisal against Donaldson if he engaged in union activities, and that Respondent thereby violated Section 8(a)(1) of the Act. I find that the aforesaid interrogation and threat of Donaldson by Laszewski tended to be coercive whether or not Donaldson was actually intimidated thereby. *TRW-United Greenfield Division*, *supra*. Under the circumstances as related by Donaldson to Laszewski concerning his salary problems, I find the evidence is insufficient to warrant a conclusion that Laszewski promised to remedy the matter in return for Donaldson's rejection of the Union or for information concerning the Union.

3. The alleged interrogation of Donaldson by Northside Branch Manager Mike Leonard

Donaldson testified that on August 26 Northside Branch Manager Mike Leonard approached him at Respondent's Northside facility and asked Donaldson what the problem was with his salary. Donaldson explained the situation to Leonard. Donaldson testified, "At that point, he asked me how mad I was and what I was willing to do about it," and that Leonard said, "There's a lot of rumbblings going on about a Union, do you know what I mean?" Donaldson asked Leonard "to be more specific" and Leonard told him that "people were talking about a union" and that Leonard "wondered if I was mad enough to have anything to do with that." He then asked Donaldson, "So, how do you stand on unions?" Donaldson replied "that I couldn't answer that question and that I couldn't believe that he would put me in that position." At that time another salesman walked by, and "he [Leonard] dropped the subject [of unions] for the time being." After the salesman "passed by, he [Leonard] then asked me if I knew of anybody else's complaints." Donaldson told him "that there were a lot of people upset about their choice in the supervisor's position, but that I didn't know of anything else." Donaldson then left.

Leonard testified that he had several conversations with Donaldson concerning Donaldson's loss of earnings as a result of the assignment to Donaldson of the warehouse route, but that he had no recollection of discussing the subject of unions with Donaldson.

I credit Donaldson's specific testimony rather than Leonard's lack of recall of the above conversations concerning the Union. I find Leonard's questioning of Donaldson concerning his union sympathies as set out above was coercive in nature, and that Respondent thereby violated Section 8(a)(1) of the Act. *TRW-United Greenfield Division*, *supra*.

4. The discussion between Donaldson and General Manager and Vice President William L. Schilling

Donaldson testified that the following day (August 27) after Leonard's discussion with him he met with another representative of Respondent, William L. Schilling (Respondent's general manager and vice president), at the Dunfey hotel in Atlanta, Georgia, that Schilling assured him that the salary problem would be favorably resolved and told Donaldson that "I had a bright future with the company, depending on how I conducted myself, the decisions I chose to make," and that Schilling then commenced to discuss the Union and why Schilling thought a union was not necessary. Schilling then again reminded him of his career with Respondent and told Donaldson, "I want you to think . . . a lot about whatever decisions you decide to make," and "I want to remind you that you have a future with this company, depending upon those decisions that you make," and "at that point, he asked me what my opinion was on the Union," and said, "I would like to know how you stand on unions. You don't have to tell me, but I would like to know." Donaldson testified further that Schilling again commenced talking about his dislike for a union and why it was un-

necessary and stated, "Once again, I want to remind you to take everything into consideration before you say or do anything. Think about your future, what you want out of life," and "I don't want you to say a word about this meeting to anyone," and then stated, "No, better yet, if you believe what I have to say about a union, I want you to go back to your peers and tell them everything that we've discussed and how you feel about a union. On the other hand, if you do not believe what I said, I don't want you to say a word about it to anybody." Donaldson testified that Schilling again told him to weigh and be sure of his decision.

Schilling testified that he had sensed that Donaldson was upset about something and was particularly aware that another employee had been promoted to route manager, a position for which Donaldson had been considered, and that he then set up a meeting with Donaldson in the hotel in order to provide for "a more relaxed conversation" rather than discuss the matter in the Northside office as there was a new manager and he did not want to give the new manager the impression that he was undermining him by talking directly to an employee. Schilling testified he asked Donaldson what was bothering him and whether he was upset by the appointment of another employee to the position of route manager, that Donaldson indicated he was upset about this, and that they also discussed the problem with Donaldson's loss of earnings as a result of the assignment to him of an experimental route. Schilling testified that he said to Donaldson, "There's a lot of talk going around about unions, and I want to tell you how I feel about that. But before I do, I don't want you to tell me how you feel about it, so I'm going to tell you how I feel, and don't respond to what I say." He then told him that "I didn't feel that the company needed a union, that we could get together and work out problems that developed," and he told Donaldson he could keep the conversation confidential if he wanted to do so.

As the General Counsel contends in her brief, the testimony of Donaldson and Schilling as to what occurred at this meeting does not differ in great detail. I credit Donaldson's version. I find that Schilling's statements to Donaldson and the circumstances of this off-business premises meeting initiated by Schilling and the focus of the meeting on the union campaign clearly give rise to the conclusion that the central purpose of the meeting was to ascertain Donaldson's sympathies regarding the Union and to enlist his help in discouraging other employees from supporting the Union. I find that the effect of Schilling's statements to Donaldson concerning his bright future with Respondent, Schilling's aversion to the Union, and the importance of decisions to be made by Donaldson concerning his future constituted promises of future benefits to Donaldson if he rejected the Union and also threats to Donaldson's future with Respondent if Donaldson supported the Union. I find that Schilling's statement that he "would like to know how you stand on unions" constituted unlawful interrogation of Donaldson. I also find that Schilling's request that Donaldson inform other employees of the conversation if he agreed with Schilling's view constituted solicitation of Donaldson to solicit other employees to withdraw their support for the

Union. I accordingly find that by said interrogation, promise, threat, and solicitation of Donaldson to solicit other employees to withdraw their support for the Union Respondent violated Section 8(a)(1) of the Act. See *TRW-United Greenfield Division, supra*, and *Viracon, Inc.*, 256 NLRB 245, 246 (1981).

C. The Alleged 8(a)(3) Violations

1. The terminations of William T. (Sam) Cochran, Julian T. Hughey, and Ralph L. Thomason

Cochran, who was formerly employed at Respondent's Southside branch, testified as follows: He was hired by Respondent in June 1976 and worked as a route salesman until his discharge on May 8. He initiated the union campaign in February or March; he contacted the union official and met with him; he picked up union cards, distributed them among Respondent's employees in and around Respondent's plant in March and April, and returned them to the Union; and he had several meetings with the union representative in an attempt to obtain an election. On the day of Cochran's discharge (a Friday), he returned to Respondent's Southside branch after working on his route and was told by another employee that Branch Manager James Morris had his paycheck and wanted to see him. At that time another employee, Mike Morris (an assistant route manager), was in the office of Manager James Morris. Both Mike Morris and James Morris then exited from the office. James Morris went to a drink machine in the warehouse and told Cochran he needed to see him. Employee Mike Morris told Cochran, "I got fired." When James Morris returned to his office and Cochran went in, Morris asked Cochran how things had gone that day. Cochran responded that they had gone "all right, I guess." Morris asked whether Cochran had worked his route that week, and Cochran responded that he had. Morris asked whether Cochran had worked the route by the route book, and Cochran responded "not exactly by the book." Morris asked Cochran whether he had made every one of the stops he was to make twice a week. Cochran replied that he had. Morris asked whether the stops were made on the day set by the route book, and Cochran replied that not all of them were covered on the day set by the book as there were too many stops on some days and he could not handle all of them. Morris then reached into his desk drawer and pulled out account settlement sheets and asked Cochran whether he had gone to Gilbert's grocery, and Cochran replied he had not. Morris then showed Cochran a ticket for Gilbert's grocery and asked why it was there. Cochran testified that the drinks on the ticket had been sold to Perilli Cable. Morris then picked another ticket up and asked whether the stop had been worked, and Cochran replied that it had not as this was a stop made every 2 weeks. Morris stated he had a ticket for six cases of drinks, and Cochran replied that these drinks had gone to another customer. Morris then picked the tickets up and put them down on his desk.

Cochran testified he then said "'James [Morris], I know what's going on here.' I said, 'I'm on Mel's [Lasewski] list. You've got me here to fire me.' He hung his

head. He said—he didn't make no answer. He said, 'Will you resign?' I said, 'No, I'm not resigning.' He said, 'Why?' I said, 'I'm just not resigning.' I said, 'You called me in here to fire me,' I said, 'Fire me.'"

Cochran testified that Morris then said they had been friends for a long time and that it would be easier on Morris if Cochran would resign, and Cochran replied, "Well, I'm not resigning." Morris asked Cochran what should be put down on the termination form, and Cochran told him to put down what had happened. Morris stated he would put down that Cochran had offered to resign in 2 weeks as he could not perform the job for Respondent, and that he would have Cochran's money the following Friday.

Cochran testified he was given no reason for his discharge by Morris, that he had followed the same procedure he previously followed with respect to the two accounts without reprimand. It is not uncommon for a route salesman to use a preprinted ticket with a customer's name on it while on a route as when placing bottles with another customer for whom there is no ticket, and that this is rectified after the salesman reports in and settles his accounts. Cochran testified that he received a bonus in the last quarter of 1980 and had not been previously disciplined. He also testified that on May 8 he offered to take Morris to the two customers in question to resolve his questions about the sales ticket and, at that point, Morris then wrapped up the tickets and placed them on the desk and told Cochran that he could not let him work for Respondent any longer.

The General Counsel also presented evidence through the testimony of Julian T. Hughey, who was the immediate supervisor of Cochran and who is also an alleged discriminatee in the case. Hughey was hired by Respondent in August 1971 and held the supervisory position of route manager for approximately 1-1/2 years in the Southside branch. Hughey testified concerning a meeting held by Laszewski in March with James Morris, and Southside Route Managers Ralph L. Thomason, Walter L. Hall, and Hughey, and that at this meeting Thomason raised concern about their own jobs as a result of organizational changes that were occurring in Respondent's Northside branch, and that Laszewski told them that their jobs were not in jeopardy, and then commenced discussing other business, that Laszewski then inquired whether they had "heard any talk about the Union?" and Thomason replied that he had. Hughey then asked whether they were free to discuss unions with employees and Laszewski informed him, "It's fine, just go ahead and discuss it with them and listen to what they have to say, and then tell Mr. Morris who's talking concerning the Union." Two or three weeks later Hughey was involved in a meeting in the office of James Morris also attended by Route Managers Hall and Thomason at which Morris told them to listen to the employees and "let him know who was talking," and that during this meeting Morris stated, "I think I know who's talking this Union up and who the leaders are," and "I don't want to do a thing until I get the thing cornered."

Hughey also testified concerning a meeting on April 17 at the Southside branch attended by Laszewski, Assistant Route Manager Mike Morris, and Hughey at

which Laszewski became upset with Mike Morris who had not reported on the prior day "to run the route"; that Laszewski "told Mike Morris that he was a bad example to the men and he was a trouble-maker, and he had a group that was following him"; and that Laszewski said, "I'm going to get rid of you trouble-makers," and then "names off Mike Morris, Mike New, Sam Cochran, Jamie Price, Ralph Thomason, Charlie Layson, Tony Roswell, and Wayne Dean, and he classified each one of them as a trouble-maker." Hughey also testified concerning an incident on the Saturday prior to May 8 during Hughey's weekend assignment in the Southside branch wherein James Morris came to the office and commenced to review the route assignments of employee Cochran for the upcoming week and added additional stops. Hughey protested that Cochran would be unable to cover all of the stops, and Morris stated that Cochran had wanted to work when he applied for a job, and "I [James Morris] want to see him work."

The General Counsel also called Ralph Thomason as a witness. Thomason is also an alleged discriminatee in this case. Thomason was hired by Respondent in May 1961 and had been employed as a route manager for 7 years at Respondent's Southside branch. Thomason also testified concerning the meeting held by Laszewski with James Morris, Hughey, Hall, and Thomason, and corroborated Hughey's testimony that Laszewski had told them that they were doing a "fantastic job" in the Southside and that Respondent was not planning any changes at the Southside facility, and that Laszewski told them that Respondent did not need a union and that if they heard anyone talking about the Union they were to give their names to James Morris. Thomason testified that he did not report any employees' names to James Morris. He testified that he had discussed the Union with employees Cochran, Mike New, and Mike Morris and that on one occasion, approximately 3 or 4 weeks prior to Thomason's transfer to the Northside facility, employee New brought up the subject of the Union in the presence of Thomason and Hall, and that Hall remarked to Thomason, "Ralph, I didn't know you was a Union man." Thomason testified that in his conversations with rank-and-file employees he voiced the opinion that the Union could offer security from random discharges that had been occurring.

On May 8, 1981, employee Mike Morris was discharged by James Morris, and Route Managers Thomason and Hughey were demoted to rank-and-file positions and transferred by Morris to the Northside facility to work in the reset department. This was in addition to Cochran's termination on that date, which Respondent contends alternatively was either a voluntary resignation or a discharge for cause. Hughey and Thomason continued in rank-and-file positions until they were discharged by Laszewski on October 5.

Hughey testified that, shortly after his transfer to the Northside facility during a meeting when Hughey inquired about his annual raise, Laszewski told Hughey that he was watching Hughey and Thomason. Thomason testified concerning two occasions after his demotion and transfer to the Northside facility on which Laszewski re-

ferred to the Southside branch as a cesspool including the day of his discharge on which he told Thomason that he was a part of it. Laszewski denied referring to the Southside branch as a cesspool.

The General Counsel contends that Respondent violated Section 8(a)(3) of the Act by its May 8 discharge of Cochran who was a known union adherent because of his engagement in union activity. Although the demotion of Route Managers Hughey and Thomason were originally alleged by the General Counsel as violations of Section 8(a)(1) of the Act, these allegations were withdrawn by the General Counsel in recognition of the Board's recent decision in *Parker-Robb Chevrolet*, 262 NLRB 402 (1982). The General Counsel contends, however, that the discharges of Hughey and Thomason in October 1981, at a time when they were rank-and-file employees, were violative of Section 8(a)(3) of the Act as culminating efforts of Respondent to quell the union campaign as Hughey and Thomason were perceived by Respondent to be supportive of the union campaign.

Respondent contends that the termination of Cochran was in fact a resignation wherein Cochran resigned rather than attempt to reconcile a discrepancy in his accounts involving six cases of soft drinks, or alternatively, that Cochran was discharged for cause because of his refusal to reconcile the discrepancy. Respondent contends that although it had knowledge of the union campaign it had no knowledge that Cochran was a union supporter and his termination was not motivated by any unlawful purpose of Respondent with respect to Cochran's alleged union activities. Respondent contends that as a threshold issue Cochran is barred as a result of the Acting Regional Director's unappealed dismissal of Cochran's initial charge filed on August 4, which was subsequently refiled by Cochran on October 19, and on which complaint was issued on December 24. I find, however, that Cochran's discharge is not barred because the initial administrative determination by the Acting Regional Director's initial dismissal of the matter was not a hearing on the issues so as to bar the instant complaint.⁴

⁴ The charge in Case 10-CA-17557 was filed by Cochran on October 19, 1981, within the 6-month period prescribed for the filing of charges in Sec. 10(b) of the Act. Prior to this Cochran had filed a similar charge which was dismissed by the Acting Regional Director on September 8, 1981, and which dismissal was not appealed by Cochran. Both charges were based on Respondent's discharge of Cochran on May 8, 1981. Respondent contended at the hearing that the charge in this case is barred by *res judicata*. In its brief, Respondent contended that the charge in Case 10-CA-17557 should be dismissed because it is barred by the prior dismissal of the previous charge.

I find, however, that the charge in Case 10-CA-17557 is not barred by the prior charge filed by Cochran as the dismissal of the prior charge was an administrative decision by the Acting Regional Director and was not an adjudication on the merits so as to bar Cochran's subsequently filed charge on the basis of *res judicata*. Under the circumstances of this case wherein the charge in Case 10-CA-17557 was filed within the statutory 6-month period and Respondent's principal witness (James Morris who was involved in the termination of Cochran) was available to testify, I find no abuse of discretion by the General Counsel so as to give rise to an equitable ground to require the dismissal of the second charge filed by Cochran, nor do I find that Respondent has been unlawfully prejudiced thereby. See *California Pacific Signs, Inc.*, 233 NLRB 450 (1977); *Silver Bakery, Inc.*, 150 NLRB 421 (1964); *Airport Connection*, 243 NLRB 1076 (1979).

Respondent also contends that the demotion and the ultimate discharge of Hughey and Thomason were part of an overall reorganizational program which was initially carried out in its Northside branch and subsequently in its Southside branch and was the result of its determination that Hughey and Thomason were incompetent route managers in May, that the determination was made at that time that they would ultimately be terminated but, in order to soften the impact of organizational changes at the Southside facility on the remaining employees, Hughey and Thomason were initially demoted and transferred in May to work as rank-and-file employees to perform temporary work in the reset department at the Northside branch until their discharge in October. Respondent contends that this action taken against two supervisors in May 1981 cannot be the basis for a violation of Section 8(a)(1) of the Act in view of *Parker-Robb Chevrolet, supra*, and further that Respondent was unaware of any union activities or union sympathies of Hughey and Thomason and that its actions were not motivated by any unlawful purposes.

Respondent called on its behalf General Manager and Vice President Schilling who testified concerning the overall position of the Company in the Atlanta soft drink market prior to the hire of Laszewski as general sales manager. Schilling testified that Respondent had a small share of the soft drink market in the Atlanta area, that this share was declining, and that he perceived his own inability to give sufficient attention to the Northside and Southside sales operations and to handle his other administrative responsibilities, and that Laszewski was hired to coordinate the overall sales efforts of Respondent. Schilling testified that Respondent initially directed its reorganizational efforts to the larger Northside facility and made substantial personnel changes in that sales division including the termination and replacement of the Northside division sales manager.

Schilling and Laszewski testified that a decision was made to reorganize the Southside facility which ultimately included the replacement of James Morris as sales manager. Morris was transferred in mid-May 1981 from his managerial position to a nonmanagerial position. Schilling and Laszewski also testified that Route Managers Hughey and Thomason were demoted in May pursuant to this organizational change because they were not good managers, and that at the time of their transfer Respondent did not intend to retain them as employees but did so temporarily in order to alleviate the trauma among Respondent's remaining Southside employees by reason of the substantial organizational changes, and terminated Hughey and Thomason when the reset work wound down in October 1981. Both Schilling and Laszewski denied that Hughey and Thomason were terminated because of their union activities or sympathies on behalf of the union campaign. Respondent also contends that age discrimination charges filed by Hughey and Thomason are inherently inconsistent with their contention that they were terminated because of union activities. Specifically, Laszewski testified that Hughey and Thomason were either unwilling or unable to successfully implement Respondent's new data gathering system

(the "MSPS" system) implemented by Respondent in early 1981, and that the poor performance of the Southside division was attributable in part to the inability of Hughey and Thomason to perform as route managers. Schilling contended they had "attitude" problems.

Respondent also called former Southside Branch Manager James Morris who testified as follows: Cochran resigned rather than attempt to reconcile an account discrepancy of six cases of soft drinks discovered during a routine audit of Cochran's accounts and told Morris to "let them find it" in reference to the Northside office on May 8. Cochran at that time indicated he had wanted to go into business for himself and was planning to purchase a convenience store, and offered Morris 2 weeks' notice. Morris told Cochran he should not continue under those circumstances and asked Cochran what he wanted written on his termination form, and Cochran replied, "Put whatever you want to, I don't care." Morris then wrote on the termination form that Cochran had resigned because of his unhappiness with his job and his inability to perform it as a result.⁵ Morris received a telephone call from Laszewski the morning of the transfer of Hughey and Thomason, and Laszewski told him to "have them report to the northside facility Monday morning." Approximately a week later Morris was transferred from his position as Southside branch manager to a nonmanagement position. Morris testified that Laszewski had discussed the need to improve on handling the MSPS system but that he, Morris, was unaware of any problems with the Southside facility, although there were things that "needed tightening up," and he believed that Hughey and Thomason had performed a good job as route managers.

(a) *Analysis of the termination of Cochran*

I credit the un rebutted testimony of Cochran that he was a leading union adherent on behalf of the Union's campaign, having initially contacted a union representative and distributed and collected union cards among Respondent's employees at its Southside facility on behalf of the Union, and met with the union representative in order to obtain an election. I also credit Thomason's testimony that he had discussed the union campaign with several employees, including Cochran, but that he did not report this conversation to management. Under the circumstances of this case wherein Thomason did not initiate the action against Cochran and was himself demoted on the same day as Cochran was discharged, I find that Thomason's knowledge of Cochran's union activities is not imputable to Respondent. *Kimball Tire Co.*, 240 NLRB 343, 344 (1979).

However, I find that Respondent's knowledge of Cochran's union activities may be inferred from other circumstances of this case. At the outset there was substantial evidence in this case that Respondent had knowledge of the union campaign in the spring of 1981, particularly in the view of the testimony of Hughey and Thomason of Laszewski's meetings with them in March and April, his discussion of the union campaign, and his di-

rections to them to listen to the employees' discussion of the Union and to report this back to Morris, and the testimony of Hughey of a later meeting with Morris wherein Morris indicated he thought he had identified the union supporters. I also credit Hughey's testimony that Cochran was referred to as a "troublemaker" by Laszewski as was employee Mike Morris who was discharged by James Morris immediately prior to Cochran on May 8 and as was Route Manager Thomason who was demoted from a supervisory position to a rank-and-file position on May 8. There was also evidence of Thomason's and Hughey's close association with the employees they supervised and an instance wherein Supervisor Hall referred to Thomason as a "union man" following a discussion between Thomason and employee Mike New. Thus, I find that Respondent's knowledge of the union campaign in the spring of 1981 has been demonstrated as has its animus toward the Union as found with respect to the violations of Section 8(a)(1) of the Act committed by Respondent in its efforts to curb the union campaign. Moreover, as hereinafter discussed, I credit Cochran's version of the circumstances of his termination rather than that of James Morris. Under all of these circumstances, I find that an inference is warranted that Respondent had knowledge of Cochran's role as a union supporter. *U.S. Soil Conditioning Co.*, 235 NLRB 762, 764 (1978); *Coral Gables Convalescent Home*, 234 NLRB 1198 (1978). See also *Alumbaugh Coal Corp. v. NLRB*, 635 F.2d 1380, 1384 (8th Cir. 1980).

In making credibility determinations with respect to Hughey and Cochran, I have reviewed Respondent's contentions concerning their credibility, particularly with respect to the information furnished by Hughey to Respondent's counsel pursuant to a *subpoena duces tecum* and discrepancies between Cochran's testimony and his affidavit and the testimony of a disinterested witness regarding Cochran's post-termination attempts to secure a position at a grocery store. I find the exchange between counsel and Hughey regarding Hughey's failure to produce *subpoenaed* material inconclusive regarding whether Hughey willfully withheld information or failed to understand the information requested. In any event, I find this to be a collateral issue and otherwise I found Hughey to be a credible witness. I also found Thomason's testimony to be credible. I do not credit Cochran with respect to his testimony concerning his inability to secure work at the grocery store. I do not find this factor, however, to require that Cochran's testimony be otherwise rejected, particularly in weighing the plausibility of Cochran's testimony against that of James Morris as to the reasons for, and circumstances of, Cochran's termination. At the outset, the circumstances leading to the termination of Cochran are beset with other factors which cannot be discounted as mere coincidence. On the Saturday prior to Cochran's discharge, the number of stops on Cochran's route for the following week were substantially increased by James Morris according to the un rebutted testimony of Hughey, which I credit. Cochran's meeting with James Morris was immediately preceded by a meeting between Mike Morris and James Morris, from which Mike Morris, another employee

⁵ Morris prepared a memorandum of the termination meeting and a written termination form (Resp. Exhs. 7 and 8).

identified as a troublemaker, emerged to tell Cochran that he had just been discharged by James Morris. At the meeting between James Morris and Cochran, Morris initially questioned Cochran as to whether he had made all the stops on his route, which stops had been increased by Morris, the preceding Saturday. The discrepancy in question does not appear sufficiently large (six cases of soft drink) to justify Morris' action in terminating Cochran without further efforts by Morris to find out why Cochran was (according to Morris) refusing to cooperate in the audit. Additionally, I credit the unrebutted testimony of Hughey regarding the prior statement of James Morris that Morris thought he knew who the union leaders were. Additionally, the demotion and transfer of Hughey and Thomason on the same afternoon as the discharge of Cochran and Mike Morris gives rise to an inference that these events, all occurring without warning on the same day, were related. Accordingly, I find that Cochran was discharged because he was a known union adherent and that Respondent's asserted compliance with Cochran's resignation and/or its alleged discharge of Cochran for his refusal to cooperate in an audit and his alleged other deficiencies as an employee are pretextual. *Limestone Apparel Corp.*, 255 NLRB 722 (1981). I find that the General Counsel has made a *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act by Respondent by its discharge of Cochran and that Respondent has failed to rebut the *prima facie* case. *Wright Line*, 251 NLRB 1083 (1980). I accordingly find that Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of Cochran because of his engagement in union activities.

(b) *Analysis of the discharge of Hughey and Thomason*

Although the May 8 demotions of Hughey and Thomason from supervisory positions of route managers to rank-and-file employees were originally alleged as a violation of the Act, these allegations were withdrawn by the General Counsel in recognition of the recent decision of the National Labor Relations Board in *Parker-Robb Chevrolet*, 262 NLRB 402, in which the Board held (with Member Jenkins concurring in the findings and conclusions but not in the rationale used by the Board in its decision) that discharges of supervisors, as an "integral part" or "pattern of conduct" of an employer's unlawful actions against its employees in the exercise of their Section 7 rights, will no longer be found to be a violation of Section 8(a)(1) of the Act in the absence of other circumstances (such as giving testimony adverse to an employer's interest in an NLRB proceeding). The General Counsel contends, however, that Hughey and Thomason were closely identified with Respondent's employees and were perceived by Respondent as being involved in union activities, and that their discharge by Respondent in October at a time when they were no longer supervisors was violative of Section 8(a)(3) of the Act.

At the outset there was no evidence that either Hughey or Thomason actually participated in the union campaign. However, the circumstances of this case give rise to an inference that Hughey and Thomason were perceived by Respondent as union adherents or other-

wise sympathetic to the union campaign. As discussed previously, Respondent's knowledge of the union campaign in the spring of 1981 has been demonstrated as has its animus toward the Union.

The largely unrebutted testimony of Hughey and Thomason, which I credit, established that they and Route Supervisor Walter Hall were directed by Sales Manager Laszewski at a meeting in March to listen to employees talk about the union campaign and report back to James Morris, and in April James Morris also directed them to report to him the identity of the union supporters but that neither Hughey nor Thomason did so. Thomason also testified that on an occasion in April or May employee Mike New discussed the Union with him in the presence of Route Manager Walter Hall who later remarked to Thomason that he (Hall) did not know that Thomason was a union man. I find that Supervisor Hall's knowledge of this incident may properly be imputed to Respondent. Moreover, discharge of employees Mike Morris and Cochran and the demotion of Hughey and Thomason all occurred on the same day (May 8). Although Respondent contends that the demotions of Hughey and Thomason were part of its overall reorganizational efforts and were based on the inability of Hughey and Thomason to manage, including their alleged inability to learn Respondent's recently implemented data gathering (MSPS) system, this was not the case with respect to the discharge of Cochran who, according to Respondent, allegedly resigned or was discharged on May 8 for refusing to reconcile an account discrepancy. Moreover, Respondent's demotions of Hughey and Thomason do not square with its lack of any action against Hall who according to Respondent was not performing his duties to Respondent's full satisfaction. Hughey also testified without rebuttal that, at the time of his demotion by Morris, Morris asked him, "When did you start siding with the men?" and told him, "it would be better for me if I kept my mouth shut and did not discuss the situation at southside after I arrived at northside."⁶ I credit Hughey's testimony. Moreover, I also credit Thomason's unrebutted testimony that at the time of his demotion he was told by Morris that he was too good to the routemen and that Morris had made the decision to send Thomason to the reset crew. I also credit Morris' testimony that he was directed by Laszewski on the morning of May 8 to demote Hughey and Thomason as well as the testimony of Morris that he believed Hughey and Thomason were doing a good job and that Morris was unaware of an upcoming organizational change on the Southside. Moreover, I do not credit the testimony of Laszewski and Schilling that Hughey and Thomason were demoted on May 8 rather than discharged at that time in order to cushion the impact on the remaining Southside facility employees by reason of the other employee terminations at the time but that there was no intention of retaining Hughey and Thomason as employees. I find this asserted reason by Respondent so at odds with normal business

⁶ This statement appears to be alleged as a violation in the complaint in Case 10-CA-17689. Although I have considered it in my analysis, I find it ambiguous and insufficient to constitute a violation of Sec. 8(a)(1) of the Act.

practices as to be implausible. I also credit Thomason's testimony that Laszewski referred to the Southside facility as a "cesspool" on one occasion after the demotion of Thomason to the reset department and on the day of his discharge.

Under the above circumstances, I find that Respondent's identification and perception of Hughey and Thomason as sympathetic to and supportive of the union campaign may properly be inferred. *U.S. Soil Conditioning Co., supra. Coral Gables Convalescent Home, supra.* See also *Alumbaugh Coal Corp. v. NLRB, supra.* I find that the demotion of Hughey and Thomason from route managers to employees on May 8 was motivated by Respondent's desire to stem the union campaign by either discharging or dispersing union supporters. Although there was testimony presented by Respondent of the reorganization of its operations in its Northside facility, I do not find persuasive Respondent's contention that the demotion of Hughey and Thomason was related to organizational changes, particularly in view of the timing of their demotion on the same date as the purportedly unrelated termination of Cochran. This demotion would not be found a violation of the Act in accordance with the *Parker-Robb Chevrolet, supra* decision. However, Respondent's discharge of Hughey and Thomason in October, at a time when they were employees, would constitute a violation of the Act if it were motivated by Respondent's efforts to stem the union campaign. I find that Respondent's asserted reason for its discharge of Hughey and Thomason in October as a followup to their demotion in May because of their alleged inability to supervise was not the true reason for their discharge. I find that the circumstances of Respondent's discharges of Hughey and Thomason in October, as set out above, warrant the inference that their discharge was motivated by Respondent's desire to stem the union campaign. *E. Mishan & Sons, Inc., 242 NLRB 1344, 1345 (1979)*, wherein the Board noted its past holdings where "an employer asserts a false reason for discharging an employee, it can properly infer that the real reason for the discharge was unlawful."

In this case I find that the discharge of Hughey and Thomason in October was in furtherance of its antiunion campaign and was motivated by its perception of Hughey and Thomason as supportive of, or sympathetic to, the union campaign and its desire to rid itself of perceived union adherents. I reject as pretextual Respondent's asserted reason for discharging Hughey and Thomason in October because of their inability to manage. *Limestone Apparel Corp., supra.* I accordingly find that the General Counsel has made a *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act by Respondent in its discharge of employees Hughey and Thomason and that Respondent has failed to rebut the *prima facie* case. *Wright Line, supra.*⁷

⁷ Both Hughey and Thomason filed charges of age discrimination with the Equal Employment Opportunity Commission against Respondent subsequent to the filing of charges in this case and alleged in their charges that they were terminated because of their age. I make my determination on the basis of the evidence presented before me at the hearing and I make no determination with respect to allegations of age discrimination. I find that although the allegations of age discrimination as the reasons advanced by Hughey and Thomason for their discharge by Respondent are

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of Respondent as found in section II, above, in connection with Respondent's operations as found in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to disputes burdening and obstructing the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent GCC Beverages, Inc., d/b/a Pepsi-Cola Bottlers of Atlanta is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Teamsters Local 728 is a labor organization within the meaning of Section 2(5) of the Act.
3. The General Counsel has established *prima facie* cases of violations of Section 8(a)(3) and (1) of the Act by the discharge of employees William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason. Respondent has failed to rebut the *prima facie* cases, and I find that Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason.
4. Respondent violated Section 8(a)(1) of the Act by its interrogation of employee Clay J. Donaldson and the issuance of threats to Donaldson and the offer of promises and benefits to Donaldson concerning his union sympathies and activities and the union sympathies and activities of his fellow employees and by the solicitation of Donaldson to solicit other employees' withdrawal of support for the Union. Respondent did not violate Section 8(a)(1) of the Act by Laszewski's alleged offer of a promise of a benefit to Donaldson in return for his withdrawal of or lack of support of the Union.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated Section 8(a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative actions deemed necessary to effectuate the purposes and policies of the Act, including the posting of the appropriate notice.

Having found that Respondent discriminatorily discharged William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason in violation of Section 8(a)(3) and (1) of the Act, it shall be recommended that Respondent offer each of them immediate reinstatement and make them whole for any loss of earnings and benefits they may have sustained by reason of the unlawful discharge. It is also recommended that Respondent expunge from its files any reference to the discharges of Cochran, Hughey, and Thomason and notify them in writing

inconsistent with their contentions that they were discharged because of unlawful reasons proscribed by the National Labor Relations Act, these inconsistent allegations do not preclude a finding of a violation of the National Labor Relations Act on the basis of the evidence presented at the hearing in this proceeding.

thereof. All loss of earnings and benefits incurred by Cochran, Hughey, and Thomason as a result of Respondent's acts, as set out above, shall be computed with interest in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).⁸

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

ORDER⁹

The Respondent, GCC Beverages, Inc., d/b/a Pepsi-Cola Bottlers of Atlanta, a corporation, Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating or threatening its employees concerning their union sympathies or activities.

(b) Soliciting its employees to solicit the withdrawal of other employees' support on behalf of the Union.

(c) Offering benefits to employees if they withhold their support for the Union.

(d) Discharging its employees for engaging in union activities or other lawful concerted activities.

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

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

(a) Offer to William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason immediate and full reinstatement to their former positions at the time of their discharges or, if those positions no longer exist, to sub-

stantially equivalent positions without prejudice to their seniority or other rights or privileges previously enjoyed.

(b) Expunge from its files any reference to the discharges of William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason and notify them in writing of this and that their discharges will not be utilized as a basis for future personnel actions concerning them.

(c) Make William T. (Sam) Cochran, Julian T. Hughey, and Ralph Thomason whole for any loss of earnings or other benefits they may have sustained by reason of the discrimination against them in the manner set forth in this Decision entitled "The Remedy."

(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 recommended Order.

(e) Post at its facilities in Atlanta, Georgia, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to Respondent 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.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed with respect to all allegations of violations not specifically found herein.

⁸ See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁰ 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."