

**Pareco, Inc. d/b/a Saddle West Restaurant and Casino and Diana Jean Schultz, Case 31-CA-11415**

16 April 1984

**DECISION AND ORDER**

**BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS**

On 2 September 1983 Administrative Law Judge Maurice M. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.<sup>3</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pareco, Inc. d/b/a Saddle West Restaurant and Casino, Pah-rump, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

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

<sup>2</sup> Member Hunter, in adopting the judge's decision, finds it unnecessary to rely on all of the judge's reasoning.

<sup>3</sup> The judge correctly included in his recommended Order a requirement that the Respondent expunge from its files any references to Schultz' termination and notify her that this has been done and that the discharge will not be used against her in any way. He failed to include a corresponding provision in his notice, however. Accordingly, we shall substitute the attached notice which conforms with the recommended Order.

**APPENDIX**

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

269 NLRB No. 177

WE WILL NOT discharge or lay off employees, or discriminate in any manner with regard to their hire or tenure of employment, or their terms and conditions of employment, because of their participation in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

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

WE WILL offer Diana Jean Schultz immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL notify her that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

**PARECO, INC. D/B/A SADDLE WEST  
RESTAURANT AND CASINO**

**DECISION**

**STATEMENT OF THE CASE**

**MAURICE M. MILLER, Administrative Law Judge.** Upon a charge filed on August 11, 1981, by Diana Jean Schultz, designated as complainant herein, and duly served, the General Counsel of the National Labor Relations Board (the General Counsel) caused a complaint and notice of hearing, dated October 19, 1981, to be issued and served on Pareco, Inc. d/b/a Saddle West Restaurant and Casino, designated as Respondent within this decision. Therein, Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act. Respondent's answer and amended answer, duly filed, concedes certain factual allegations within the General Counsel's complaint, but denies the commission of unfair labor practices.

Pursuant to notice, a hearing with respect to this matter was conducted on July 27 and 28, 1982, in Las Vegas, Nevada, before me. The General Counsel and Respondent were represented by counsel. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence with respect to pertinent matters. Following the hearing's close, the General Counsel's representative and Respondent's counsel filed comprehensive and well-drafted briefs; these briefs have been duly considered.

On the complete testimonial record, documentary evidence received, and my observation of the witnesses, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

Respondent raises no questions, herein, with respect to the General Counsel's present jurisdictional claims. On the complaint's relevant factual declarations—more particularly, those set forth in detail within the second paragraph therein—which Respondent's counsel concedes to be correct, and on which I rely, I conclude that Respondent herein was, throughout the period with which this case is concerned, and remains, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities affecting commerce within the meaning of Section 2(6) and (7) of the statute. Further, with due regard for presently applicable jurisdictional standards, I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

## II. PROTECTED CONCERTED ACTIVITY

Considered in totality, the present record warrants a determination, which I make, that Diana Jean Schultz, complainant herein, was—prior to her discharge—participating in concerted activity qualified for statutory protection. The General Counsel's record presentation, in this connection—together with Respondent's defensive presentation—will be considered, subsequently, within this decision.

## III. THE UNFAIR LABOR PRACTICE CHARGED

A. *Issues*

This case presents a limited number of questions, generated by complainant's August 1981 discharge. Within his brief, Respondent's representative fairly summarizes these questions:

(1) Did complainant participate in concerted complaints to Respondent's management, protesting management's decision to cease providing employees with meal tickets, and did she further encourage her fellow employees to boycott the restaurant facility on Respondent's premises, in support of their protest?

(2) If she did, should her conduct be considered concerted activity protected by the statute?

(3) If so, did Respondent's management have any knowledge regarding her participation in such concerted activity?

(4) Assuming Respondent's knowledge with respect to complainant's course of conduct, did Respondent's management have "animus" toward her, because of her concerted activities?

(5) Assuming Respondent's demonstrable "animus" toward complainant, would the firm's management, nevertheless, have terminated her, for some nonproscribable reason, even absent some suspect motivation?

The General Counsel contends, herein, that complainant was engaged in protected concerted activity, that Respondent was cognizant with respect thereto; that management's decision to discharge her derived from resentments generated by her participation in such protected concerted activities, and that she would not have

been terminated absent Respondent's statutorily proscribed motivation.

B. *Facts*

## 1. Background

a. *Respondent's business*

## (1) Physical facilities

When the particular situation with which this case is concerned developed, Respondent maintained and conducted a combined restaurant and gaming casino business in Pahrump, Nevada; Pahrump is a small community, with slightly less than 4000 population, located some 60 miles northwest of Las Vegas, near the California state line.

There, Respondent's business was conducted within a single two-story building which—solely within its first floor space—compassed a restaurant and related kitchen facility; a small pinball/video game area; a gaming casino which, inter alia, held three "21" tables, a poker table, and some slot machines; a bar; and a dance floor. The property is owned by a business enterprise known as Pareco Limited Partnership; functioning as a separate legal entity, Pareco, Inc., Respondent herein, operated—and, when this case was heard, still operated—the gaming casino. Before July 1981, the restaurant was operated by a closely related, but legally separate partnership called Saddle West Company Restaurant. The complete facility is open for business 24 hours per day; Fridays, Saturdays, and weekday evening hours are normally the busiest periods, particularly for Respondent's casino operations.

## (2) Management

Throughout the period with which this case is concerned, Robert Huffman, concededly a principal part "owner" within the tripartite web of partnership and corporate enterprises herein noted, served as Respondent's managerial overseer, generally. Philip Garwood has, however, functioned throughout as Respondent's designated general manager. When the situation which gave rise to this case developed, Garwood was considered generally responsible for Respondent's casino operations, though subject, of course, to Part Owner Huffman's proprietary oversight. However, Valita Huffman, Robert Huffman's sister, supervised Respondent's restaurant operations, particularly.

## (3) Employees

Throughout the period with which this case is concerned, Respondent employed some 30-plus workers, serving on various shifts. This number compassed some 12 casino "21" dealers, 4 or 5 concededly supervisory casino pit bosses, 4 or 5 restaurant waitresses, 3 or 4 bartenders, 3 or 4 "cage" cashier personnel, 2 or 3 cooks, 2 cocktail waitresses, 1 or 2 dishwashers, and 1 or 2 office workers.

## (4) Respondent's meal ticket policy

Before July 17, 1981, Respondent maintained a so-called "meal ticket" policy, pursuant to which casino and restaurant employees were, each, permitted to sign for one meal, taken in Respondent's restaurant, during whatever shift they worked. The restaurant waitresses would write regular checks for whatever meals Respondent's employees took, pursuant to this policy. Such checks, however, were not rung up, in full, on Respondent's restaurant cash register. Whenever the particular employee's meal cost \$3.50 or less, that employee would simply sign the check, and pay nothing further. Should the check call for more than a \$3.50 payment, the worker concerned was required to pay the difference, between \$3.50 and the check's stated total.

Respondent's casino pit bosses—herein stipulated to be supervisors within the meaning of the statute—were beneficiaries of a more liberal "meal ticket" privilege. They could sign restaurant checks for the cost of their meals—without being required to pay for them—even when such checks called for more than a \$3.50 payment. Further, they could sign for all meals taken; they were not limited to one meal per shift.

This so-called meal ticket privilege constituted the sole fringe benefit which Respondent's employees received, apart from their wages, though casino employees might further receive gratuities ("tokes") sometimes, from casino customers. The record warrants a determination, which I make, that most of Respondent's employees, during this period, claimed meal ticket benefits on their respective work shifts.

b. *Diana Jean Schultz*

Complainant was hired by Respondent's restaurant manager, Valita Huffman, on January 10, 1981; she started work as a restaurant waitress, cocktail waitress, and bartender, working various shifts. Schultz was told, when she was hired, that she would be paid \$3.25 per hour and would receive a single "meal ticket" for whatever shifts she worked.

When hired, complainant had declared her desire to become a casino "21" dealer, should some opening for such a position become available. While serving as Respondent's restaurant waitress and bartender, therefore, she sought, and received, training for service as a casino dealer.

Sometime in March, complainant became a full-time casino "21" dealer; she retained this position until she was terminated, under circumstances which will be noted hereinafter.

While so employed, Schultz normally worked Friday and Saturday evenings, from 9 o'clock to 5 in the morning, and Mondays from 4 in the morning until noon. She would, then, return on Monday evening, starting at 8 o'clock, and work until 4 on Tuesday morning. These four shifts provided her, regularly, with 32 hours of work, per week. Additionally, she was subject to call for further work, whenever Respondent's pit boss, then on duty, might require an extra dealer. Such extra shifts, normally, provided complainant with an average total of 40 hours work, per week.

While working as a dealer, Schultz was, however, permitted a 15-minute "break" within each hour; during such "break" periods she was provided with free coffee or tea refreshment, but was required to remain within the casino's pit area.

c. *Respondent's restaurant lease*

For some time prior to July 1981, Huffman, Respondent's proprietor, had been, so his testimony shows, determined to lease his facility's restaurant. While a witness, Huffman declared, without challenge or contradiction, that he had not considered himself sufficiently knowledgeable to maintain a restaurant operation profitably; he had not, however, been able to locate a surrogate manager qualified to take over that responsibility. Respondent's proprietor had, therefore, determined, so he testified, that someone with a defined "vested interest" in the restaurant's success would have to be found, to make it profitable; he had discussed a restaurant lease with several potential lessees.

In July 1981, Huffman decided, finally, to lease his restaurant facility to one Alberto Merel; that prospective lessee, so Respondent's proprietor understood, had previously established numerous pizza parlors, and had, at one time, managed an Italian restaurant.

The lease negotiated by Huffman and Merel, so the record shows, provided for a flat monthly rental payment; Merel was, further, committed to purchase Respondent's restaurant inventory. Initially, the lessee had planned to finance his required inventory purchase, and essential "starting" costs, with funds derived from the sale of his house, plus a loan. When these arrangements fell through, however, Huffman had agreed preliminarily that Merel could, nevertheless, take over Respondent's restaurant facility forthwith, though he would be required to provide further monthly payments earmarked for the purchase of the restaurant's inventory, which were to be spread over some period of time.

Respondent's lease arrangement, then, was to become effective, pursuant to a negotiated consensus, following Merel's procurement of certain equipment required for his projected restaurant operation. He completed his arrangements more quickly than Respondent's proprietor had expected, and requested Huffman's consent to take over Respondent's restaurant facility forthwith. A quick "abbreviated" restaurant inventory, thereupon, was taken; on Friday, July 17, Merel became Respondent's lessee.

## 2. The suspension of Respondent's meal ticket policy

a. *The suspension*

Prior to July 17, during his lease negotiations with Merel, Huffman had—so his testimony, proffered without challenge or contradiction, shows—tried to negotiate provisions concerning both his personal meal privileges, and continued meal privileges for Respondent's employees. Merel had conceded that he would "handle" his lessor's personal meals; the negotiator could reach no consensus, however, with regard to possible special arrange-

ments for regular employees' working shift meals. (Merel contended that his working capital funds were limited, and that his anticipated profit margin would not be sufficient to cover his prospective costs, for regular employee meal allowances.)

Huffman had suggested his readiness to pay for restaurant meals which Respondent's lessee might provide for Respondent's employees, if Merel would simply bill him, at month's end, for the costs involved. The restaurant lessee however had rejected the suggestion, contending that he would not have free funds sufficient to replenish his required supplies before receiving Huffman's month-end payments. While a witness, Huffman declared—for the present record—that, when confronted with Merel's dilemma:

[T]here was no way that I [Huffman] could just give them [Respondent's employees] the money to go in and buy their own meals at this point in time. [Interpolations supplied to provide clarity.]

With matters in this posture, then, the lease negotiators set aside their problem for later resolution. They reached a sidebar consensus, merely, that they would eventually try to work out "some kind of a cut-rate price" payable by Respondent, or chargeable to Respondent's employees, for their working shift meals, plus some sort of arrangement whereby Respondent's management could—whenever it desired—request, and pay for, meals provided to favored casino customers.

On Friday, July 17, concurrently with Merel's restaurant takeover, Respondent's casino employees learned that their "meal ticket" benefit had been suspended. Most of them were notified by restaurant personnel, or heard about their meal privilege's cancellation by word of mouth from fellow workers.

Respondent's management had provided no advance notice, with regard to this change; neither Huffman nor General Manager Garwood had drafted, or even considered, any sort of general announcement beforehand that Respondent's previously maintained meal ticket system would no longer be operative. (Conceivably, their failure to prepare such a general announcement may have been due to the fact that Merel's readiness to take over Respondent's restaurant facility, so soon, had not been anticipated.)

Prior to Merel's takeover as Respondent's restaurant lessee, General Manager Garwood had been planning a short vacation, scheduled to begin on Friday, July 17. When Respondent's lessee proclaimed himself ready to take over restaurant operations, forthwith, on that date, his declared determination had concededly found both Huffman and Garwood unprepared. Nevertheless, following their "quick" consummation of required preliminary arrangements, Respondent's principal part owner, so Garwood's testimony shows, had directed the general manager to proceed with his vacation plans; Garwood was told that they could "let [the problem of meal privileges for Respondent's employees] go" until his return. Thus advised, Garwood, so he testified, may have told "some" employees—though, concededly, not all—that, with a lessee providing restaurant service, their working

shift meal benefit would no longer be available. Despite this, some July 17 night-shift casino workers were, so the record shows, caught without pocket money sufficient to pay for their midshift meals, particularly on that date; presumably, they received no food.

#### b. *Employee reactions*

Throughout the 10-day period which followed, prior to General Manager Garwood's July 27 return, their loss of previously granted "meal ticket" benefits generated considerable discussion, reflective of manifest resentment, within Respondent's employee complement. According to complainant herein—whose testimony, within my view, generally merits credence—many casino employees, restaurant waitresses, cashier "cage" employees, and bar workers openly proclaimed their displeasure over the sudden loss of their sole work-related fringe benefit, and frequently voiced their resentment, directed particularly toward Respondent's general manager, who had departed, on vacation, without answering that their "meal ticket" privilege had been suspended. (Mary Jo Rotramel, General Counsel's witness, who had been a pit boss in Respondent's casino, at the time, testified herein that "the whole place was in an uproar" because their meal ticket benefit had been terminated. There were general "understandings" expressed that Respondent's meal ticket privilege had, therefore, been designated a part of the wage package, which employees had been "offered" when they were hired; some felt that Respondent's employees should be "compensated" somehow, for its loss.)

During numerous discussions, many of Respondent's employees proclaimed their determination to refrain from patronizing the newly leased restaurant facility. They believed—so several witnesses recalled—that they had not been fairly treated. Complainant's testimony herein—which Theresa Stanton, former casino dealer summoned as Respondent's witness, confirmed—warrants a determination, which I make, that "everyone kind of agreed" they would bring sack lunches, rather than eat restaurant food. Jill Holmes, Respondent's former pit boss—whose proffered recollections, in their particular connection, match that of several witnesses herein—testified, credibly, that many employees felt they could not afford restaurant meals; she recalled that all of Respondent's concerned employees had discussed "not eating in the restaurant" until they were vouchsafed some "answers" with regard to Respondent's suspension of their meal ticket privileges.

Subsequent to July 17, many of Respondent's employees did, indeed, bring lunches in paper bags, when they reported for work. They did not purchase restaurant meals. Some few employees, reportedly, brought their "brown bag" lunches into Merel's newly leased facility, and consumed them while seated at restaurant tables; the prevalence of this practice, however, cannot be determined precisely from the testimonial record herein.

Respondent's management representatives were fully cognizant, so the record shows, regarding the nature and scope of this employee distress. While a witness, Part Owner Huffman conceded that, during General Manager Garwood's absence:

[T]here was quite a lot of dissension starting in the place. There was a lot of upset amongst the employees about loss of meals, which I could understand. It is something they had had for quite some time and we had had to cut out. . . . It was circumstances that nobody could really help at this point in time with the present manager we brought in.

Though Merel tried to compensate employees, for their meal ticket loss, by providing them with "nacho" snacks and pizzas, for consumption at Respondent's bar and within the facility's casino area, during break periods, Huffman noted, so he testified, that there was still "quite a lot of dissatisfaction and dissension" within Respondent's employee complement. Respondent's part owner was "dissatisfied" with those continued manifestations of disaffection; he thought they were destroying his "close-knit . . . family-type" business operation. Huffman, so his testimony shows, queried his lessee again with respect to whether he had considered some way to provide "some type of meal" for Respondent's employees; Merel reported, however, that he had "enough problems" trying to handle his current volume of business, and could not undertake further obligations.

#### c. Management's response

Despite Huffman's purported concern he took no action, looking toward a possible solution, prior to General Manager Garwood's return. When Garwood reported back from his vacation—some time on Monday, July 27, presumably—he was told, by Respondent's part owner, that there was considerable dissension, resulting in low morale, amongst Respondent's employees, bot-tomed upon dissatisfaction regarding their meals. With respect thereto, Huffman testified:

I said, "I understand they have got a legitimate beef there—that we need to try to make some kind of compensation. We must get this straightened out, with this dissension and stuff. So get a meeting with the employees. See if you can calm them down."

When summoned as Respondent's witness, Garwood conceded, consistently with Huffman's testimony, that directly following his return he had been told, by everybody, but primarily by Respondent's part owner, that there was a great deal of "turmoil [and] unhappiness" within Respondent's employee complement. Previously herein, when summoned, initially, as the General Counsel's witness, Respondent's general manager had specifically conceded his "knowledge" also that some of Respondent's employees were refraining from patronizing their employer's leased restaurant facility, in protest of their "meal ticket" loss. (Likewise, when subsequently cross-examined by the General Counsel's representative, Garwood reiterated his concession that Respondent's employees had been "upset" over their meal ticket losses.)

He conceded, further, that *this knowledge*, particularly, had prompted him to call a July 29 meeting, to "smooth over" things, to "calm down" protests, and to "satisfy" Respondent's employees.

However, while testifying in Respondent's behalf, Garwood nevertheless claimed—purporting, to present a *different explanation* for his decision to meet with Respondent's employees—that Huffman had, further, told him about employees who had brought their sack lunches, or food purchased from a nearby sandwich shop, into Respondent's restaurant facility; that Respondent's part owner had, further, reported comments and suspicious queries, *proffered by restaurant customers* who had observed Respondent's personnel eating food purchased elsewhere, and sack lunches there; that Huffman had described the relationship *between Respondent's employees and the restaurant's new management* as marred by considerable "animosity" and reciprocated "ill feelings" running in both directions; and that Respondent's part owner had reported himself distressed, because Respondent's employees had been allegedly "bad-mouthing" the restaurant, because their derogatory public comments *about the restaurant* were being heard by restaurant customers, and because their statements and conduct were "embarrassing" both Merel's restaurant and Respondent's casino operation. With this testimony, so the General Counsel's representative cogently notes, Garwood clearly sought to suggest, while a witness, that he had decided to call a July 29 meeting of Respondent's personnel primarily because he was concerned about "snow-balling" deliberate attempts, by Respondent's employees' to embarrass the restaurant operators, and because he was further concerned regarding the possible effects which a continued "meal ticket" contretemps might have on both Respondent's *casino* customers, and prospective *restaurant* patrons.

The general manager's broadly phrased, self-serving suggestions with regard to his purported motivation, however, lack persuasive record support. They stand belied, first of all, by his initial testimonial concession, reiterated during his subsequent cross-examination, that he *knew* Respondent's employees were, basically, protesting their "meal ticket" loss; that loss, of course, clearly represented a fringe benefit deprivation with respect to which they patently considered their direct employer, *not the restaurant facility's new management*, responsible. They stand belied, further, by Huffman's testimonial concession that he was primarily dissatisfied because dissension *within Respondent's personnel complement* had apparently destroyed the "close-knit . . . family-type" relationship which *Respondent's part-owner* had been concerned to maintain. (As previously noted, Huffman testified, herein, that Garwood was told Respondent's employees, within his view, had a legitimate grievance, with respect to which "we [Respondent] need to try to make some kind of compensation" for lost meal ticket privileges. While a witness, Garwood conceded, likewise, that shortly following his return from vacation Respondent's management had, again, sought some arrangement whereby casino employees could purchase "special" meals, or purchase regular meals at reduced prices, particularly because Huffman and he felt that "even though we had no control over the meals at that time, we did want to do something" which would benefit Re-

spondent's employees, in that regard, thereby making them feel better.)

Finally, they stand belied by Garwood's testimonial concession; when cross-examined by the General Counsel's representative, that Huffman had never mentioned "bunches of people" who had, *functioning in concert*, brought bag lunches, or purchased food elsewhere, which they then consumed openly while seated in Respondent's leased facility. Huffman, so Garwood testified, had merely reported such incidents which would "now . . . and . . . again" happen. And Respondent's general manager declared his personal belief, while a witness herein, that such incidents had constituted nothing more than "isolated" situations involving particular employees; further, he conceded his lack of knowledge regarding any significant "interaction or discussions" between Respondent's employees and the restaurant's new management.

Upon this record, I find determinations warranted that Respondent's management representatives knew Respondent's employees were highly disturbed and distressed over their sudden, never foreseen, loss of meal ticket privileges; that Huffman and Garwood both understood Respondent's employees were concertedly or conjointly pursuing courses of action calculated to make their distress manifest; that Huffman directed Garwood to repair the situation, rather than merely request employees not to embarrass the restaurant's management or disconcert customers; and that, mindful of these considerations, General Manager Garwood, pursuant to Huffman's suggestion, determined to summon Respondent's personnel, hoping that they could be placated.

### 3. Respondent's July 29 meeting

#### a. *The meeting*

Respondent's general manager held his planned meeting—which some 12 of the casino's "pit" personnel, dealers, and pit bosses attended—on July 29, during morning hours. The meeting was held on Respondent's dance floor, next to the bar. The General Counsel's witnesses—whose synthesized, mutually corroborative testimony, with respect to what Garwood said, merits credence, within my view—recalled that Respondent's general manager confirmed the restaurant facility's lease; and that he further confirmed Respondent's termination of their previously maintained "meal ticket" privileges, adding that he did not want to hear any more complaints regarding the situation. Garwood stated so I find that Respondent's management wanted to see their restaurant lessee succeed; that, should Respondent's employees "bad-mouth" the restaurant, such statements would not help; and that Huffman had declared he did not want anyone "bad-mouthing" the restaurant. Respondent's general manager further stated forcefully that, should there be any more "trouble" regarding their lost meal ticket privileges, he would terminate "anybody or everybody" within the casino pit complement and hire a new crew if he considered such action required. He asked, finally, whether anyone had any comments; receiving no immediate response, he left the dance floor directing his steps toward Respondent's restaurant facility.

With their meeting concluded, several dealers and pit bosses drifted back to Respondent's casino "pit" nearby; there, split into several conversational groups, they began to discuss Garwood's message. Several comments were made that their meeting had been quite "short and sweet"; some employees declared their shock and distress over the fact that they had been given no opportunity to report how unhappy they were. Some group members further opined that Garwood had not been fair; they complained that Respondent's management had never notified them beforehand regarding the restaurant's lease, or their consequent loss of meal ticket privileges, and that no expressions of regret had, even, been vouchsafed them.

At this point, Respondent's general manager rejoined the group. He notified those present that they could bring sack lunches if they wished; that he could not force anyone to patronize the casino's restaurant; but that those who brought sack lunches should consume them in Respondent's dance floor section. He repeated his threat that, should he hear anymore complaints about their lost meal ticket privileges, Respondent's pit employees would all be discharged.

The record, considered in totality, warrants a determination, which I make, that complainant then spoke up; she repeated, I find, comments which in substance she had previously made, that she could not afford to patronize the restaurant as a full paying customer, that she had considered Respondent's meal ticket benefit part of her wages, and that loss of that benefit represented a pay cut. Several of those present—Pit Bosses Rotramel and Beth Wright, Jill Holmes, who was then a dealer and part-time pit boss, and Bea Thurber, then a casino dealer—proffered comparable statements; they declared, likewise, that they could not afford restaurant meals. Wright, so I find, commented further that most of Respondent's dealers were not working 40 hours weekly, and thus were not "making enough money" to afford restaurant meals. At this point, Garwood repeated his prior comments that he could not "force" them to patronize Respondent's restaurant; he declared further, however, that he did not want to hear "another word" regarding a restaurant boycott; I so find. (While a witness, Respondent's general manager claimed that he knew "some" employees were boycotting the restaurant, but that he did not really care about such boycotting. His protestations of indifference, within my view, merit no credence. Within a perhearing statement, given to a Board representative 3 weeks subsequent to his confrontation with Respondent's pit personnel, Garwood conceded that Wright had been told Respondent's casino dealers were the highest paid in town; she had—so Respondent's general manager reported—been told, further, that those dealers could eat wherever they desired, but that they should neither "boycott" nor "bad-mouth" Respondent's restaurant.)

Respondent's general manager reiterated his comment that their restaurant had changed hands; he reported, so I find, that neither Huffman nor Respondent's lessee was in a position to do "anything" at that time, which might compensate Respondent's employees, completely or par-

tially, for their lost meal ticket privileges. Finally, Garwood declared that the termination of Respondent's meal ticket policy meant hardships for him and his family, likewise, since they, too, now had to pay for their restaurant meals. On this note, so I find, Respondent's general manager concluded his remarks and the gathering dispersed.

*b. The meeting's aftermath*

Within a day or two thereafter, complainant, Rotramel, and Holmes, during a discussion of their dissatisfaction with Garwood's presumptive disregard for their concerns, consensually determined to investigate some other forms of recourse. Complainant suggested possible union representation; shortly thereafter, Holmes spoke, by telephone, with a Teamsters union representative. He suggested that they determine how many of Respondent's employees would be interested, and whether a majority would be willing to sign union designation cards. Between July 30 and August 3, therefore, complainant discussed possible union representation with "just about all" of Respondent's employees, suggesting that they might thereby recover their meal ticket privileges, and press for medical benefits. (According to Rotramel, she—together with complainant herein—likewise spoke with "one or two" employees during this period.)

Most of those contacted, so complainant's testimony shows, expressed interest. On August 4, complainant and Rotramel visited the Teamsters union hall; they procured a supply of union designation cards.

By then, however, Rotramel had been terminated by Respondent's general manager; the circumstances of her August 2 termination—which, conceivably may have some relevance herein—will be noted, subsequently, within this decision.

4. Complainant's restaurant conversation

Meanwhile, sometime between Wednesday, July 29 and Monday, August 3, possibly while she was working a scheduled shift, and taking a permitted 15-minute hourly break, complainant had a conversation with two fellow dealers, Trudi Deleo and Nancy Neimer, who were then patronizing Respondent's restaurant facility. (While a witness, complainant could not remember precisely the date on which this conversation occurred. Nor could she recall definitely whether it took place between shifts while she was off work, or during a break period while she was working a scheduled shift. She testified, merely, that it occurred during daytime hours. The record, considered in totality, warrants a determination, which I make, that complainant's conversation, with which we are now concerned, took place during a late morning or early afternoon period, subsequent to Garwood's July 29 confrontation with Respondent's casino "pit" personnel, but several days before complainant's August 2-3 working shift, noted hereinafter.)

According to complainant, Neimer and Deleo were seated within a booth; they were, then, eating restaurant food. The restaurant was not busy; complainant testified that "there might have been two or three customers" seated at the facility's breakfast counter. Her witness

chair recollections with regard to what happened—proffered repetitively during her direct examination and subsequent rebuttal, but consolidated for consideration herein—read, in material part, as follows:

Well, I remember seeing them sitting in there, and I walked in there, and I said—made the comment that, "[Hey] I thought we [you guys] weren't going to eat in the restaurant [anymore]." And I do not exactly remember what the reply was. And I sat down [with the girls], and we started talking about something else. [And we chatted for a few minutes, and I left.]

Complainant denied that her voice had been raised; while a witness, herein, she contended, consistently, that she had spoken normally, but nevertheless conceded that, while maintaining normal volume, her voice "carries" or "projects" well.

Thomas Turner, a local Pahrump real estate salesman, testified that he was playing a pinball machine in Respondent's arcade section—which directly adjoins the building's restaurant facility—when he overheard the conversation with which we are now concerned. The salesman, while a witness, called it a "discussion" sufficiently "loud" to draw his attention. His proffered recollection with respect to what he heard complainant say—which he did not, however, recapitulate until cross-examined—substantially matches hers; he recalled further hearing Nancy Neimer respond, "I will [eat in the restaurant] if I want to" or say something of similar import. According to Turner, that was all he heard; the discussion, he recalled, did not last long. He then resumed and finished his pinball game.

Turner testified further, that within a day or 2 days thereafter he "mentioned" the incident to Huffman, whom he encountered in Respondent's restaurant, while drinking coffee. When requested by Respondent's counsel to recall as closely as he could precisely what Huffman was told, Turner reported, merely, that:

It would just have to be the fact that he had a—you know, a couple of people [employees] out of line in the restaurant, and they did not need that stuff.

Respondent's part owner, however, was told, further, who the discussion participants were; the real estate salesman reportedly suggested that Huffman would "need to do something" about the people concerned. Turner's testimony would warrant a determination, which I make, that Huffman merely "registered" his report, thanked him, and then asked whether he would be willing to recapitulate the incident for Garwood's information, should the latter inquire; the salesman promised that he would.

Within a day or 2 days after Turner's conversation with Huffman—presumably on July 31 or August 1 possibly—Respondent's general manager telephoned him. Turner told Garwood, so his testimony shows, merely that Respondent had some employees who had been "making a scene" and behaving "out of line" while in Respondent's restaurant. The salesman reported their

names. Respondent's general manager, so Turner recalled, thanked him for his report, but proffered no further comment.

Garwood, when queried herein with regard to what Turner had reported, proffered further details. According to Respondent's general manager, the real estate salesman had declared:

That he had heard a loud argument, words to the effect that he was embarrassed, that Diane Schultz was the one that perpetrated the argument, or the one that was the aggressor in the argument, so to speak. She was the one that—whose voice was above everybody else's that caught his attention . . . [He told Garwood] . . . Something to the effect that she was . . . telling two employees that they should not be eating in the restaurant, that—or they had all agreed to, or she—at any rate that she was not eating in the restaurant and they should not eat in the restaurant.

Respondent's general manager recalled, further, that Turner reported he was most impressed with complainant's loud mouth; that he called complainant's conduct "out of line" but declared that Nancy Neimer, also, was "beginning to get louder" as their discussion progressed.

Shortly after hearing Turner's report, Garwood communicated, so he testified, with both Neimer and Deleo, seeking their versions of the restaurant discussion now under consideration. So far as the present record shows, however, he took no further action; specifically, he made no effort, contemporaneously, to query complainant with respect thereto.

##### 5. Complainant allegedly questions her supervisor's qualifications

When Respondent's pit boss, Mary Jo Rotramel, reported for work at 7:45 p.m. on Sunday, August 2, for a scheduled 8 p.m. to 4 a.m. shift, General Manager Garwood called her into his office; she was notified that she was being terminated. Summoned as the General Counsel's witness, Rotramel testimonially recalled merely that Respondent's general manager told her she was being dismissed because her "attitude" had supposedly changed.

When subsequently queried, while testifying in Respondent's behalf, regarding his decision relative to Rotramel's discharge, Garwood purportedly could not initially remember his reasons. He conceded, however, that within a sworn prehearing statement given a Regional Office representative less than 3 weeks following her termination he had, *inter alia*, described it thusly:

On the date of her termination, I called Rotramel into my office and told her that I discovered that she was the one who was instigating employees against the restaurant, and told her that I expected all pit bosses to be supportive of management.

The general manager's sworn statement, further, contained references to some comment, on his part, that Rotramel's purportedly "poor attitude" concerning her work, not otherwise specified, had indeed rendered her

"less valuable as a supervisor" within Respondent's casino. However, while a witness, Garwood was finally asked, point blank, whether his purported discovery that Rotramel was the responsible "instigator" of employee disaffection was the reason for her termination; he replied, "Yes, sir, it was" without qualification. Upon being given her notice, Rotramel promptly left Respondent's casino; Joe Ogden, then a casino dealer—who had, sometime previously, served, for a brief period, as Respondent's general manager—immediately took over Rotramel's casino "pit boss" position, for Respondent's late evening-early morning shift.

Complainant reported for work, likewise, on Respondent's August 2-3 swing shift. Schultz discovered, when she reported, that Rotramel had been replaced; Ogden was, she learned, her new first-line supervisor. At some point thereafter, during their shared shift, complainant and her new pit boss, Ogden, concededly had a brief conversation. Their respective testimonial recapitulations with respect thereto however reflect categorical conflict. For present purposes, that conflict requires a finder of fact's resolution.

##### a. Ogden's version

Summoned as Respondent's first witness, Ogden purportedly recalled a "little bit" of conversation with complainant regarding his "altercations" [N.B.: Did he really mean qualifications?] while functioning as her pit boss. Testifying in direct and cross-examination, with respect thereto, Ogden reported, in relevant part, that:

She said I was not as qualified [to do the job] as the person was who I replaced . . . I cannot recall them but there was a few digs and some things that made me uncomfortable, and this was done in front of [probably about three or four] customers as she was dealing the game . . . I was behind her watching the game . . . I told her that it was not up to her to make any kind of decision on my qualifications, that it was up to the people that owned the casino or the casino manager, and that, if she wanted to take it any farther, we could discuss it with him. [Interpolations supplied from Ogden's testimony in cross-examination.]

When queried, further, by the General Counsel's representative, Ogden conceded that he had not "really" been upset, personally, by complainant's purported comment regarding his qualifications; he declared, however, that he had been disturbed because Schultz had made her comment in front of customers. She had, so Respondent's former pit boss recalled, continued nevertheless to deal cards; she had neither turned around to address him, nor done "anything wrong" while maintaining game play. According to Ogden, she had however spoken loudly enough for him to hear; therefore, he was "sure" that the players at complainant's table had, likewise, heard what she said. Respondent's former pit boss, nevertheless, continued to work with Schultz for the balance of their shift; complainant, so he testified, made no further comments.

At some time during this August 2-3 shift—so Ogden recalled—he reported his purported verbal exchange, with complainant, to Respondent's general manager; the pit boss conceded, however, that Garwood and he did not have "much of a conversation" regarding the matter. Garwood, according to Ogden, merely said "something to the effect" that he would talk to Schultz; he did not, however, communicate with her forthwith. She was neither censored nor removed from service on Respondent's swing shift.

#### b. Complainant's version

Summoned in rebuttal, complainant denied, categorically, that any August 2-3 swing-shift conversation, consistent with Ogden's witness chair recital, had taken place. Rather, she recalled a brief exchange—concerned with a completely different subject—which she recapitulated. Her testimony, with respect thereto, reads as follows:

Joe Ogden had taken me off a table. It was time for my break. And we had four, I believe, customers at the table at the time, and he told me to go grab a cup of coffee. So I went, grabbed a cup of coffee at the bar, which we have a coffee pot sitting behind the bar for the dealers. . . . And I proceeded to go back in the pit area and sit down in a chair next—the table over that was not being played on. And when I came back, there was markers up there that had [not] been there, and I just asked him about them. Just my own curiosity coming back. They were not there when I left, and when I came back they were there. And he looked at me and wanted to know if I was questioning his authority. And I says, "No I am not. I was just curious." And that is all that was said.

Complainant reports, herein, that she has never heard any comments, whatsoever, from Respondent's management representatives, regarding *this particular conversation* relative to so-called markers since it took place. (N.B.: Markers are small button-like disks, with declared dollar values, which—when requested by casino customers and provided by pit bosses—signify that credit has been, temporarily, granted such playing customers; customers granted such credit may, then, continue to play, using chips provided by the house, with declared values which, in toto, match the face value of their markers.)

Respondent's counsel has, likewise, conceded by stipulation that the purported "incident" described in complainant's testimony, with respect to Pit Boss Ogden's responsibility for "marker" grants, has never been discussed.

When queried, then, with respect to Ogden's witness chair report, herein, regarding their purported confrontation, complainant testified: That, prior to her discharge which will be discussed hereinafter Garwood had never communicated with, or questioned, her regarding the matter; *that it was neither discussed nor mentioned when she was terminated*; that she heard about Ogden's purported complaint, for the first time, when Respondent's general manager, subsequently, reported her supposed

conversational exchange with the pit boss during a presumptively nonformal "investigatory" hearing, conducted by a Nevada Equal Rights Commission representative, following her postdischarge decision to file a State of Nevada sex discrimination charge against Respondent herein; and that, during that stage agency conference, she had forthwith challenged the correctness of Garwood's report, relative to Ogden's purported complaint.

#### c. Conclusions

With regard to Respondent's claim, bottomed on Ogden's testimony, that complainant had been grossly "insubordinate" toward her newly designated supervisor, the General Counsel's representative within his brief submits that Schultz' version of their purported confrontation should be considered more "accurate, logical and reasonable" than her newly designated pit boss' completely different testimonial proffers. On balance, I concur. Though provided without corroboration, and therefore hardly "clear and convincing" beyond peradventure of doubt, complainant's proffered recollections—when evaluated with due regard for the record considered in totality, her generally candid, forthcoming, and somewhat ingenuous witness chair demeanor, and the natural logic of probability—struck me as more worthy of credence than Ogden's seemingly spare, but nevertheless somewhat overblown, narrative.

Respondent's former pit boss has, herein, detailed no circumstantial background which, conceivably, might have prompted complainant's purportedly critical comment; as reported by Ogden, that comment stands—within the record—devoid of any concomitant reference to *prior developments* which might, arguably, have led Schultz to volunteer a presumptively derogatory remark, directed to her superior. (Respondent's speculative suggestion that complainant may have proffered her purported observation, gratuitously, because at that time she shared residential quarters with Rotramel because they were presumably friends, and because she was therefore conceivably distressed by Rotramel's unexpected termination, carries no persuasion. Assuming, arguendo, that Schultz was indeed distressed over Garwood's dismissal of Rotramel, derogatory remarks about Ogden's capabilities would seemingly have been, not merely a gratuitous affront, but pointless as well.)

Further, while a witness, Ogden provided no details calculated to suggest Complainant's conceivable *factual basis* for challenging his qualifications. Even within a written memorandum, prepared by the pit boss subsequently pursuant to Garwood's request, his recapitulation of their purported conversation had been limited; it had compared, merely, a summary report regarding complainant's single, allegedly critical remark, coupled with vague references to her "persistence in this line of talk" thereafter, which he had followed with nothing more than a capsulized summary of his responses. (Ogden's memorandum, herein noted, designated August 17 as its preparation date; this was 14 days subsequent to complainant's purportedly "hostile" remark, 6 days after her August 11 Board charge had been filed, and 5 days subsequent to her August 12 sex discrimination charge filed

with the Nevada Equal Rights Commission, previously noted.)

The pit boss' failure to provide circumstantial details, reasonably calculated to define the situational context within which Schultz' purportedly "hostile" and "insubordinate" comment was allegedly made, leaves her supposed statement standing alone, without a persuasively relevant circumstantial background, which had it been provided might conceivably have "lent verisimilitude to an otherwise bald and unconvincing narrative" herein. (Gilbert and Sullivan, *The Mikado*, Act II, Pooh-Bah's plea.) For this reason, among others, I find Ogden's narrative unpersuasive.

Respondent did produce a casino customer, Leslie Mankins, who, while a witness, reported that during play at complainant's table he had heard the conversational exchange between complainant and her newly designated superior. His proffered recollections with respect thereto, which track Ogden's so closely as to suggest rote memorization, compass merely a *single* reported remark, rather than some "persistent line of talk" purportedly chargeable to complainant herein, supposedly followed by the pit boss' curt response. Yet despite his narrowly circumscribed recapitulation of their presumably brief "discussion" conducted in conversational tones, Respondent's witness claimed that they were "arguing" together; that he concluded complainant and Pit Boss Ogden were having "internal" problems; that contact with their "trouble" had generated a tense "atmosphere" which made him uncomfortable; and that, after playing another hand or two, he therefore left. Proffered as corroborative of Pit Boss Ogden's testimony, Mankins' witness chair recitals, within my view, carry no persuasion. In material respects, they reflect off-putting hyperbole, coupled with a seeming disposition, willy-nilly, to see a mountain where most people—present during a brief "conversation" such as he reported—would find little more than a molehill.

As the General Counsel's representative notes, within his brief the fact that Ogden had, theretofore, accumulated years of gaming experience in various capacities and had once been Respondent's general manager was common knowledge within the local community. Complainant, concededly with limited experience—functioning solely as a casino "21" dealer—would hardly have been likely to have told Ogden that he was not qualified to hold a pit boss position, or that he was not as well qualified as his predecessor.

For these several reasons, I conclude that Ogden's version of their supposed "altercation" merits no credence. He may, very well, have bristled at some remark complainant made—but, if he did, his reaction most likely derived from her clearly innocuous query about the credit "marker" which he had, while she was absent, provided for a casino player. I so find.

#### 6. Subsequent developments

Following the conclusion of her August 2-3 shift, complainant was off work for 2 or 3 days. The record reveals that she "left town" briefly; within this decision, her trip to Las Vegas with Rotramel has, heretofore,

been noted. She did not return until late Thursday, August 6, or during August 7's early morning hours.

In the meantime, shortly before noon on Tuesday, August 4, Respondent's general manager had "pulled" Jill Holmes aside, when she reported for work, and had spoken with her privately. According to Holmes, Garwood had reported Rotramel's August 2 discharge, declared that he had made "another change" in Respondent's pit, and stated that he was going to make "as many changes as necessary" until he got the pit situation adjusted the way he wanted.

Respondent has, herein, challenged Holmes' credibility. The record reveals that—shortly before her July 27, 1982 witness chair appearance pursuant to the General Counsel's subpoena—she had been discharged by Respondent's general manager for, allegedly, dislodging and pocketing coins stuck in Respondent's slot machine "payoff" tubes, which various departed players had, presumably, failed to notice and which they had, therefore, neglected to collect. Respondent's counsel suggests that such recently discovered conduct should cast doubt on Holmes' personal "honesty and integrity" generally; he contends therefore that her reported behavior, in this respect, impugns her general "truthfulness and veracity" sufficiently to warrant rejection of her present testimony regarding a year-old situation. I have not been persuaded. It should be noted first that Holmes' testimony, now under consideration, comports fully with her recitals within a prior sworn statement, given to a Board representative on August 14, 1981, shortly after the developments with which we are, herein, concerned; concededly, she was in Respondent's employ—with her personal integrity not yet challenged—when that statement was given. Secondly, Holmes' purportedly improper conduct, recently, was—so the record shows—discovered some 11 months subsequent to her sworn statement; Respondent has not, persuasively, demonstrated that her "truthfulness and veracity" which had not yet been challenged when her prior, consistent, sworn statement was given should be considered impugned, retrospectively, thereby. Thirdly, specific instances of conduct chargeable to a witness—when proffered for the purpose of challenging that witness' credibility—may properly be considered a legitimate subject of inquiry only when, within the discretion of the trier of fact, they are probative of truthfulness or untruthfulness. See Federal Rules of Evidence, Rule 608(b), in this connection. On this record, I have not been satisfied that Holmes' purported conduct, for which she was allegedly discharged—assuming, arguendo, that it really took place—persuasively reflects a longstanding disposition, on her part to be untruthful, generally.

Garwood had, further, reiterated his determination to "straighten up" Respondent's casino pit, getting rid of "problems" or "contention" therein, no matter what it took. Holmes was then notified that she would be given complainant's swing-shift assignment that night, and would be given a 5-day, rather than a 4-day schedule. As Holmes understood it, this meant that she would be working complainant's extra shift.

Further, on Wednesday, August 5, Beth Wright was, so I find, terminated; she had worked for Respondent for

2 years—first as a cook, then as a casino dealer, and finally as a shift pit boss. Before notifying her that she was being dismissed, Garwood had queried Wright—so her credible testimony shows—with respect to whether she was “involved” with the group which included complainant and Gail Demeny, another casino “21” dealer.

Wright had, concededly, discussed Respondent’s suspension of meal ticket privileges with “everyone” concerned, both dealers and fellow pit bosses. She had shared their unhappiness, and had participated in their concerted “decision” to bring sack lunches and refrain from eating in Respondent’s newly leased restaurant. During the July 29 postmeeting gathering in Respondent’s casino area, previously noted herein, Wright had seconded the several protests which complainant and Holmes had voiced.

The pit boss had denied “involvement” with the dealers mentioned. Garwood had, then, asked Wright whether her attitude had changed, since their July 29 meeting. She declared that it had not, commenting that she did not know she had said anything wrong. Respondent’s general manager had then told her he did not “need” her pit boss services further.

When subsequently queried, during the General Counsel’s cross-examination, with respect to Wright’s termination, Garwood denied that she had been dismissed. He conceded, however, that Wright had been told her proper role as Respondent’s shift boss required her to support management’s position whenever situations developed between management and labor—like the meal ticket dispute—“opposing viewpoints” were being presented; that the shift boss had, thereupon, proclaimed her determination to “confront” him whenever she considered his position wrong; and that Garwood had then suggested or invited her resignation. Considered with due regard for its situational context, Garwood’s conceded suggestion that she resign, within my view, conveyed a clear message that Wright’s proclaimed willingness to back casino employee protests with regard to Respondent’s suspension of their meal ticket benefits, and her continued employment, would not be considered compatible. Cf. *L. A. Baker Electric*, 265 NLRB 1579 (1983), and cases therein cited.

On this record, I credit Wright’s version of her conversation with Respondent’s general manager. However, should a determination be considered warranted, consistently with Respondent’s testimonial proffers, that her “resignation” was suggested, I would find in any event that her termination derived, not from her own, but from Garwood’s decision. Realistically, she was dismissed.

#### 7. Schultz is discharged

When Schultz visited Respondent’s casino, on Friday morning, August 7, she was told by Bea Thurber that she had been removed from Respondent’s work schedule. Complainant so I find promptly sought Garwood, who confirmed that she had been “taken off” 2 days previously, and suggested that they repair to his office, where they could discuss the matter. With regard to their discussion, Schultz and Respondent’s general manager have proffered significantly divergent testimonial recitals.

#### a. Complainant’s version

According to Schultz, she reiterated her query with regard to why she had been taken off Respondent’s work schedule. Her testimony, during direct examination, regarding the conversation which ensued, reads as follows:

[He] said he took me off because of my attitude. And I says, “Well, would you explain?” And he said, “Over the meal tickets and the restaurant.” And he said that I had made a comment to a couple of the employees in the restaurant . . . that they could not eat in the restaurant. And I denied that. That is not what I said to them. I told him that I had said to the employees that I thought we were not going to eat in the restaurant. And that was the end. And he came back and stated that—that that is not what they told him. And I says, “Well, then, is that the reason for firing me, or what is the reason—official reason for firing me?” And he stated my change of attitude. And I left.

Complainant denied, categorically, that she had been given “any other reason” for her discharge. She declared that “insubordination” had not been mentioned, claiming—in that connection—that Garwood had made no reference to Joe Ogden, whatsoever.

#### b. Garwood’s version

When summoned by the General Counsel’s representative—shortly after the hearing, herein, convened—Garwood declared, initially, that Schultz, had been terminated for a number of reasons: *First*, because she had been “very insubordinate” to Joe Ogden, her shift boss; *second*, because she had been “very loud and very boisterous” toward a fellow employee, while in Respondent’s newly leased restaurant, with customers present. Respondent’s general manager testified that, before his August 7 confrontation with complainant, he had “considered” her termination, but had not yet reached a decision with respect thereto. Garwood reported his witness chair “thought” that he had spoken to Schultz, regarding her restaurant confrontation, during their August 7 conversation; he could not, however, remember his exact words. He recalled, merely, that he had mentioned matters with respect to which he had considered her conduct “out of line” and that she had been told her services would no longer be needed.

Subsequently, when summoned as Respondent’s witness, Garwood revealed a somewhat amplified memory. He testified during direct examination that, sometime on August 7, he had telephoned complainant, requesting that she visit his office. With respect to their conversation, there, Garwood reported that:

I do not remember the exact words that I told her, but I let her know the circumstances that I was aware of, while she denied none. . . . Well, the circumstances with the shift boss, the circumstances with the scene that was made in the restaurant, and that, you know, this—this type of attitude just cannot be condoned.

According to Respondent's general manager, complainant's attitude "at that particular time" did not appear to be different; she did not feel that she had done anything wrong. During their talk, he concluded, so he testified, that he could no longer tolerate complainant's attitude.

Queried further, by Respondent's counsel, Garwood denied that complainant's behavior during the July 29 meeting, particularly, had motivated his discharge decision. Further, while conceding knowledge that employee sentiment opposed to patronizing the casino's newly leased restaurant had been widespread, *and would have to be curbed*, he denied having been motivated by any thought that Schultz had been a more responsible "instigator" than anyone else, with respect to:

. . . boycotting the restaurant, or hassling the restaurant, or trying to make things uncomfortable for the restaurant.

Respondent's general manager, while a witness, reiterated his position that complainant's determination to refrain from patronizing the restaurant did not "matter" so far as he was concerned. He testified, however, that he had been "bothered" when he discovered that some employees—never named for the record—had been consuming bag lunches while in Respondent's restaurant; Garwood considered such conduct—so he testimonially declared—an "obvious, deliberate attempt to embarrass" his firm's newly designated restaurant lessee.

When cross-examined, subsequently, by the General Counsel's representative, Respondent's general manager purportedly recalled still further details, regarding his final conversation with Schultz. He testified, finally, that:

I told her that—that—you know, I told her the complaints that I had, of the—the reasons that I had her in there. And I told her that she was . . . I told her that I would not need her services. . . . I told her that I—that I had the complaint from Tommy Turner, and we went through that, and that I had already talked to the two dealers that were involved, and we went through that. And I told her about the part with Joe Ogden, and we went through that. And I told her under the circumstances that I did not need her anymore.

Garwood subsequently conceded, however, that he had not mentioned Turner's name, during his discussion with Schultz regarding her restaurant conversation with two fellow dealers. Nor had Turner's name been mentioned, in that connection, when Respondent's general manager gave his sworn prehearing statement.

#### c. Conclusions

On this record, complainant's testimonial recapitulation with regard to her termination interview merits credence, within my view. Garwood's shifting versions with respect to complainant's purportedly objectionable conduct, and the sequence of purportedly relevant events, render his testimony less than reliable.

When he provided his sworn prehearing statement, Respondent's general manager had reported receiving reports that Schultz had "*complained to customers*" regard-

ing the employees' loss of meal ticket privileges; he had declared, further, that during their final conversation she had been taxed, specifically, with making "continued complaints" directed to *customers*, as well as her "encouragement of two dealers" with customers present, to refrain from patronizing the restaurant. While a witness, however, Garwood referred solely to complainant's supposed verbal confrontation with Niemer and Deleo, within Respondent's restaurant. Regarding complainant's purported swing-shift conversation with Pit Boss Ogden, Garwood's testimony further reflects confusion and lack of certainty. His witness chair recitals suggest, confusingly, that their conversation could have taken place on Respondent's August 2-3 swing shift *or* Respondent's August 3-4 shift. Within his sworn prehearing statement, further, Respondent's general manager had reported that Ogden described complainant's challenge, with respect to his qualifications, *before* Garwood learned about the dealer's purported complaints to customers regarding lost meal ticket privileges. While a witness, however, he claimed that Ogden's report, which had *followed* Turner's description of complainant's supposed restaurant contretemps, triggered his determination with respect to her dismissal.

With matters in this posture, I conclude that Respondent's reliance, herein, on Ogden's purported complaint, to justify Schultz' termination, derives from afterthought; that—despite his reiterated, progressively more detailed, testimony with respect thereto—Garwood made no reference to Ogden's purported complaint during his August 7 conversation with Schultz; and that—whatever Ogden's supposed tiff with complainant may have concerned—their brief encounter played no motivating part, when Respondent's general manager declared that her services were no longer required.

Though complainant may have spoken with some of Respondent's employees, subsequent to her termination, regarding their possible unionization, no such discussions took place on Respondent's premises. And, so far as the record shows, they sparked no sustained self-organization campaign.

#### 8. Subsequent developments

Shortly after Respondent's lessee, Alberto Merel, took over casino restaurant operations, Huffman was contacted by potential buyers, who proposed to purchase Respondent's complete casino and conjoined restaurant enterprise. The prospective purchasers concurrently produced \$20,000 in earnest money, which so Huffman testified was placed in escrow. When this case was heard, arrangements looking toward a consummation of the purchase and sale of Respondent's business were, however, still pending; Nevada's Gaming Commission had not, yet, completed requiring action with regard to the prospective purchaser's state gaming license application.

According to Huffman, whose testimony in this respect stands without challenge or contradiction, Respondent's lessee—confronted with some uncertainty with respect to whether the prospective buyers would "keep him on" running the casino's restaurant facility—refused to discuss or consider some "credit system"

whereby Respondent would, meanwhile, handle employee meals. Further, so Huffman testified, Merel started "letting the restaurant go downhill" noticeably. Within 6 months, sometime around the Christmas season, Respondent's part owner therefore terminated Merel's lease. Respondent, thereupon, resumed direct responsibility for the restaurant's operation.

When queried, then, with respect to whether Respondent's former restaurant meal ticket policy, for employees, was thereafter reinstated, Huffman testified that:

I could not reinstate them because the buy-sell agreement that I had with the buyers [provided] that we would try to maintain or run the place [without change] until they were approved for a gaming license. . . I had agreed to leave things as [they were] until they came in . . . or [were] denied their gaming license. [Interpolations in brackets supplied to promote clarity.]

Respondent's employees had, sometime subsequent to complainant's termination, been notified so Huffman recalled that the casino's prospective purchasers planned to continue operations without change, retaining the facility's "whole force" intact. Nothing had been said, however, with respect to whether Respondent's prospective sale would, or would not, affect management's capacity to do "anything" regarding work shift meal privileges. In fact, since Respondent's resumption of direct responsibility for restaurant operations—management's former "meal ticket" policy has never been reinstated. I so find.

### C. Conclusions

On this record, the General Counsel's representative seeks determinations that complainant was participating in genuinely concerted activity; that her course of conduct, throughout, merits characterization—for present purposes—as concerted activity qualified for statutory protection; that Respondent's management was cognizant with respect to complainant's participation in protected conduct; that Respondent's general manager, particularly, displayed legally cognizable "animus" directed toward her, primarily because of her participation in such concerted, statutorily protected activity; that complainant's discharge derived therefrom; and that Respondent's presently proffered double rationale, for her August 7 termination, lacks persuasive record support. Should this Board conclude, nevertheless, that Respondent's claimed double motivation for complainant's dismissal merits acceptance, the General Counsel would presumably seek a determination, further, that management's purported motivation provides no legally cognizable exculpation for the casino dealer's summary termination.

The General Counsel's several contentions, within my view, merit Board concurrence. My reasons for reaching that conclusion herein follow.

#### 1. Protected concerted activity

Within his brief, Respondent's counsel suggests, first, that complainant's course of conduct, revealed within the present record, should not be considered "concerted" ac-

tivity, pursued in conjunction with her fellow casino workers, for mutual aid or protection. Should her course of conduct, within its situational context, be considered conduct nevertheless pursued conjointly with others, directed toward their mutual realization of some shared objective, Respondent contends that the particular "manner and means" which, finally, characterized complainant's personal participation therein removed her conduct, otherwise conceivably protected, from the statute's coverage, and left her vulnerable to privileged discipline, presumably including discharge.

Within my view, Respondent's present contentions, however, lack record support. In totality, therefore, they carry no persuasion.

There can be no doubt, on this record, that "everybody [within Respondent's employee complement] was complaining" with regard to their lost meal ticket privileges; that they were seriously "upset" because of their fringe benefit's suspension; that "just about everybody" was not merely complaining, but likewise protesting because of their loss; that vocal "arguments" with respect thereto had come to management's notice; and that there was "an agreement [which lasted for several weeks] among the employees" not to patronize the casino's restaurant, motivated "primarily" or "partially" by their loss of meal ticket privileges.

(Contrary to Respondent's present contention, these findings do not derive exclusively from testimony proffered by Rotramel, Wright, and Holmes, former casino supervisors. Summoned as Respondent's witnesses, two former casino dealers—Theresa Skaggs and Theresa Stanton—likewise so testified. The quoted phrases, herein above set forth, derive from their witness chair concessions. When cross-examined, Skaggs further conceded monosyllabically that she had been "part" of the restaurant "boycott" noted, because she could not afford to eat there, without meal ticket allowances.)

With matters in this posture, the patently "concerted" nature of the particular protests with which we have, herein, been concerned would seem clear beyond cavil. Respondent's employees, obviously, were not merely seeking relief for purely personal grievances; they were clearly marking common cause, concededly for the purpose of bringing their shared complaint to management's notice. Compare *Ontario Knife Co. v. NLRB*, 637 F.2d 840, 845-846 (2d Cir. 1980); *NLRB v. Bighorn Beverage Co.*, 614 F.2d 1238, 1242 (9th Cir. 1980); *NLRB v. C & I Air Conditioning*, 486 F.2d 977, 978 (9th Cir. 1973); these cases, which define the requirement that statutorily protected conduct must be *concerted*, may clearly be distinguished herein.

And, since the employees' shared complaint, obviously, concerned a common term or condition of their employment—specifically, Respondent's suspension or termination of their meal ticket benefit, without prior notice—their conjoint protests with respect thereto clearly merit characterization as group action for mutual aid or protection.

Complainant's participation in such group action generally has not, herein, been seriously questioned. The record, within my view, fully warrants a determination,

which I make that, like other employees, she voiced her protest with respect to Respondent's withdrawal of meal ticket privileges; that she, like many of her fellows—their total number never specified—refrained from patronizing the casino restaurant; and that she discussed a possible restaurant “boycott” with other casino workers, encouraging them to participate. Whether some, or most, of Respondent's employees reached specific “agreements” with respect to withholding their restaurant patronage matters not; whether they subjectively considered their concurrent withdrawals of patronage sufficient to constitute a literal “boycott” likewise matters not. In practice, through general discussions, there developed, so the record shows, a consensual understanding, clearly shared by some substantial number of Respondent's casino personnel, that they would, for the time being, refrain from purchasing restaurant meals, while on their scheduled work shifts, since Respondent's compensatory “meal ticket” policy had been discontinued. See *NLRB v. Lloyd A. Fry Roofing Co.*, 651 F.2d 442, 445 (6th Cir. 1981), and cases therein cited, in this connection. Complainant may not have been a formally designated spokesperson for Respondent's employees who were so disposed; she may not, even, have been a leading “boycott” protagonist. There can be no doubt, however, that some of Pareco's casino personnel had seemingly spontaneously developed a consensually “concerted” determination to withhold their restaurant patronage pending a satisfactory resolution of their “meal ticket” grievance, and that complainant, among others, shared that determination. I so find.

Within his brief, Respondent's counsel suggests, however, that such a consensually maintained restaurant boycott should not be considered concerted activity for the purpose of collective bargaining or other mutual aid or protection since it was clearly “devoid of any objective” capable of realization.

That suggestion, within my view, misses the mark. The fact that Respondent's employees may not have conceived of some specifically articulated, concrete objective, which their withdrawal of restaurant patronage, per se, might help them realize, will not deprive their concerted protest of statutorily protected coverage. This Board has consistently held, with judicial concurrence, that group action—when undertaken to protest generally applicable changes in wages, hours, or particular employment terms and conditions—will be considered statutorily protected conduct, even though such concerted action viewed by some disinterested observer might be deemed misdirected, or conceivably bottomed on mistaken premises. Further, such concerted action will be considered protected, even though its presumptive purpose may never have been specifically formulated, or publicly proclaimed, by consensually designated or self-appointed spokesmen.

It may be true—as Respondent's counsel notes, tangentially, within his brief—that Respondent's suspension of fringe benefit meal ticket privileges, which the firm's casino workers had previously enjoyed, derived from management's recognition that their required continuation, without some concomitant arrangement whereby Merel might be compensated, promptly, for costs in-

curred, or potential sales “income” lost thereby, would significantly burden casino restaurant operations, and might conceivably strain the limited financial resources of Respondent's restaurant lessee. Arguably, therefore, concerted refusals by Respondent's casino workers to patronize their facility's “in house” restaurant—which, clearly, would not *directly discommode Respondent's management, but which might conceivably do so, indirectly*, since Respondent's lessee would be denied some hoped for, possibly anticipated, revenue, thereby compromising his chances for success—could, herein, be considered misdirected.

Upon this record, however, there can be no doubt that Huffman, nevertheless, recognized the basic purpose which had motivated Respondent's casino employees to withdraw shift meal patronage from their employer's newly leased restaurant facility. Clearly, Respondent's part owner could and did deduce, properly, that a situation had developed with which his firm, *rather than the restaurant's new management*, would be required to cope. Though none of Respondent's casino personnel had brought shared “complaints” or “problems” directly to him, Huffman was concededly cognizant that, as a group, they were “dissatisfied” and significantly “upset” regarding their lost meal benefit.

Huffman's testimony, indeed, warrants a determination—which I make—that he was, likewise, fully aware that many of Respondent's employees were manifesting their disaffection by withholding patronage from the casino's restaurant. He may not have been chargeable with notice that consensual understandings had developed—between some, or perhaps most of Respondent's casino personnel—regarding such a withdrawal of patronage. Nevertheless, he clearly knew enough about the situation to notify Garwood, when Respondent's general manager returned from his vacation, that employee “dissension” had generated a boycott which would require curbing. I so find.

With his general manager gone, Huffman had therefore sought some resolution for Respondent's perceived problem by soliciting his restaurant lessee's cooperation. When notified, however, that because of his limited working capital resources the latter could not help Respondent handle the meal ticket problem, Huffman had deferred further action pending Garwood's return, hoping, so he testified, that “maybe we could work out some type of solution” for it. (Emphasis added.)

Realistically, therefore, the concerted employee protest with which we have, herein, been concerned could not, really, be considered misdirected. Though Respondent's employees may not have been consciously and deliberately pressing for their Employer's concurrence with respect to some specifically formulated program—calculated to replace their suspended meal ticket benefit—they were clearly seeking a definitive “objective” known to their superiors, which they could, legitimately, hope to achieve. Consensually maintained common action, looking toward some mutually desired goal—such as the record, herein, clearly reveals—certainly merits characterization as something more than mere personal “griping” denied the statute's protective reach. Properly

viewed, I find it therefore qualified for Section 7's coverage.

Complainant's restaurant conversation with her fellow dealers, Neimer and Deleo, clearly involved statements and conduct, on her part, whereby she sought to solicit their support for a consensually maintained program, pursuant to which *some* casino employees—their number presently unknown—were withholding patronage from Respondent's newly leased restaurant facility. In short, she was seeking to promote and further "concerted activity" which—within my view, previously noted herein—concerned employees were, then, pursuing for mutual aid and protection. Concerted activity may properly be found present, even where "one person is seeking to induce action" from a group. See *Salt River Valley Assn. v. NLRB*, 206 F.2d 325, 328 (9th Cir. 1953); compare *Signal Oil & Gas Co. v. NLRB*, 390 F.2d 338, 342-343 (9th Cir. 1968); *Root-Carlin, Inc.*, 92 NLRB 1313 (1951), in this connection.

Within his brief, for present purposes, Respondent's counsel substantially concedes these propositions; he suggests, nevertheless, that complainant's statements and conduct should not be considered statutorily protected. Specifically, Respondent's counsel contends that:

The manner in which the Charging Party addressed the other employees removed her comments from any arguably protected arena. Her comments were made in front of ten to twelve customers, were loud enough to attract the attention of a customer engaged in playing an arcade machine fifteen to twenty feet away, were loud and boisterous enough to cause that customer to feel embarrassed for the other customers, the restaurant and himself, and to report the incident to the owner of the facility, and, finally, were said in such a way as to cause the other employees to feel she was trying to impose her will upon them.

This Board has, upon occasion, held, with judicial concurrence, that, given certain conditions, the manner and means employed, when concerned workers pursue a course of conduct statutorily privileged under normal circumstances, may remove their conduct from Section 7's protective reach. Consistently with this line of Board decisions, Respondent's counsel seeks a determination, herein, that complainant's restaurant conversation with her fellow dealers should be deemed flagrantly disruptive of good order, sufficiently so to render her, properly, vulnerable to discharge.

On this record, however, Respondent's proposition, merits rejection, within my view, for several reasons.

*First:* It stands predicated on purported factual underpinnings which lack persuasive record support. Complainant's encounter with Neimer and Deleo *may* have taken place while some disinterested restaurant patrons were present, presumptively within hearing distance. The record in that connection however can hardly be considered clear; certainly, no definitive conclusion, that "ten to twelve" customers *heard* the conversational exchange with which we are concerned, would be warranted. While a witness, Turner could not recall their number;

he cited no reactions, noted, on their part. Complainant's presumptively challenging comment, directed to her fellow dealers, *may* well have "carried" sufficiently, or been sufficiently loud, to attract real estate salesman Turner's attention, some 15 feet distant; upon this record, however, Garwood's presently proclaimed conclusion that she had been notably "loud and boisterous" merits characterization as overblown, within my view. (Turner, while a witness, merely reported herein that complainant's first remark had been sufficiently loud to attract his attention; he further recalled Neimer's reply but proffered no *testimonial* opinion himself regarding its tone, pitch, or volume. Since the real estate salesman's witness chair recollections, herein, reflect no further "discussion" exchanges which he purportedly overheard, determinations would seem warranted, either, that he gratuitously *embellished* his report, after the fact, when queried regarding the incident by Respondent's general manager, or that Garwood subsequently drew *inferences* from their discussion, relative to the restaurant incident, which Turner's reported recapitulation, with respect thereto, could not really have justified.)

While a witness, Turner reported that he had, merely, notified Huffman that some of Respondent's employees—whom he named—had been "out of line" within his view, during a conversational exchange within the casino's restaurant facility; he testified further that Garwood had, subsequently, been told they had "made a scene" there. His proffered recollections with respect thereto, however, reflect nothing more than complainant's comment, previously noted, followed by Neimer's single riposte; thereafter, Turner concededly resumed, and completed, the pinball game with which he had previously been preoccupied. With matters in this posture, Respondent's present claim, herein—that complainant's conduct had been sufficiently disruptive to cause Turner some *personal* embarrassment, purportedly coupled with some parallel, *but presumably empathetic*, discomfiture, merely, for those casino restaurant customers and Lessee Merel's representatives, never specified, who *might*, likewise, have overheard her—carries no persuasion. It suggests, within my view, fanciful exaggeration, rather than objectively based reportage, calculated to embellish a somewhat bald, less than convincing, narrative. Finally, Garwood's present witness chair claim—that Neimer and Deleo had *told* him they subjectively "felt" Schultz had been trying to impose her will on them—provides no reliable, substantial, or persuasive justification for his purported *belief* that complainant's manner had, really, been peremptory or domineering. Schultz' testimony that she had seated herself, without further ado, and that her further conversation with Neimer and Deleo, thereafter, had concerned different subjects—which I credit—stands, herein, without challenge or contradiction.

*Second:* Should a factual finding be considered warranted, nevertheless, that complainant's comment was indeed proffered within the hearing of some restaurant customers, and that it was indeed proffered stridently, vehemently, or boisterously, determinations would, nevertheless, be justified, within my view, Schultz' conduct did not really transgress reasonable limits, within which

concerted activity should be deemed statutorily protected.

When the specific conduct which the General Counsel's representative would characterize as statutorily protected—herein complainant's vocal solicitation of her fellow dealers—has, likewise, been cited by a concerned employer as constituting his purportedly legitimate *business reason* for imposing discipline—or effectuating a discharge—this Board normally determines that concerned employer's statutory culpability, or nonculpability, by applying a so-called balancing test. *NLRB v. Prescott Industrial Products Co.*, 500 F.2d 6, 10 (8th Cir. 1974). It weighs the statutorily validated rights of concerned employees to engage in concerted activity, putatively within Section 7's protective reach, against their employer's likewise undisputed right to maintain discipline, and promote efficient, profitable business operations.

Specifically, this Board determines whether the employer's proffered business reason for a challenged disciplinary reaction, or discharge, should be considered sufficient to override the concerned employer's presumptively protected right to participate in concerted activity for mutual aid and protection. See *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 16–17 (1962); cf. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798 (1945), in this connection. In short, statutory protection will not be extended to *all* concerted activity; the statute's reach, within a given case, will be dependent on circumstances.

Thus: Concerted activity will not be deemed protected when conducted in some presumptively “unlawful” manner. *Restaurant Horikawa*, 260 NLRB 197 (1982); *Mal Landfill Corp.*, 210 NLRB 167 (1974). And language closely related to putatively protected conduct will, nevertheless, be considered unprotected when “so offensive, defamatory or opprobrious” as to warrant its exclusion—within this Board's judgment—from the statute's protective ambit. See *Ben Pekin Corp.*, 181 NLRB 1025 (1970). Other decisional formulations, descriptive of various situations within which statutory protection will be deemed lost, purport to deal with conduct or language, found to reveal “malice or deliberate intention to falsify,” *Westinghouse Electric Corp.*, 77 NLRB 1058, 1060 (1948); “flagrant, violent, serious or extreme misconduct,” *Bruehler Corp.*, 156 NLRB 397, 400 (1965); “malicious opposition to the exercise . . . of a right” by the particular employer concerned, *ibid.*; “offensive, obscene or obnoxious” conduct, *Southwestern Bell Telephone Co.*, 200 NLRB 667, 670 (1972); “the most flagrant, violent, or egregious” cases, *American Telephone & Telegraph Co.*, 211 NLRB 782, 783 (1979); cf. *Dries & Krump Mfg., Inc.*, 221 NLRB 309, 315 (1975); sufficiently “opprobrious, profane, defamatory, or malicious” language, *American Hospital Assn.*, 230 NLRB 54, 56 (1977); or patently “injurious or disruptive” conduct, cf. *Ford Motor Co.*, 246 NLRB 671 (1979); *Postal Service*, 252 NLRB 624, 625 (1980). In cases with respect to which this decisional rubric may, logically and reasonably, be deemed dispositive, this Board has essentially found that a concerned employee's particular conduct fell beyond “acceptable bounds” and thereby lost whatever protection the statute might, otherwise, have provided.

Further, this Board has traditionally recognized that special rules, differentiated from those considered applicable within manufacturing plants, should define employee rights to participate in union-related or concerted activity within retail business establishments. See, e.g., *May Department Stores Co.*, 59 NLRB 976, 981 (1944); *Marshall Field & Co.*, 98 NLRB 88, 92 (1951), *enfd.* as modified 200 F.2d 375 (7th Cir. 1952). Specifically, the Board has noted its determination that—within retail establishments, including restaurants—general atmospheres should be maintained wherein customers may be effectively served, and that consequently broadly preemptive proscriptions of union-related or concerted activity, within those particular “areas” where patrons of the concurred establishment may be present, should not be considered statutorily forbidden. See, e.g., *S. E. Nichols Co.*, 156 NLRB 1201, 1207 (1966); *Zayre Corp.*, 154 NLRB 1372, 1379 (1965). Consistently with this determination, the Board has sanctioned the promulgation and enforcement of properly drafted “no solicitation” rules applicable within retail enterprises, calculated to preclude solicitation, within locales, therein, frequented by the concurred enterprise's customers. *May Department Stores Co.*, *supra*; *Goldblatt Bros. Inc.*, 77 NLRB 1262 (1948); *Marshall Field & Co.*, *supra*; *Montgomery Ward & Co.*, 145 NLRB 846 (1964). Even absent a specific “no solicitation” rule, this Board has similarly found grossly “disruptive” conduct, deemed reasonably likely to disturb a retail customer-salesperson relationship, beyond the statute's protective reach. See *Restaurant Horikawa*, *supra*, in this connection.

None of the Board's decisional principle, noted, would however, warrant a determination—within my view—that complainant's purported restaurant “confrontation” with her fellow dealers, revealed within the present record, was sufficiently disruptive to remove her from the statute's protective compass. For present purposes, her conduct, as previously noted, may properly be characterized as concerted activity for mutual aid or protection. And upon this record no determination would be warranted, within my view, that her “engagement” therein occurred under such circumstances as to warrant her loss of Section 7's protection.

*First*: I noted that, while some patrons may, indeed, have been present—within the newly leased casino restaurant facility—the record, herein, provides no persuasive warrant for a finding that *those restaurant patrons* particularly, regardless of their number or location within the facility, had heard complainant's conversation with her fellow dealers. Certainly, none of them had complained. Real Estate Salesman Turner, Huffman's coffee-time companion and Garwood's conceded business contact—had, alone, provided Respondent's management representatives with reports regarding the purported “incident” which he—though not a restaurant patron—had, fortuitously, overheard. *Second*: Nothing within the record would warrant a determination that complainant's conduct had been genuinely disruptive of good order. Previously, within this decision I have noted the lack of substantial, reliable, or persuasive testimony that complainant's single confrontational remark had actually

been sufficiently "loud and boisterous" to constitute or generate a disturbance. Further, I have noted that complainant's purportedly loud "discussion" with Neimer had clearly been notably brief; it had compassed little more than complainant's supposedly challenging comment, which Neimer, one of the two dealers addressed, had promptly countered—so Turner testified—with a firm, but nonabusive rejection. (This Board has consistently held that a concerned employer's professed "belief" regarding a particular employer's suspected misconduct cannot be relied on to justify a discharge—motivated, *prima facie*, by statutorily proscribed considerations—without some proof that the employer's claimed belief had some reasonably well-grounded *factual* basis. No such showing, with respect to Garwood's professed "belief" regarding complainant's conduct, has, within my view, been made herein.)

*Third:* I noted that Respondent seeks to justify complainant's discharge, herein, for conduct which facially at least did not take place within her place of employment, Respondent's casino facility. Thus, even assuming—for the sake of argument—that the particular conversational exchange now in question may have involved some bickering and dissension, nothing within the record would suggest that it had, or could have, interfered with Respondent's casino operations. Compare *Stuart F. Cooper Co.*, 136 NLRB 142, 144–145 (1962). Wherein this Board found that "Persistent" bickering and dissension for which particular employees were clearly responsible had interfered with the *concerned employer's* production. Nor could any determination be considered warranted that a Schultz-Neimer confrontation would have been "inherently" likely to disturb the "efficient operation" of Respondent's casino business. Compare *Caterpillar Tractor Co. v. NLRB*, 230 F.2d 357 (7th Cir. 1956). If anyone could have been considered entitled to take responsive action, designed to curb complainant's conduct, it would have presumably been Respondent's newly designated restaurant lessee, who was, then, maintaining a separate, legally distinguishable, business enterprise. And his remedy would necessarily have been bottomed on separate charges of trespass, assuming that complainant had been requested to leave, but had refused.

In short, without proof of genuinely disruptive conduct, chargeable to Schultz, which took place within Respondent's defined casino premises, or, which interfered proximately within *casino* operations, no determination would be warranted that she had conducted herself in such an offensive or flagrantly obnoxious manner as to "depart from the *res gestae* of concerted activity and expose [herself] in an area beyond" Section 7's protective reach. *Thor Power Tool Co.*, 148 NLRB 1379, 1380 (1964), *enfd.* 351 F.2d 585 (7th Cir. 1965). See further *Union Carbide Corp.*, 171 NLRB 1651 *fn.* 1 (1968). This Board held, therein, that:

Where, as here, the conduct in issue [herein, complainant's purported restaurant confrontation, with two fellow casino dealers] is *closely intertwined* with protected activity, the protection is not lost unless the impropriety is egregious. [Interpolation added for clarity. Emphasis added.]

Complainant's purportedly improper conduct, herein, was clearly directly related to her prior concerted activities, with respect to which Respondent's management concededly proffers no present challenge. Upon this record, that conduct cannot legitimately be considered flagrantly disruptive. I find it qualified for characterization as statutorily protected.

## 2. Respondent's knowledge

Within his brief, Respondent's counsel suggests that, nevertheless, "even assuming there was some agreement among the employees not to eat in the restaurant and that the agreement was designed for mutual aid or protection" no evidence has been proffered showing *knowledge of such an agreement* on the part of Respondent's management. Counsel contends that, without evidence of such knowledge, specifically, the General Counsel's case should fail. For several reasons, however, I find Respondent's present contention lacking in persuasive thrust.

*First:* The record, considered in totality, will support a determination—within my view—that, while Huffman may not have been particularly cognizant of some consciously formulated "agreement" reached by Respondent's employees, pursuant to which some of them—at least—withheld their patronage from his casino's newly leased-out restaurant, Respondent's management representatives were, nevertheless, fully aware that "dissension" regarding lost meal ticket privileges, manifested by many within their personnel complement, had sparked a consensual determination that some adjustment remedial or corrective in character, should be sought, which determination complainant shared. Compare *Signal Oil & Gas Co. v. NLRB*, *supra*, 390 F.2d at 342. Garwood's references to some "clique" or "group" chargeable with fostering employee protests—the group which, within his view, included complainant herein—suggests, persuasively, Respondent's *knowledge* or *belief* that complainant was participating in concerted action.

*Second:* Garwood has, while a witness herein, conceded that complainant was not discharged for, *inter alia*, manifesting her dissatisfaction, or for protesting Respondent's suspension of meal ticket benefits, personally or through her participation in group discussions. Further, she was not terminated—so Respondent's general manager presently concedes—for supposedly "instigating" refusals, generally, to patronize the casino's newly leased-out restaurant. (Since Respondent has eschewed such contentions, determinations that Huffman and Garwood were vicariously cognizant of complainant's statements and conduct—bottomed on the knowledge of Respondent's pit bosses, Rotramel, Holmes, Wright, and Gus Lindholme, with respect thereto, legally imputable to their superiors—will presumably not be required.)

Respondent contends, rather, that Schultz was dismissed *specifically* because she had—supposedly under egregious circumstances—taxed two fellow dealers with failures to withhold their patronage, consistently with a consensual understanding which she believed Respondent's casino personnel had, theretofore, reached. In that connection, Garwood's direct knowledge, regarding

complainant's tacit solicitation of Neimer's and Deleo's cooperation, can hardly be gainsaid. Real Estate Salesman Turner had notified Huffman—and later Respondent's general manager—with respect thereto; both Neimer and Deleo had, so Garwood testified, subsequently confirmed Turner's report. Within his brief, Respondent's counsel concedes that Pareco's management representatives were, indeed, cognizant of complainant's restaurant "discussion" with her fellow dealers; certainly Huffman and Garwood could infer—based on what they already knew—that Schultz was soliciting Neimer's and Deleo's cooperation, in connection with a concerted protest regarding Respondent's suspension of employee meal ticket privileges. I so find.

### 3. Respondent's motivation for complainant's discharge

Upon this record, there can be no doubt that both Huffman, Respondent's proprietor, and General Manager Garwood were seriously disturbed when confronted with clear cut evidence of widespread employee complaints, sparked by Respondent's decision to suspend their meal ticket benefits. Both were determined—so the record shows—that overtly manifested "dissension" prompted by Respondent's decision would have to be curbed, somehow. (Clearly, Huffman felt that Respondent's employees had a legitimate grievance, and would have to be mollified; he sought some arrangement whereby Respondent's restaurant lessee might provide fixed-price specials, or discounted meal service for Respondent's casino personnel, for which requisite compensation—from Respondent specifically—would, subsequently, be provided. Respondent's lessee had, however, considered himself constrained, for business reasons to reject Huffman's several suggestions. With matters in this posture, Garwood had, concededly, tried to "calm [things] down" pending Respondent's further efforts to resolve matters, by directing Respondent's casino personnel forcefully, to refrain from "bad mouthing" his firm's newly leased-out restaurant facility. Respondent's general manager was clearly determined to curb—without further ado—what he considered employees' plans to "boycott, hassle, or make things uncomfortable" for Alberto Merel's restaurant management.)

Within his brief, the General Counsel's representative suggests that Garwood revealed "tremendous hostility" toward Respondent's employees, because of their "concerted" complaints and consequent conduct. That suggestion may conceivably overstate the case. Clearly, however, Respondent's management representatives had been noticeably taken aback when the casino employees reacted, as strongly as they did, following their meal ticket benefit's loss. Management's concern, with respect thereto, was indeed freely manifested. Huffman was concededly distressed; he may well have felt frustrated, discomfited, and worried. Presumably for the moment neither he nor Garwood could, so they claimed, conceive a workable solution for Respondent's presumptive dilemma. (While a witness, Huffman reported, simply, that he could not have replaced Respondent's previously maintained "meal ticket" subvention system, then and there, with straight cash meal money allowances, payable di-

rectly to Pareco's casino workers. However, his testimonially claimed lack of capacity to do so—directly following his restaurant lease's execution—has not, herein, been explained.)

With matters in this posture, Garwood's reaction—when confronted with reports that, despite his efforts to "curb" demonstrations of dissatisfaction, complainant was still soliciting cooperation from her fellow workers, with respect to withholding patronage from Respondent's leased-out restaurant facility—may not, reasonably, be considered derived from genuinely virulent hostility. Clearly, however, the general manager's reflexive response constituted another manifestation of Respondent's basically negative "nothing-can-be-done" posture; further, it reflected his conceded determination to quell, forthwith, concerted employee behavior calculated to pressure Respondent's management—either into restoring "meal ticket" privileges, or providing, alternatively, some substantially equivalent *replacement* benefit. (Garwood had, prior to complainant's discharge, terminated Rotramel for "instigating" employees against the restaurant. He had notified Holmes that he was determined to "straighten [matters] up" by getting rid of "problems" and "contention" within Respondent's casino pit complement, making whatever "changes" the situation required. Pit Boss Wright had been terminated because she had, forthrightly, proclaimed her continued support for casino employee protests regarding their meal benefit loss. Though Respondent's general manager had—in this connection—been dealing with conceded supervisors, his statements and conduct clearly reflect his mind set.)

Herein, therefore, Garwood's final decision, with respect to complainant's replacement and discharge, clearly manifested Respondent's cognizable "animus" statutorily proscribed; I so find.

Respondent's further contention—that complainant was dismissed, without "animus" statutorily proscribed, for flouting Garwood's purportedly "no discussion-no complaint" dictate, calculated to prevent *public* comments, particularly within the casino's leased-out restaurant facility, which might be overheard by casino patrons or restaurant customers—likewise merits rejection, for several reasons.

*First:* Garwood's reported command, sparked by the situation which Respondent's management confronted, was clearly overly broad. He did not, so I have found, purport to proscribe—merely—discussions or vocal complaints by Respondent's personnel, within their *working* time, or within *public* areas, which casino or restaurant patrons might overhear; previously, within this decision, determinations have been made that Respondent's general manager, rather, declared that *he did not want to hear any more reports regarding employee complaints* relative to the casino's meal ticket situation. The record, further, warrants a determination—which I have made—that he threatened Respondent's casino personnel with wholesale discharges if *he* heard "anything more" regarding employees who were reportedly "badmouthing" or "boycotting" the restaurant. In so doing, he gave *no* indication that proscribed talk would be considered banned within particular time periods or particular areas, merely.

Since Pareco's casino workers were, realistically, confronted, thereby, with a broadly phrased gag rule—one which, on its face, clearly did more than proscribe "working time" or "public" comments, relative to their meal ticket grievances, which casino restaurant customers *might* conceivably hear—their statutorily guaranteed right to discuss their shared grievance and consider measures for some "mutual aid or protection" was, necessarily, limited. This Board has consistently held that such overly broad "no solicitation" rules, when promulgated, cannot be enforced, legitimately, even when relied on to justify discharges or discipline which some properly circumscribed, less restrictive, rule might have validated. Compare *Essex International*, 211 NLRB 749 (1974), in this connection.

*Second:* While the record will, preponderantly, warrant a determination that Garwood did indeed direct Respondent's pit personnel specifically to refrain from consuming their "brown bag" lunches within Alberto Merel's newly leased restaurant facility, complainant was not concededly discharged for flouting that restriction. Nor does Respondent claim, herein, that she had even suggested or solicited violations of Garwood's concurrent suggestion or directive, that employees' personal "sack" lunches might be consumed within the confines of Respondent's casino dance hall. This Board *could* conclude, on the record, that—with respect to this particular matter—Respondent's general manager did indeed promulgate a properly restricted rule, calculated to insulate Merel's leased restaurant facility from whatever "embarrassment" the firm's lessee might conceivably suffer, should casino employees consume food—there—which they had personally purchased or prepared elsewhere. Clearly, however, no violation of that presumptively privileged directive, chargeable to complainant, had been demonstrated herein.

With matters in this posture, then, counsel's present contention, that Schultz was effectively terminated for violating some properly promulgated rule, carried no persuasion.

The present record, rather, provides several persuasive "indications" beyond those previously noted that complainant's termination derived from a statutorily proscribed motive. She was dismissed within a week subsequent to Garwood's July 29 confrontation with Respondent's casino personnel, during a period which had been worked—despite his purported efforts to curb dissension—with continued manifestations of employee discontent. Her purportedly "official" termination date, August 5, coincided with Beth Wright's forced departure, and followed Rotramel's dismissal by 3 days, merely. (All three separations clearly derived from comparable circumstances. Rotramel had been told, by Garwood, that he had learned she was "instigating" casino workers against Merel's restaurant operation. Wright had been queried regarding her relationship with the "group" which had supposedly been spearheading employee protests against Respondent's decision to discontinue their meal ticket privileges. Consistently with the General Counsel's contention, I note that Garwood's formulations regarding the reason for both discharges, purportedly bottomed on their suspected disloyalty as managerial em-

ployees, reflect the concern with which Respondent's general manager viewed his pit crew's discontent, and confirm the seriousness of his threat to clear the casino's personnel complement of "troublemakers" so-called. While a witness, Garwood conceded that he had considered complainant, likewise, a member of the dissatisfied "clique" with which Rotramel and Wright had, presumably, been associated. He was clearly determined to identify and terminate all the "instigators" and "perpetrators" within the group which Huffman and he considered directly responsible for meal ticket protests.)

Respondent general manager's course of conduct, in short, patently reveals his concern regarding a potential for continued "dissension" difficulties, should complainant's demonstrated disposition to press for solidarity within Respondent's casino crew—with regard to their meal benefit's loss—remain unchecked. Within his sworn prehearing statement, Garwood claimed that—during discussions with various dealers, individually, subsequent to their July 29 conference—he had been able to "satisfy" them regarding their benefit's suspension, but that Schultz' purported "complaints to customers" had continued. While a witness, however, Respondent's general manager conceded that the only such "customers" he had been *told* about were those—never specified as to number—who *might* have overheard complainant's brief restaurant conversation with her fellow dealers.

This Board may, properly, note further that—presumably because of his particular concern—Garwood treated complainant differently from several other casino workers whom he had previously been given cause to discipline. One dealer, Bob Tuttle, whom Garwood eventually terminated, had previously been sent home several times, because he had reported for work drunk. On one such occasion he had publicly castigated Respondent's general manager. His drunkenness, late reporting, and argumentative behavior had, however, clearly been tolerated, at least for a time. Theresa Lawson, another dealer, had been publicly criticized by Garwood—while some casino patrons were present within hearing distance—for reportedly rude behavior toward customers; she had not, however, been further disciplined. Within this context, Garwood's determination to discharge complainant without first seeking her version of the restaurant incident, clearly bottomed upon her demonstrated "concerted activity" calculated to promote mutual aid and protection, reflects disparate treatment which—within my view—should call for statutorily warranted proscription. Compare *Ranger Baker, Inc.*, 222 NLRB 828, 832 fn. 18 (1976); *Baker Hotel of Dallas*, 134 NLRB 524, 537 fn. 23 (1961), and related text, *enfd.* 311 F.2d 528 (5th Cir. 1963), in this connection.

#### 4. Respondent's contention that Schultz was dismissed for unprotected conduct

Respondent contends, nevertheless, that—without regard for "whatever illegal motives" management representatives may have harbored—Garwood would have terminated complainant, in any event, because of her "in-subordinate" remarks to Joe Ogden, her newly designated supervisor, alone.

This Board has held, with Supreme Court concurrence, that, when discharges are challenged as violative of the statute, the General Counsel must show, minimally, that the purported discriminatee's protected conduct was a "substantial" or a "motivating" factor for a concerned employer's questioned action. When that showing has been made, the designated employer can still avoid being held in violation of Section 8(a)(3)'s and/or Section 8(a)(1)'s proscriptions, but *only* by showing that his challenged course of conduct *likewise* rested on the particular employee's unprotected conduct, *and* that his discharge decision or disciplinary action would have been taken, on that ground, in any event. *Wright Line*, 251 NLRB 1083 (1980), *enfd* 662 F.2d 899 (1st Cir. 1981) cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 103 S.Ct. 2496, 97 LC ¶ 10,164 (1983). Consistently with this decisional rubric—clearly—contentions that a challenged discharge, or some other disciplinary action, would have been effectuated "in any event and for valid reasons" constitute an affirmative defense, with respect to which concerned employers carry the burden of proof, which they must satisfy by a preponderance of the evidence. See *NLRB v. Transportation Management Corp.*, *supra*, in this connection.

Herein, Respondent seeks an exculpatory determination, consistently with *Wright Line's* requirements, that complainant was "grossly insubordinate" when she purportedly told her newly designated pit boss that he was not competent to perform his supervisory functions, and less competent than his predecessor. With this for his predicate, Respondent's counsel would contend that—when a worker challenges his supervisor's qualifications—his conduct provides a privileged basis for termination. Further, counsel would have this Board find complainant's purported criticism of Ogden's qualifications "particularly aggravated" because it had—so Ogden testified—been volunteered with casino patrons present; such discourtesy manifested "in front of" customers, counsel contends, likewise provides a valid justification for dismissal. In substance, therefore, Respondent claims herein that complainant's purported "discourtesy and bad attitude" displayed during her supposedly confrontational conversation with Pit Boss Ogden reflects statutorily "unprotected" conduct, sufficiently gross to provide a privileged rationale for her discharge, whether or not she was concurrently involved in concerted activity for mutual aid or protection.

I have not been persuaded. Within my view, Respondent has failed to demonstrate, preponderantly, that—without complainant's participation in concerted activity herein found statutorily protected—she would have, in any event, been terminated. My reasons follow.

*First:* Determinations have been reached, previously within this decision, that Pit Boss Ogden's testimonial version of their August 2-3 late shift conversation merits no credence. Complainant's contrary testimony—which reflects some quite innocuous query, completely devoid of purportedly disparaging references to her newly designated supervisor's qualifications—has, rather, been found more worthy of belief. On this record, therefore, Respondent's quintessential predicate for some contention that Garwood really had a privileged justification

for effectuating complainant's termination clearly has not been preponderantly established.

*Second:* Should a determination be considered warranted nevertheless that complainant had, indeed, questioned Ogden's qualifications, Respondent's defensive presentation, within my view, fails to demonstrate, persuasively, that her conduct, dispassionately considered, provided some "valid reason" for dismissal, or that Respondent's general manager would really have terminated her for such conduct, alone, absent her contemporaneous participation in protected concerted activity, herein found.

While a witness, Garwood described Schultz' behavior as "very insubordinate" toward her superior, sufficiently so that, had he been present, he would have discharged her forthwith. His witness chair characterization, however, may reasonably be considered, within my view, overblown. (In dictionaries, insubordination has been defined as a *refusal to submit to authority—disobedience* involving some *neglect or refusal to follow positive orders*, violation of some *prohibition*, or some *rule infraction* reflected in *particular instances*, or habitual. Clearly, complainant's purported remarks—if she made them—never reached the level of disobedience. Assuming, for the sake of argument, that she did make the comments alleged, determinations might be considered warranted, at most, that she had been presumptuous—that she had taken liberties, or overstepped bounds—but hardly that she had been insubordinate.)

Previously, within this decision, note has been taken of Ogden's testimony that he had not "really" been "upset" personally; that Schultz' purported comments had allegedly been proffered more or less offhandedly; that their purported conversational exchange had not interfered with, interrupted, or affected complainant's work performance; and that—when he reported the matter to Respondent's general manager—they had not had "much of a conversation" regarding the situation. Though Schultz' purported remarks—if made—presumably had been proffered within the hearing of some casino patrons, her conversational exchange with Ogden had concededly been brief; further, neither complainant, nor her superior had—so far as the record shows—been contentious. Respondent's purportedly corroborative testimonial proffers, calculated to suggest that their conversation had, nevertheless, generated some "tension" which had, allegedly, distressed or disturbed casino patrons, have, herein, been found exaggerated. And Garwood—despite his readiness, on other occasions, to reprimand dealers for discourtesy shown directly to patrons, and despite his present contention that he would have dismissed complainant, *immediately*, had he been present—took no action whatsoever directly following Ogden's supposed report. Schultz was neither censured, nor temporarily removed from shift service. With matters in this posture, Respondent has not—within my view—demonstrated, preponderantly, that complainant's purported misconduct, if it did occur, would—reasonably and dispassionately considered—should be deemed a genuinely "valid reason" for her termination.

Further, on this record, I remain satisfied that she was not, in fact, discharged for such misconduct and, indeed,

would not have been discharged because of her purported insubordination—had it really occurred—absent her involvement in statutorily protected conduct. As previously noted, complainant's testimony, that her supposed "insubordination" was *not* mentioned during her August 7 termination interview, has herein been credited. But, assuming *arguendo* that her purported misconduct may have been mentioned, and that Garwood may have purported to rely on it to justify complainant's termination, I would conclude, as previously noted, that the general manager's possible references thereto as derived from afterthought. In short, I would find his purported present reliance thereon purely pretextual—or, if not pretextual, then "blown up out of proportion" herein, because of his desire, thereby, to "veil" Respondent's statutorily proscribed motivation.

As noted, the General Counsel has, so I find, made out his *prima facie* case. And Respondent has not, within my view, sustained its burden of persuasion that complainant would have been terminated—purportedly because of her supposedly "insubordinate" confrontation with a superior—absent her participation in statutorily protected conduct. Contrary to Respondent's contention, therefore, I find *Wright Line's* several requirements, for a finding of violation, herein, satisfied.

#### IV. THE EFFECT OF UNFAIR LABOR PRACTICE ON COMMERCE

The unfair labor practice described in section III, above, and herein found to have been committed by Respondent's management—since it occurred in connection with Respondent's business operations noted within section I of this decision—had, and continue to have, a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction it would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

In view of the findings of fact and conclusions set forth, previously, within this decision, and on the entire record in this case, I find the following conclusions of law warranted.

1. Respondent herein, Pareco, Inc. d/b/a Saddle West Restaurant and Casino, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act.

2. Diana Jean Schultz was, throughout the period with which this case is concerned, Respondent's employee, engaged in concerted activity statutorily protected within the meaning of Section 7 of the Act.

3. Philip Garwood, Respondent's general manager—when he terminated the employment of Diana Jean Schultz under the circumstances described within this decision—interfered with, restrained, and coerced Respondent's employees, generally, with respect to their exercise of rights statutorily guaranteed. Thereby, Respondent engaged, and continues to engage, in unfair

labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

#### REMEDY

Since I have found that Respondent committed, and has thus far failed to remedy, a specific unfair labor practice which affects commerce, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act.

Specifically, I have found that Section 8(a)(1) of the statute was violated when Respondent's general manager dismissed Diana Jean Schultz for statutorily forbidden reasons. I shall, therefore, recommend that Respondent be required to offer complainant herein immediate and full reinstatement to her former position, dismissing if necessary any replacements hired for that position subsequent to her termination. Should that position no longer exist, complainant should be reinstated to a substantially equivalent position, without prejudice to her seniority or other rights and privileges. (When this case was heard, Respondent's principal part owner, Robert Huffman, reported that negotiations for the sale of Respondent's Pahrump facility to third parties had generated a contract of sale, with respect to which a substantial sum, provided by the prospective purchasers, had been placed in escrow. The close of escrow was—so Huffman reported—dependent on the Nevada Gaming Commission's approval of a license for the purchasers. Should the sale have been consummated prior to this decision's issuance, or prior to whatever Board decision further proceedings herein might produce, the purchaser's responsibility for effectuation of the remedy recommended herein should be determined in compliance negotiations, or formal proceedings related thereto.)

Respondent should be further required to make Diana Jean Schultz whole for any pay losses which she may have suffered, or may suffer, by reason of her statutorily proscribed termination, by the payment to her of whatever sums of money she would normally have earned as wages, from the date of her termination, herein found, to the date on which Respondent offers her reinstatement, less her net earnings during the period designated. Whatever backpay complainant may be entitled to claim should be computed by calendar quarters, pursuant to the formula which the Board currently uses. *F. W. Woolworth Co.*, 90 NLRB 289, 291-296 (1950). Interest thereon should likewise be paid, computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977); see generally *Isis Plumbing Co.*, 138 NLRB 716 (1962), in this connection.

Since Respondent's course of conduct, herein found violative of the law, reveals no pervasive proclivity to violate the statute, and reflects no egregious or widespread misconduct demonstrating a general disregard for employees' fundamental statutory rights, no broadly phrased cease-and-desist order would seem warranted. See *Hickmott Foods*, 242 NLRB 1357 (1979). Respondent will, therefore, be required merely to cease and desist from repetitions of the specific unfair labor practice

found, and from violations of the statute, in any like or related manner, hereafter.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Pareco, Inc. d/b/a Saddle West Restaurant and Casino, Pahrump, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or laying off employees, or discriminating in any manner with regard to their hire or tenure of employment, or their terms and conditions of employment, because of their participation in concerted activities for the purposes of collective bargaining or other mutual aid or protection, which involve their exercise of rights statutorily guaranteed.

(b) Interfering with, restraining, or coercing employees in any like or related manner with respect to their exercise of rights which Section 7 of the statute guarantees.

2. Take the following affirmative action which will effectuate the policies of the Act.

(a) Offer Diana Jean Schultz immediate and full reinstatement to her former position or, should that position no longer exist, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any pay losses which she may have suffered, or may suffer, because of her statutorily proscribed termination, plus interest, in the

manner and to the extent set forth within the remedy section of this decision.

(b) Preserve, until compliance with any order for backpay promulgated by the Board in this proceeding and, on 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 relevant and necessary to reach a determination with respect to the amount of backpay due, pursuant to this Order.

(c) Expunge from its files any references to Diana Jean Schultz' August 1981 termination, and notify her, in writing, that this has been done, and that evidence of her termination will not be used as a basis for future personnel actions affecting her.

(d) Post, within Respondent's Pahrump, Nevada place of business copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, shall be posted immediately upon receipt after being signed by Respondent's authorized representative. The notice shall remain posted for 60 consecutive days in conspicuous places including all places where notices to Respondent's employees have customarily been posted. Reasonable steps shall be taken by Respondent to ensure that these notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director within 20 days from the date of this Order what steps Respondent has taken to comply.

<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>2</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."