

Leather Center, Inc. and International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL-CIO. Case 16-CA-14624

July 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 18, 1992, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified and set forth in full below.³

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

"3. The Respondent has violated Section 8(a)(1) of the Act by interrogating employees regarding their

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

The Respondent has excepted to the judge's finding that employee Michael Cantu was discriminatorily laid off in violation of Sec. 8(a)(3) of the Act. The Respondent contends that the General Counsel did not allege in the complaint that Cantu was selected for layoff because of his union activity and that this issue was not litigated at the hearing. We disagree. The complaint alleges at par. 11 that Cantu was laid off because he "joined, supported, or assisted the Union," and the record shows that this issue was fully litigated at the hearing. Accordingly, we find no merit to the Respondent's exception.

In sec. III,B,2, par. 41 of his decision, the judge stated that Union Representative Tom Keane testified that of the 25 employees who were laid off, only 2 were not members of the union organizing committee. The record shows that 6 of the 25 laid-off employees were not members of the union organizing committee. This inadvertent error does not affect the outcome of the case.

² The judge found that the Respondent violated Sec. 8(a)(1) by threatening employees with plant closure and by creating the impression that their union activities were being monitored, but he failed to include these findings in his conclusions of law. Thus, we will amend the judge's conclusions of law to include these findings.

³ We shall modify the judge's recommended Order to require the Respondent to remove from its files any reference to the unlawful layoffs, and to require that the Respondent cease and desist from threatening employees with plant closure and creating the impression that the union activities of the employees are being monitored. We shall also substitute a narrow cease-and-desist order for the broad order recommended by the judge.

union activity, threatening employees with discharge, plant closure, loss of benefits, or other reprisals because of their union activity, creating in the minds of employees the impression that their union activities are being monitored, and suggesting that an employee would receive a promotion if he discontinued his union activity."

ORDER

The National Labor Relations Board orders that the Respondent, Leather Center, Inc., Carrollton, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge, plant closure, loss of benefits, or other reprisals, in the event they select or fail to select International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(b) Coercively interrogating employees about their union activities.

(c) Creating in the minds of its employees the impression that their union activities are being monitored.

(d) Suggesting to employees that they may be promoted in the event they discontinue their support for the Union.

(e) Laying off employees because of their union activity.

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

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

(a) Offer to the following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision:

Yvonne Acy	Carmelo Hernandez
Alicia Alfaro	Rafael Hernandez
Everett Alvarado	Tom Jordan
Jesus Aranda	Joseph Minero
Juan Becerra	Rolando Morante
Juan Jose Cabral	Tom Norton
Simon Cruz	Antonio Olivarez
Claudia Espinoza	Catalina Perez
Diana Garcia	Victor Rodriguez
Miguel Gonzales	Paul Salazar
Enedina Gonzalez	David Salinas
Eli Hague	Martin Vargas
David Luna	Michael Cantu

(b) Remove from its files any reference to the unlawful layoff of the above-named employees and notify each of them in writing that this has been done and that the layoff will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Carrollton, Texas facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

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. Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with discharge, plant closure, loss of benefits, or other reprisals in the event you select or fail to select International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL-CIO, or any other labor organization, as your collective-bargaining representative.

WE WILL NOT coercively interrogate you about your union activities.

WE WILL NOT create the impression in your minds that we are monitoring your union activities, or suggest to you that you may be promoted if you discontinue your support for the Union.

WE WILL NOT lay off or otherwise discriminate against any of you for supporting International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL-CIO or any other union.

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 to the following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest:

Yvonne Acy	Carmelo Hernandez
Alicia Alfaro	Rafael Hernandez
Everett Alvarado	Tom Jordan
Jesus Aranda	Joseph Minero
Juan Becerra	Rolando Morante
Juan Jose Cabral	Tom Norton
Simon Cruz	Antonio Olivarez
Claudia Espinoza	Catalina Perez
Diana Garcia	Victor Rodriguez
Miguel Gonzales	Paul Salazar
Enedina Gonzalez	David Salinas
Eli Hague	Martin Vargas
David Luna	Michael Cantu

WE WILL remove from our files any reference to the unlawful layoff of the above-named employees and notify each of them in writing that this has been done and that the layoff will not be used against them in any way.

LEATHER CENTER, INC.

Ruth Small, Esq. and *Edward Valverde, Esq.*, for the General Counsel.

Robert G. Mebus, Esq. and *William P. Finegan, Esq.* (*Haynes & Boone*), of Dallas, Texas, for the Respondent.

Jaime P. Martinez, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Fort Worth and Dallas, Texas, on June 25, 26, and 27; July 16, 17, and 18; and August 6, 7, and 8, 1991. The Charge was filed by International Union of Electronic, Elec-

trical, Salaried Machine and Furniture Workers, AFL-CIO (the Union) on June 25, 1990. An amended charge was filed by the Union on June 26, 1990. Thereafter, on September 28, 1990, the Regional Director for Region 16 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations by Leather Center, Inc. (the Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). On the same date the Regional Director issued an order directing hearing, order consolidating cases and notice of hearing, whereby a related representation case (Case 16-RC-9308) was consolidated with the unfair labor practice proceeding for the purpose of resolving election objections filed by the Union following a representation election held on June 29, 1990.¹ The Respondent's answer to the complaint, duly filed, denies the commission of any unfair labor practices.

On August 27, 1991, subsequent to the close of the hearing, the Union requested the dismissal of the representation proceeding in order to permit the election results to be certified, and set forth its intention to file a new election petition. By Order dated September 6, 1991, I granted the Union's request, severed the representation proceeding from the unfair labor practice case, and remanded the representation matter to the Regional Director.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for the Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation with its principal office and place of business located in Carrollton, Texas, where it is engaged in the manufacture, distribution, and sale of leather furniture. In the course and conduct of its business operations the Respondent annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Texas.

It is admitted, and I find, that the Respondent is now, and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the above-named Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are whether the Respondent has violated and is violating Section 8(a)(1)

¹The tally of ballots shows that of approximately 222 eligible voters the vote was 70 for and 112 against the Union, and 29 ballots were challenged.

and (3) of the Act by interrogating employees and threatening them with discharge, and by laying off 26 employees as a result of their interest in and activities on behalf of the Union.

B. *The Facts*

1. The 8(a)(1) violations

The Respondent manufactures leather furniture. It sells the furniture through approximately 26 showrooms located throughout the United States, and maintains its manufacturing facility in Carrollton, Texas, where, at the time of the events here, it employed approximately 200 production employees.

Employee Diana Garcia and her husband, who did not work for the Respondent, were instrumental in initially contacting the Union. Garcia testified that on March 22, 1990,² Production Manager Ricardo Sanchez called Garcia to his office. He said he just wanted to ask her a question and he wanted her to answer with the truth. He said that some people were telling him that she and her husband were trying to bring in the Union. Garcia denied it, and asked Sanchez to name the people. He refused to give her their names. He told her that whatever she said it would not be held against her or cause her any harm, and that he merely wanted to know what the problems were so that he could help.

Sanchez also said, according to Garcia, that he had worked for a union or under a union contract about 10 years before and there wasn't anything good about it; that unions obtained very little, and used all kinds of lies and other things to obtain the signatures of the people. He told her that there could be nothing good in the way the union hides its activities, and made the analogy that it is "like when a man rape a little girl he is doing that in hiding because it is an ugly and bad thing to do and that was the way that the Union was working in hiding." Sanchez went on to say that:

And, if the Union comes to the company [it is] going to obtain very few things. The company even is possible to be closed. What everybody here is going to do without work? So, that's what he wants to help to the people because many people signed without knowing what they are signing for. He wants to help everybody there. Whenever he wants to go to his offices his doors were always open for everybody.

Ricardo Sanchez testified that shortly after being told of Diana Garcia's activity on behalf of the Union, Sanchez called her into his office. He told her that he had heard that she and her husband were trying to bring in the Union. Garcia denied that she and her husband were engaged in such activity. According to Sanchez, nothing else about the Union was discussed, although there was discussion about other matters. The conversation lasted 5 or 10 minutes.

Gloria Chavez, a former employee who is now a representative for the Union, testified that she and other employees were active on behalf of the Union in March. During a meeting, apparently in late March or early April, attended by all the supervisors, Kent Bouldin, the Respondent's president and chief executive officer, told the employees that it was up

²All dates or time periods are within 1990 unless otherwise specified.

to the employees if they wanted a union. Between that date and April 9, on which date Chavez was terminated for reasons unrelated to the instant matter, Chavez was summoned to Ricardo Sanchez' office. Sanchez said that he knew she was talking to employees about the Union. Chavez acted surprised, and denied it. Sanchez said that another employee, Dora Garcia, had told him about Chavez' involvement with the Union, and that Chavez should be careful.

Ricardo Sanchez denied that he ever spoke with Chavez about the Union.

On Saturday, March 24, two employees who had become boisterous at a union meeting had been ejected from the meeting and went to the Respondent's premises to continue their activities at a fajita party which, coincidentally, the Respondent was having for its employees. Employee David Salinas, a relative of various supervisors or managers of Respondent, also had attended the union meeting. Salinas testified that he was sitting with the Respondent's president of manufacturing, Juan Leon, when the two aforementioned employees walked in and boasted that they had been evicted from the union meeting. Production Manager Ricardo Sanchez was present and, according to Salinas, asked them several questions about the meeting. However, Salinas did not recollect the questions.

Shortly thereafter, Salinas happened to be in the restroom at the same time as the two other employees. They were discussing the Union when Juan Leon, vice-president of manufacturing, walked in and stood there for a while and listened to their conversation. Salinas said that he thought they needed a union. Leon remarked that the Union was not a good idea and that it would mess up the Company. Leon became angry, pushed Salinas against the restroom wall, and a fight started. The scuffle was short-lived and was quickly broken up. Both Salinas and Leon had been consuming liquor at the party.³

Employee David Luna attended the fajita party with a co-worker, Eli Hague. They had also previously attended the union meeting. Luna testified that at the party Leon said, "I hear a couple of you guys have been attending union meetings." Luna said, "Yes, everybody is entitled to their own opinion." Leon replied, "Well, you know you are f—king with the family." Luna said, "Well, I am sorry." Then Leon said to Kent Bouldin, Respondent's president and chief executive officer, who had walked into the room, that he wanted Bouldin to hear this "crap." Luna decided that it was time to leave; he shook Bouldin's hand, thanked him for the party, and left.

Employee Eli Hague testified that she was present during the aforementioned conversation. Leon started the conversation. He said to Luna, "I heard you just came back from a union meeting." Luna replied that he was free to do whatever he wanted. Leon said, "What in the f—k do you think you are doing to my family here?" Luna said to Hague he thought it was time for them to go. Leon said, "Okay; if you want to play hardball, we will play hardball." He motioned for Bouldin to come over and said, "Come here and listen to this shit that is going on here." Luna shook hands with Leon and Bouldin, thanked them for the party, and Hague and Luna left.

³There is no complaint allegation that Leon's conduct during the dispute in the restroom is violative of the Act.

The following Monday, March 26, Salinas approached Leon about the altercation in the restroom. Leon said that they had been partying and that what happened would not affect Salinas' job or anything. Leon also said that he was going to give certain people a week or so to think about how things could be changed at Leather Center.

Later the same day, Bouldin called Salinas into his office. Juan Leon and Stella Hanna, who is in charge of the Respondent's human resources department and is also a relative of management, were present. Bouldin said that Salinas had been working there for quite some time together with various family members, and that Bouldin felt that "we were close and like family." He said, according to Salinas, "that I was messing up, referring to being involved with the union, and that not only was [I] jeopardizing my own job, that I was also jeopardizing the job of the people in my family there, and that I needed to think about that." He also told Salinas that he thought there would be a spot for him in management in the future, but that he needed to change his attitude.

Leon testified that he does not recall much about the March 24 incidents at the fajita party as he and others had been drinking and "We got a little bit intoxicated." Leon does not recall Ricardo Sanchez asking the two employees any questions about the union meeting. He does not remember the details of the fight with Salinas in the restroom or whether the fight had anything to do with any conversation about the Union. He does recall that Salinas did come into his office the following Monday and apologized for his conduct, but he was unable to recall whether he attended a meeting later that day with Bouldin, Salinas, and Hannah; he did testify, however, that such a meeting may have taken place.

Bouldin testified that he was present at the fajita party when two employees came in and were boasting very loudly that they had just been thrown out of a union meeting. When they brought that up, Bouldin left the room. On cross-examination, Bouldin explained that he left the room because he had been "counseled on the rules," and was fully aware that "I am not supposed to discuss union affiliation with people in a voting unit; therefore I immediately left." He does not believe that he ever talked to Salinas about the fight with Juan Leon at the fajita party.

Bouldin testified that the Respondent held a meeting with employees on the following Monday, March 26. Such meetings, called "townhall" meetings, are not infrequent, and the subject of the meeting had nothing to do with the Union. At the meeting several employees, including David Salinas, had brought up various concerns. Salinas had expressed the concern that he, and apparently most of the other employees, had been changed from a piece rate to an hourly rate, and this resulted in a decrease in pay. Later Bouldin spoke to each of the complaining employees on an individual basis. Regarding his conversation with Salinas, Bouldin testified that he called Salinas into the office and said:

Yes. That I was very disappointed with him, that a lot of his family work in Leather Center. He was part of the family, I didn't really like the way he was going about doing things.

He was always resisting management, was talking very badly about the company on a continuing basis, and was just generally causing a lot of problems. And

I was trying to help him out, get him headed in the right direction.

Bouldin denied that he said anything to Salinas about the possibility of a management position for him in the future.

Salinas further testified that on about May 5, Ricardo Sanchez told him that he had a list of employees he was going to lay off. Sanchez denied that he made this statement to Salinas or that he had any list of employees at that time who were to be laid off.

Employee Gloria Chavez testified that on April 5, during her break, as she was soliciting employee Antonio Olivarez to sign a union authorization card, her acting supervisor, Steven Gonzalez, approached. Chavez hid the card, and Gonzalez said, "I know you are up to your union tricks again." Chavez replied that she didn't know what he was talking about. Olivarez corroborated the testimony of Chavez, and testified that he considered Gonzalez to be his supervisor.

The Respondent denies that Steven Gonzalez was a supervisor in the recliner department (the recliner cell) on April 5. The evidence shows that Gonzalez had been a supervisor in another cell (the fantasy cell) at least until March 6, and issued various disciplinary warnings to employees. Thereafter, he was transferred to a position in the receiving department, and sometime thereafter he was placed in charge of the recliner cell, apparently on a temporary basis. Chavez and Olivarez worked in the recliner cell.

Employee Michael Cantu, a leather department employee, testified to the following conversation with Ricardo Sanchez on about April 17:

It was the day after I had signed the card. I was working around my work area and [Ricardo Sanchez] walked by and he called me over there, and he told me if I knew anything about the union. And I replied no and I asked him why. And he said he was just wondering, and walked by—kept walking and laughing into his office—I mean, into the main office.

Sanchez, as production manager, had no supervisory authority over the leather department employees, as they were not considered to be part of the production operations. Sanchez did not deny that he asked Cantu about the Union.

The Respondent was experiencing financial difficulties, and on Saturday, April 28, the Respondent's management met and determined that a large layoff was necessary. A layoff of about 65 primarily nonproduction employees was implemented the following Monday, April 30.

Employee Diana Garcia testified that shortly after the April 30 layoff, at a meeting of the employees in her cell, Cell Manager Tommy Gonzalez told the employees that there had been a layoff of about 60 people in the front office, but there would be no more layoffs.

Employee Juan Becerra testified that at a cell meeting in early May an employee asked if there was a possibility of any further layoffs. Supervisor Marco Cabrero replied that there would not be any layoffs in the production area.

On Wednesday, May 9, the Union filed a representation petition with the Board, and later that afternoon, coinciding with the employees' 2 p.m. break, the Union held a rally adjacent to the parking lot at the Respondent's manufacturing facility. Apparently there were about 40 employees present. Various union representatives and employees distributed cop-

ies of the aforementioned representation petition, printed in both Spanish and English, and handed out T-shirts, caps, and a variety of buttons, all bearing the union logo or other supportive union slogans. Various employees put on the caps, and pinned the buttons to their clothing. Production Manager Ricardo Sanchez came out into the parking lot to observe what was happening.

Employee Alicia Alfaro testified that she was standing in the parking lot next to employee David Luna and Ricardo Sanchez when Sanchez said to Luna:

You look very pretty with your buttons and your caps, but you are going to look a lot prettier when you are going to be crying after . . . you [are] fired.

Employee Miguel Gonzalez testified that he overheard one of the union representatives, Eddie Felan, ask Sanchez whether there would be any more layoffs. Sanchez said there would not. Sanchez also said to the employees, according to Gonzalez, "You look so pretty with your blue caps. Let's see how you are going to look when you are not working here."

Employees Carmelo Hernandez, Juan Jose Cabral, Jesus Aranda, Yvone Acy, and Eli Hague testified similarly regarding Sanchez' remarks to the employees who were wearing union caps and buttons.

During the remainder of that day, and on the following 2 days, Thursday and Friday, May 10 and 11, numerous employees wore caps and buttons during the workday. It was estimated that as many as 100 employees wore them on Wednesday after the rally; and the record shows that fewer employees wore them during the next 2 days. Employee Juana Rodriguez, called as a witness by the Respondent, testified that about 80 employees were wearing either a union cap or button at work on the afternoon of May 9. Further, Rodriguez testified that she had an opportunity to observe how many people were wearing union caps or buttons on the following 2 days, and she estimated that about 40 employees wore such union identification. Commencing with the following Monday, May 14, and continuing for several weeks, the number of employees wearing caps or buttons declined significantly; Rodriguez was not asked to estimate the number.

Employee Enedina Gonzalez testified that on May 10, the day on which Mother's Day is celebrated in Mexico, she wore a bouquet of flowers on her clothing. Later she replaced it with a union button. Gonzalez testified that Sanchez walked by and said, "Hey, Enedina, don't you think this looks a lot better, the flowers, on you than that button there?" She didn't reply.

Ricardo Sanchez testified that he may have made a statement to the effect that flowers were more becoming than union buttons, but he does not specifically recall making the statement to Gonzalez or any other employee.

Employee Yvonne Acy testified that shortly after the May 9 rally she was at the Alamo Restaurant, a restaurant or cafeteria at the Respondent's premises. Acy was wearing a union button, and James Gimble, the manager of the restaurant, came up to her table where she was sitting with employee Tom Norton and another employee, and asked her if she was stupid enough to vote for a union. Acy said yes. Gimble said, according to Acy, that "Well, you all know that if you all get a union in here, they will close the Alamo

down.” Acy asked him why that would happen, and Gimble replied that, “Well, it is a benefit for you all, and if you get a union in, they will take away some of your benefits.” Employee Tom Norton corroborated Acy’s testimony.

During the morning of Monday, May 14, the Respondent laid off approximately 25 production employees. The record shows that the regular payday was the following day, Tuesday, May 15, as the employees are paid on the 15th and 30th of each month. A Carrollton police officer was in the room as the employees were given their final checks, which consisted of pay through May 15 together with their accrued vacation pay. They were told that the layoff was due to financial difficulties the Respondent was experiencing. Another police officer was stationed outside the room.

Employee Martha Moya, was not laid off on May 14. However, at the time of the hearing she no longer worked for the Respondent as a result of an accident which occurred shortly before the election. Moya testified that she did not wear a union cap or buttons at work. During the 9:15 morning break on May 14, Bouldin held a meeting with a group of employees. He said the Company was passing through some bad times, and he was forced to lay off some people because sales had declined. Someone asked why particular individuals were laid off rather than new employees who were not familiar with the work. Bouldin replied, according to Moya, “because they were causing problems.” He did not state what problems the employees were causing. Someone asked whether the employees would be recalled when sales picked up, and Bouldin said no. However, Moya also testified that at “the first [meeting] that we ever had” Bouldin said that he did not like the Union but that the employees could get it if they wanted to.

Bouldin testified that on the afternoon of May 14, after the layoff had taken place, he held “townhall” meeting with the employees. He did not state that people who had been handing out cards were gone for good; nor did he state that he had gotten rid of the troublemakers. He simply tried to reassure everyone that they needed to build a team, told them about the financial condition of the Company, and said that the Respondent needed to move in a more positive direction.

Moya attended another meeting on May 21 in the break area. Bouldin conducted the meeting. He announced that he would conduct a meeting every month. He was again asked why he laid off employees who knew the work. He replied, according to Moya, that he knew the employees were unhappy about the layoff of the people that “knew well” how to do the job, and “he told us that the people that was passing those cards and running about with secrets—those people is [sic] never going to come back.”

Moya received a 5-cent-an-hour wage increase in May. On or about May 15, during the course of a conversation in Ricardo Sanchez’ office regarding the raise, Sanchez asked her “what she was thinking about the Union.” She replied that the reason the employees wanted the Union was because the supervisors were dealing with the workers as if they were animals rather than employees.

Employee Ofelia Solis is currently employed by the Respondent, and has been an employee for 5 years. Prior to 1989, Maria Leon, Juan Leon’s mother, was Solis’ supervisor. Currently, Maria Leon is a seamstress and works together with other seamstresses in Solis’ department. Solis testified that during a conversation in the Respondent’s din-

ing room, in the presence of two other coworkers, Maria Leon said that if the Union was voted in the Company would be closed and another company would be opened for those who were not in the Union. She also said that the union employees would probably be without work, and their “record is going to be all the time affecting us, because it is going to be in the computer—all that in relation with the social security.”

Solis testified that she attended the company meeting the day of the layoff, during which Bouldin talked about the employees who had been laid off. Bouldin spoke in English, and Juan Leon translated his remarks into Spanish. Solis was not asked what Bouldin or Leon said, and therefore she did not corroborate the testimony of Moya, discussed above.

The parties stipulated that at all times material herein Maria Leon has been a seamstress/material handler. She voted in the election and her ballot was challenged. No determination of her status has been made. She is salaried, as are managers or supervisors; the other employees are hourly paid.

At the time of the election Javier Rico was a unit employee. He was made a manager in about May 1991, prior to the hearing. Rico testified that on June 27, 2 days before the election, he and employee Rowdy Charpentier held a meeting with other employees during the 2 p.m. break. Several supervisors were also present. Rico and Charpentier presented their views in favor of the Union. Rico testified that at the end of the meeting he had a conversation with Ricardo Sanchez regarding the Union: Rico said that he favored the Union, and Sanchez said that the company didn’t need outsiders. When asked to recollect what else Sanchez said, Rico testified that he heard someone say, “If you not win, you guys fired,” but he was not sure who made the statement. However, Rico’s affidavit states:

As the people were beginning to leave, as Sanchez was walking to the shipping area, Sanchez told us in Spanish, ‘If you guys don’t win, you guys are fired.’ He said nothing more and left.

Sanchez testified that although he was present during the spontaneous gathering of employees who were discussing the Union he made no statement to the effect that the employees would be discharged if the Union was not voted in. He did tell the employees that they were not being given the complete picture, and mentioned that he was aware that at another plant certain employees who had gone on strike had been replaced.

2. The May 14 layoff

Fernando Sanchez is executive vice president of finance and administration. His brother is Ricardo Sanchez, production manager. Fernando Sanchez testified that the Respondent had an exceptionally good sales month in January 1990, which constituted the largest sales month in the Respondent’s approximately 10-year history. As a result it was anticipated that the Respondent would have a highly profitable 1990, and therefore it immediately purchased considerable quantities of leather. However, the January sales were apparently an anomaly, and in February 1990, the last month of its fiscal year, the Respondent began experiencing severe financial difficulties. In part, the loss of over \$1 million for February

was due to the fact that certain expenses incurred throughout the fiscal year, for example, accrued vacations, were not debited until the final month. The audited consolidated financial statement as of February 28, 1990 (fiscal 1990), shows a substantial loss for the year. While sales and production were over 25 percent greater than the prior year, the cost of sales increased even more. Generally, the cost of sales includes the following: occupancy expenses of some 26 showrooms throughout the country; increased labor costs associated with increased production; and selling, general, and administrative costs, including increased advertising, compensation, and transportation expenses.

Sanchez explained that due to its financial condition the Respondent began incurring serious cash flow problems and was unable to secure financing in order to enable it to timely pay its vendors, including vendors who supplied it with its most essential raw product, leather. The large increase in sales for the month of January was followed by a substantial \$2 million decline in sales for February. Sales for March (the second highest sales month in the Respondent's history) increased about \$1 million over February. At this point the Respondent's four principals granted themselves a 25-percent increase in salary. However, April's sales again plummeted about \$2 million. Sales in May increased approximately \$1 million over April. The document entitled "Written Sales by Month" shows that the Respondent's sales have generally increased since 1987, that they reached a peak in January, and then began a general downturn until August, when they began to increase.

Customers who purchase furniture through the Respondent's showrooms put down a deposit of from 30 to 50 percent of the purchase price. They receive the furniture from two to 6 weeks later, at which time they pay the balance. The deposits provide cash flow for the Respondent's operations. Thus, when written showroom sales are down, the cash flow is impacted immediately.

Fernando Sanchez testified that commencing in February, sales were not high enough to keep up with expenses, and the Respondent took various cost-cutting measures in order to counteract this trend. The four principals of the Respondent took pay reductions of about 25 percent in May, and, according to Sanchez, but not reflected in any documents proffered by the Respondent, an additional 25-percent reduction beyond that.

The most significant cost-cutting measure, however, was a reduction in force. Sanchez testified that at a meeting held on Saturday, April 28, the Respondent's four owners or "principals," including Sanchez, initially decided to lay off approximately 80 individuals, comprising 15 percent of its total employee complement. The layoff was to affect all areas of the Respondent's operations, including administration, transportation, marketing, and manufacturing. This initial decision, however, was modified as a result of the objection of Juan Leon, vice president of manufacturing, who convinced the other principals that the manufacturing employees (associates) should not be included in the layoff at that time. According to Sanchez, Leon said:

Look, guys, we need them. They are valuable people. They are low overhead. Every hour they produce is as hour that, you know, goes into the value of the furniture. We get it back.

Sanchez testified that salespersons at the showrooms and administrative personnel "were creating a lot more overhead than value," but that, as maintained by Leon, the manufacturing employees would be needed if sales improved as a result of furniture promotions which had been scheduled for May. Therefore, according to Sanchez, it was decided "to wait for the April numbers and see if the promotions that were running on a weekly basis for the following two weeks would work."

On Monday, April 30, approximately 65 nonmanufacturing employees were laid off. The selections for layoff were made by the various vice presidents or by people designated by them, and, according to Sanchez, "by noon everybody was gone."

Sanchez testified that he received the financial report for April on Monday, May 7. He brought them to a corporate meeting which was held the following day, Tuesday, May 8. As noted above, the written sales for April had declined from the previous month. However, Sanchez noted that the Respondent's written sales are available by computer on a daily basis, and these sales are looked at each day. Sanchez testified that although the April financial report was not good, he was "more impacted by the situation on our cashflow. We basically couldn't pay anybody. We had to pay our landlords and employees first, and there was very little money to pay vendors with." Sanchez then persuaded the principals that they needed to proceed with the layoff of the manufacturing employees which had been debated, but deferred, at the earlier April 28 meeting. According to Sanchez, he told the principals that:

The trend is down. It doesn't seem it is going to turn back up really soon. We need to save money as soon as possible. Payroll is one of the things that we have to pay first. I mean, we give that priority. We don't want employees receiving bad checks. So we decided that, yes, we had to do it.

It was decided at that meeting to schedule the layoff of the manufacturing employees for the end of the pay period which, according to Sanchez, was Monday, May 14.

In the interim, according to Sanchez, on Wednesday, May 9, the Union held a rally adjacent to the Respondent's parking lot during the afternoon break, and also the Respondent obtained a copy of the representation petition which the union representatives had handed out during the rally. The petition, filed with the Board the same day, defines the bargaining unit as including production and maintenance employees including lead person, but excluding all other employees, professional employees, confidential employees, office employees, truckdrivers, guards, watchmen, and supervisors as defined by the Act.

Sanchez testified that the principals met with the Respondent's attorneys on the evening of May 9. They asked the attorney what the petition meant, and explained that they were preparing to implement the previously agreed-upon layoff of the manufacturing employees. The attorney, who is not associated with the law firm currently representing the Respondent, stated, according to Sanchez, that "you are playing with fire, because this is going to give you some trouble." It was explained to the attorney that this was a predetermined business decision, and the employees needed to be taken off the

payroll. The attorney told them to go ahead with the layoff “[i]f it is a business decision and you believe you have got to do it.”

Fernando Sanchez testified that the Respondent’s cash flow position, which is monitored daily, was precarious. In March, it took an “incredible” negative jump, as evidenced by a chart, introduced into evidence, entitled “Average Neg Cash Position By Month.” Apparently this was due to a combination of the low February sales, coupled with the fact that the Respondent purchased a large amount of leather in January for which vendors needed to be paid about 30 days thereafter. The vendors were called and told that they would have to cooperate, and that the Respondent needed their help to extend the terms of the leather purchases. The vendors agreed, but started charging interest on the unpaid balances.

Sanchez testified that “in May we [had a] tremendous sale and we brought cash and we turned accounts payable and made everybody happy.” Sanchez said that the Respondent runs a sale every single weekend, and such sales generate more business, particularly the 3-day weekend sales when the Respondent makes a “big push.” One such weekend sale is the annual Memorial Day sale at the end of May; and Memorial Day and Labor Day are the two biggest weekends for the Respondent. The sale prices during the Respondent’s 1990 Memorial Day weekend sale were, according to Sanchez, “too good,” as the customers purchased large quantities of the sale items which were sold on a low margin in order to attract customers to the showrooms. Rather than purchase upgraded furniture at higher prices, the customers purchased, according to Sanchez, “humongous quantities” of the promotional items.

The unanticipated response to the Respondent’s Memorial Day sales promotion, according to Sanchez, caused a lot of problems with the manufacturing of the furniture, “because basically all the cells were making those pieces. And our manufacturing cells are not designed to get that extreme of a mix of furniture. So that slowed down the manufacturing process on top of that.” Sanchez explained that customarily one cell would have priority on making one particular style of furniture, and the overflow, if any would be given to other cells. Because of the one particular style that was purchased in large quantities during the Memorial Day sale, the Respondent utilized five cells to make the same style of furniture. Employees had to work overtime and on Saturdays for about a month in order to get caught up. However, the laid-off employees were not recalled because the Respondent did not anticipate that sales would pick up again thereafter.

A necessary component of the Respondent’s “just in time” method of production, discussed below, was overtime. As the employees were not permitted to clock out until they had completed the scheduled production for the day, overtime was customarily extensive. Overtime hours are paid at time and one-half, and are significantly more expensive to the Respondent in terms of its profit; they also impact negatively on the Respondent’s cash flow.

The evidence shows the following number of overtime hours worked during the months indicated within the six cells and, also, within the production support departments, namely, leather, woodshop, and maintenance.

	1989		1990		1991
November	3597	January	5108	January	5669
December	5629	February	8787	February	6139
		March	4393		
		April	5223		
		May	1664		
		June	7163		
		July	6418		
		August	4374		
		September	3824		
		October	981		
		November	4278		
		December	5871		

The above data shows that overtime was the highest during the months following the highest dollar volume of written showroom sales. Thus, in February, following the peak month of January 1990, the overtime hours totaled 8787; and the high volume sales month of May, which reflects the Memorial Day sale orders, resulted in a correspondingly high number of overtime hours, totaling 7163 hours in June 1990. The following is a breakdown of the hours of overtime worked in each of the six cells during June 1990: 1370, 1508, 1065, 630, 871, and 1114.

According to Sanchez, the Memorial Day sale was excellent and it alleviated the immediate cash flow problems; the Respondent “paid a lot of vendors and got a fresh start.” But the sale of large quantities of low margin furniture did not translate into appreciably greater profits. Sanchez testified that the situation worsened somewhat after that through August, but the cost cutting and, in effect, a modest raising of prices, brought about a financial recovery. According to Sanchez, “from that point on [August] the strategy started working and up until today it continues to go up.” On October 3, and again in February 1991, the Respondent recalled many of the manufacturing employees who had been laid off on May 14.⁴

Fernando Sanchez testified that the May 14 layoff did not include transportation employees. He said that the transportation people were discussed at the April 28 meeting, but that there was no decision to lay them off. However, Sanchez indicated that some transportation employees were apparently laid off in the summer of 1990. Sanchez explained that the transportation employees get paid by the mile, and if they don’t drive, they don’t get paid, “So that is why the impact on economics was not there.” Sanchez further testified that Leon also convinced the principals, apparently at the May 8 meeting, not to lay off the transportation people because they were getting paid by the mile and “if we didn’t have any furniture going out, they were not going to get paid. So we decided to keep them.”

Sanchez testified that Production Manager Ricardo Sanchez was not told until he was called to a meeting at about 9 a.m. on Friday, May 11, that he was the one who would have to select the employees to be laid off. He was chosen to make the decision because, according to Fernando Sanchez, he knew how the cells were supposed to operate

⁴The Respondent’s attorney represented at the hearing that all or virtually all the laid-off employees had been recalled and were back at work.

and basically knew the people, "but he wasn't as close as the supervisor of the cell as to know who could be or not involved with the union." Ricardo Sanchez was instructed to cut from 10 to 15 percent of the manufacturing labor force, and was told that his selections should be made according to each employees' performance. He was further instructed to commence the selection process immediately so that the human resources department could prepare the necessary paperwork. Ricardo Sanchez selected 25 employees, and they were laid off the following Monday morning, May 14.

Sanchez further testified that Ricardo Sanchez was not told about the layoff until May 11 because the Respondent did not want rumors to be spread. He explained that if Ricardo Sanchez had been advised of the layoff on May 8, and would have commenced to make his layoff selections at that time, this would have necessitated his access to a payroll list which would have necessitated his requesting the list from the human resources department. This was not feasible at the time, according to Fernando Sanchez, because the person then in charge of human resources was married to a supervisor, and it was feared that word of a possible layoff might be leaked in advance and would result in morale problems among the employees.

Sanchez testified that, unlike prior layoffs,⁵ supervisors were not permitted to make the layoff selections because:

[W]e had the concern that the supervisors that were directly involved in the operation of that particular cell were going to be a lot more biased on the decision just by looking around, who was wearing caps or buttons or whatever for the union. We thought that Ricardo had enough knowledge to know who performed or not, but wasn't as close to the operations—every single operation. That was basically the reason why we did it that way.

Sanchez went on to explain that:

[W]e didn't want the supervisors to be biased because they knew them—I mean, they knew who was wearing them, you know. Ricardo was going to be a lot more unbiased and try to use his judgment as far as performance. That is the reason.

On Thursday, May 10, according to Sanchez, approximately 70 to 80 people were wearing some sort of union buttons or identification during work. Sanchez was not present on Friday, and therefore gave no estimate of the number of employees wearing union identification on that day.

Kent Bouldin is president and chief executive officer of the Respondent. Bouldin testified that all furniture is made to order. Generally, closed sales, which reflect delivered goods, follow written showroom orders within 2 to 3 weeks; sometimes the range is 2 to 6 weeks if there is a very large

⁵The record indicates that prior layoffs occurred in 1988 and 1989. Such layoffs involved only about three to five employees on each occasion, and it appears from certain abbreviated testimony that employees laid off were newer employees with the least seniority. The Respondent did not proffer any specific evidence regarding the details of these prior layoffs. Further, the layoffs were instituted prior to the time the Respondent went from piecework to hourly pay for its production employees, and prior to the "just in time" method of production.

backlog. When the customer purchases the furniture at a leather center showroom, the customer is given a delivery date established by a trucking schedule. That, according to Bouldin, "is the way we are able to deliver furniture on the exact day that we quote a customer to when they order the furniture." When the shipping date approaches, the computer generates a schedule, and the production employees "start work at 7:00 a.m. and we go home when that day's production is completed." Bouldin testified that this "just in time" production method sometimes requires overtime work, "[a]nd one cell might work 12 hours one day and the next day it might work six hours."

Employee Raphael Hernandez testified that employees do not know from day to day what the production schedule is going to be. As soon as the employees complete the day's schedule, they clock out; if there is more work to do, the employees remain until the work is completed. Hernandez testified the employees would never remain at work when there was no work to be done.

Bouldin testified that the Respondent had positive cumulative profit throughout 1989 which continued until February 1990. The Respondent experienced an actual loss for February. More significantly, however, items that the Company should have written off in earlier months, such as "inventory write-downs" and accrued vacation pay were not written off until February, the last month of the fiscal year. The Respondent had peak sales, and commensurate expenses, in January, and then sales began declining. As expenses did not decline, this put the Respondent in a very difficult and deteriorating cash position in the spring of 1990. The Respondent instituted a range of cost saving methods: getting rid of expendable warehouse space and extra trucks, requiring the showroom personnel to water the showroom plants rather than have an outside contractor to do this work, and, most importantly, reducing the staff.

In March, according to Bouldin, the principals "were feeling pretty good" and granted themselves a 25-percent pay increase. Shortly thereafter that increase was rescinded, and an additional 25-percent pay decrease was implemented.

At a meeting on April 28, it was decided to lay off the staff in all areas, including manufacturing, in a relatively equitable manner. However, towards the end of the meeting, according to Bouldin, "Juan Leon talked us out of laying off in production and transportation, because we looked at those people as adding more direct value." Bouldin explained that:

The ultimate decision initially was that we lay off in all areas of the company. Juan [Leon] argued vigorously that these people were valued [sic] people and we needed to retain our production level—our manufacturing and production level at that staff. So we—he convinced me that we shouldn't at that time. That is correct.

. . . .

[I]f you want to reduce expenses, you should reduce in areas that are directly affected. Like, if you have one less salesman, hopefully you will sell as much as if that salesman was there. You would sell as much. But, in effect, a production associate, if he is not there, you make less furniture.

Bouldin also believed that some of the employees were not working to their capacity, and were “sandbagging quite severely,” and that production would not suffer if the less productive employees were laid off. However, Juan Leon convinced Bouldin that they should hold off and not do anything at that time. According to Bouldin, “It was more of a put it on hold for further discussion.”

As a result of the discussions during the meeting of April 28, it was determined that the April 30 layoff would include sales associates, administrative personnel, some maintenance personnel, and other support staff, including several production support employees, but not the transportation or production employees.

Bouldin testified that when the financial figures for April became available in early May, “we had continued to lose money.” He further testified that:

We had gotten in our sales figures, and we just weren’t writing the volume of business that was going to produce a profit that we thought in May. And so we decided to go on and finish up the layoff we had started, and we...decided we would reduce our production staff and our transportation staff, too.’’⁶

When asked when that decision was made, Bouldin testified that he had looked up the date in his calendar within the last few days prior to the date of his testimony herein, and found that it was at a partners’ meeting on Tuesday, May 8, as there is a partners’ meeting every Tuesday.

Bouldin testified that something very significant happened between the time the layoff decision was made and the time it was implemented, namely, that on May 9 someone put a copy of the representation petition on his desk. This prompted the principals to meet with their attorney later that same day. Upon advising the attorney that they were preparing to institute some layoffs, Bouldin testified that the attorney gave them the following advice:

And, paraphrasing, he said that we were really playing with fire. I don’t remember his exact words, but he said it was very dangerous. But on the other hand, that you should go on and conduct your business as a businessman.

According to Bouldin, Ricardo Sanchez was not told about the layoff until Friday, May 11, during the course of another meeting attended by Bouldin, Fernando Sanchez, Juan Leon, two vice presidents, and some of the Human Resources staff. Bouldin testified that layoffs are customarily made at the end of a pay period, and that the pay periods ended on the 1st and 15th of each month.⁷ Bouldin further testified that the Respondent waited as long as it could to advise Ricardo Sanchez of his mission so that rumors of the layoff would not be leaked to the employee for fear that false rumors would create more pain than necessary among them.

Ricardo Sanchez was told to lay off only employees from the production work force. No layoffs were made at that time

⁶As noted above, no transportation employees were laid off. Transportation employees (truckdrivers) were specifically excluded from the unit requested in the Union’s May 9 representation petition.

⁷He did not explain why the layoffs were made on May 14 rather than May 15.

among the transportation employees. Bouldin testified that it was decided to deviate from the customary way that the selection for layoffs had been made in the past, that is, by the employee’s immediate supervisor. He testified that:

And in this case [we were] quite afraid, since we had just talked to our attorney, that we didn’t want to get tangled up in any union problems by laying people off according to a union affiliation.

So we chose Ricardo—and this was my idea—to make the selections, because I know Ricardo to be very fair, and he is a very ethical person. And I knew that he would make the selections based on criteria of performance as opposed to someone’s affiliation with the union.

Ricardo Sanchez was told that he needed to make the selections that same day, a Friday, so that the paperwork could be prepared over the weekend by the human resources department. Bouldin testified that in the absence of any union activity, the production layoff selections would probably have been made by the employees’ immediate supervisors.

Bouldin’s affidavit, dated August 1, was taken at the Respondent’s offices, and Bouldin admits that he had access to his appointment calendar at the time the affidavit was taken. The affidavit, introduced into evidence, states:

We avoided layoffs in the manufacturing end of operations. Then in reviewing the financial data for the month of April, 1990, the losses continued. Company Vice-president Juan Leon, Human Resources Celia Boynton, Ricardo Sanchez, Production Manager, Fernando Sanchez, Vice-President of Finance Administration, and myself met and I informed Boynton and Sanchez that additional cuts were needed and that they would have to reduce the manufacturing end by 10 to 15 percent. I told Sanchez to keep the best producers and not to allow the union to influence his decision in making the selection for layoff. The meeting took place on May 11, 1990, after receiving the financial report for April 1990 on or about May 10, 1990.

I had knowledge of the Union’s filing of a petition with the National Labor Relations Board on or about May 9, 1990, when I found a copy of the petition on my desk.

Bouldin testified that in preparing for his testimony at the hearing, he was advised by Fernando Sanchez that the meeting occurred on May 8 rather than May 11. To verify the correct date, both he and Fernando Sanchez reviewed their calendars which reflected the correct date of the meeting, and, according to Bouldin, both calendars showed that the meeting took place on Tuesday, May 8.⁸

Bouldin’s aforementioned affidavit also states:

The Memorial Day weekend sale generated a lot of orders which required production to work overtime during the months of June and July 1990 to meet the order requirements. The net loss for the month of June 1990 was \$934,000. All the orders that were generated from

⁸The appointment calendars were not proffered by the Respondent.

the Memorial Day weekend sale have now been completed. I am in the process of meeting with the associates and inform [sic] them that we will be working a 40-hour weeks [sic] during the month of August 1990.

Ricardo Sanchez testified that he was called to a meeting on May 11. Those in attendance were given "packets of the economy of the company," consisting of several documents. Sanchez estimates that the meeting lasted about 2 hours. Sanchez could not recollect what Bouldin said or what he said during the course of the meeting; however, he did recall that Bouldin told him that he was to lay off 10 to 15 percent of the work force, effective the following Monday, May 14. After the meeting Celia Boynton, human resources manager, prepared a printout of all the production employees. Sanchez called out the names of the employees he selected for layoff, and Boynton pulled their files.

Sanchez testified that there were six cells and there were between 26 and 28 employees in each cell. He said that he considered himself sufficiently familiar with the work of each of the approximately 200 employees to make the selections without assistance from any other source, as he spends 90 percent of his time in the production area. He did not consult with any supervisors or look at any personnel files prior to selecting the individuals to be laid off. Rather, he simply selected the employees who, in his opinion, were the least productive or the most expendable.

Sanchez had a very limited recollection of specific warnings or adverse information contained in the personnel files of the production employees. The record shows that the employment records of many employees who were not laid off were inferior, in terms of absenteeism, warnings, and prior suspensions, to the comparable records of certain employees whom Sanchez had selected for layoff. In addition, among employees who performed the same type of work with the cell, certain employees with greater seniority were laid off.

Sanchez testified that if he would have been given the time to review the personnel file of each of the employees, he would nevertheless have selected the "majority" of those that he did, in fact, select. However, he acknowledged that, because of various documents in employees' personnel files which were shown to him at the hearing which he had not previously recalled or had not been made aware of by the supervisors, he may have selected other individuals.

Sanchez had a computer print-out of the names of all the production employees. Those with the most seniority were at the top of the list. He began at the bottom of the list and worked his way up. He selected the employees for layoff based upon his evaluation of their productivity, attitude, team work, and how they followed instructions. Teamwork, or how the employee worked within his or her cell, was a very important factor. Sanchez had managed various departments, and had performed every type of work involved in the production process. As production manager he spent 90 percent of his time on the production floor, and would meet with the cell managers on a daily basis and discuss production and personnel problems with them. He spent about 3 hours making his layoff selections.

Sanchez testified that when some of the employees were recalled, he sat down with them and explained where they need to make improvements. Various employees denied that

Sanchez mentioned anything about their alleged work deficiencies when they were recalled.

Of the twenty-five laid-off employees 19 testified in this proceeding. Each of them testified that they were active on behalf of the Union and that they wore union buttons or caps at work on May 9, 10, and 11. These employees are: Alicia Alfaro, Enedina Gonzalez, Catalina Perez, Miguel Gonzalez, Diana Garcia, Carmelo Hernandez, Juan Becerra, Juan Cabral, Raphael Hernandez, David Salinas, Elizabeth Hague, Jesus Aranda, Yvonne Acy, Joseph Minero, Thomas Norton, David Luna, Rolando Morante, Everette Alvarado, and Antonio Olivarez. Additionally, David Salinas testified that Martin Vargas, who was laid off, wore a union cap and buttons at work after May 9.

Tom Keane, a union representative, credibly testified that of the 25 employees who were laid off, only 2 were not members of the union organizing committee. It is reasonable to presume, under the circumstances, that all members of the organizing committee wore union insignia at work.

The record shows that on or about May 1 the production employees received a seniority raise, apparently based on the number of years they had been employed by the Respondent. It appears that the seniority raises generally ranged from 12 to 20 cents per hour. According to Ricardo Sanchez, the employees had been told sometime during the period between July and September 1989, when the employees went from a piece-rate system to an hourly rate, that such a raise could be expected a year from that period of time. Sanchez explained that the promised raise was to compensate for the fact that during July through September 1989, the Respondent changed its conventional production process and commenced operating under the cell or department system, and this impacted adversely on the employees as they began earning less money under the hourly system than they had formerly earned under the piece-rate system. Sanchez offered no explanation of the fact that the seniority raise was granted some 2 to 4 months in advance of the time the raise had been promised.

In addition, the record shows that nearly all the production employees were evaluated and granted merit raises during the period between April and June. Ricardo Sanchez, who was manager of one of the cells, testified that he evaluated the approximately 28 employees on his team and each received a merit increase, effective May 9. The payroll change notices show that these employees received merit increases averaging over 50 cents per hour. Apparently the production employees in the other cells received comparable wage increases, although the record does not reflect the specific amounts of such increases. The record shows that some 90 employees received merit increases during the month of May; and of this number, nearly half became effective on May 8, 9, or 10.

The record shows that two production employees, Iris Elias and Gilberto Lopez, were hired on May 8, and were both employed in cell 5 (recliner). While three other employees from cell 5 were laid off; namely, Antonio Olivarez, Rolando Morante, and Juan Becerra, the two newly hired employees were not.

3. The April 30 layoff of Michael Cantu

Michael Cantu began working for the Respondent on September 19, 1987. Since that date and until the date of his lay-

off on April 30, 1990, he was employed in the leather department and performed the job of receiving the leather from tanneries, measuring and inventorying it, and pulling leather from inventory which, in turn, would be taken to the production cells for the manufacture of furniture. Leather department employees were not considered to be a part of the production process. Cantu was the most senior employee assigned to perform the aforementioned job, and apparently there was only one more senior employee in the entire department.

As set forth above, Ricardo Sanchez questioned Cantu about the Union on about April 17. Sanchez asked Cantu whether he knew anything about the Union. Cantu said no, and Sanchez laughed as he walked away. This conversation occurred the day after Cantu had signed a union authorization card. Thereafter, on about April 18, Cantu solicited some of the leather department employees to sign union authorization cards.

Cantu and other employees in the leather department, consisting of six employees, were unhappy with their supervisor, Roy Davis, and their leadman, Marco Navarro. According to Cantu, Supervisor Davis was not receptive to their complaints, and leadman Navarro was lazy and would not perform his job. The employees held a group meeting about the situation and decided to enlist the help of Manufacturing Vice President Juan Leon and explain the situation to him. Another employee, Carlos Lara, asked Leon to meet with them. The employees explained their concerns to Leon, and Leon said that he would speak to Davis and Navarro.

Shortly after the employees met with Leon, Supervisor Davis called all the leather department employees into his office, and asked whether their first little group meeting, prior to their meeting with Leon, had been about the Union. The employees said no, and asked him why. Davis then asked what the employees were talking about during that meeting. They replied that they were discussing the problems in the department. Davis then asked about their meeting with Leon, and the employees told him that the same matters were discussed with Leon. Davis asked why the employees didn't come to him, and the employees replied that they had brought the matters to his attention, but that he didn't seem to listen or to take any action; therefore they went to Leon.

On the morning of April 30, Davis told the leather department employees that he had just come from a manager's meeting and that he would have to lay two employees off. He said he didn't know who they would be, and that he would have to think about it. He then called Leadman Navarro into his office, and the employees went back to work. About 4 p.m. that day, Cantu was called into Davis' office and was told he was being laid off. Cantu asked him why, and whether he didn't work hard enough. Davis agreed that Cantu worked hard enough, and stated that it was not his decision to lay Cantu off. Cantu mentioned that he had more seniority than the other employees, and that there were new employees who had just started working for the Company. Davis again replied that he was told whom to lay off, and said that he was told to keep the new employees.

One other employee was laid off from the leather department, an employee whom Cantu was only able to identify by his first name, Cesario. Cantu testified that in 1990 he received a warning for missing work 2 days, and he also received a warning about a mistake that he made. The record

shows that the Respondent customarily issues an abundance of similar warning notices, and the Respondent did not attempt to show that the warnings to Cantu were other than routine. Cantu was recalled to work on October 17.

Supervisor Davis did not testify in this proceeding, and the Respondent presented no evidence regarding this matter. Leon testified, on cross examination, that there were five or six employees in the leather department, and that he did not recall whether Cantu was the most senior employee. According to Leon, all the leather department employees, collectively, complained about Davis and Navarro.

C. Analysis and Conclusions

1. The 8(a)(1) violations

I credit the testimony of Diana Garcia and find that on March 22 Production Manager Ricardo Sanchez summoned her to his office and asked her if she and her husband were trying to bring in the Union. While he initially assured her that there would be no reprisals taken against her for admitting to such union activity, Sanchez then went on to analogize the clandestine activities of a union with the rape of a little girl, and further remarked that it was possible that the plant could be closed and people could be without work, and that many employees may have signed cards for the Union without knowing what they were signing.

While Sanchez admitted that he interrogated Garcia about her union activity, he denied making any further statements about the Union after Garcia replied that she and her husband were being falsely accused of such conduct. I do not credit Sanchez' denials, and find that the conversation occurred as related by Garcia. I find that such interrogation and threat of plant closure is violative of Section 8(a)(1) of the Act.

I credit the testimony of Gloria Chavez and find that in late March or early April, Sanchez told her that he knew she was talking to employees about the Union and that she should be careful. Such remarks constitute a veiled threat of possible repercussions against Chavez because of her suspected involvement with the Union, and are violative of Section 8(a)(1) of the Act.

I credit the testimony of David Luna and Eli Hague, and find that on March 24, during a fajita party given by the Respondent, the Respondent's vice president of manufacturing, Juan Leon, indicated to Luna that he was aware that Luna had attended the union meeting that day, and characterized such activity as "f—king with the family," and playing "hardball" with the Respondent. Such remarks by Leon that Luna, as a result of his attendance at the union meeting, was harming the Respondent and would be dealt with in kind, would reasonably cause Luna to anticipate unspecified reprisals for engaging in union activity, and are clearly coercive, in violation of Section 8(a)(1) of the Act.

Employee Gloria Chavez testified that on April 5, during her break, as she was soliciting employee Antonio Olivarez to sign a union authorization card, her acting supervisor, Steven Gonzalez, approached. Chavez hid the card, and Gonzalez said, "I know you are up to your union tricks again." Chavez replied that she didn't know what he was talking about. Olivarez corroborated the testimony of Chavez, and testified that he considered Gonzalez to be his supervisor. I credit their testimony.

The Respondent denies that Steven Gonzalez was a supervisor in the recliner cell on April 5. The evidence shows that Gonzalez had been a supervisor in another cell (the fantasy cell), at least until March 6, and issued various disciplinary warnings to employees. Thereafter, he was transferred to a position in the receiving department, and sometime thereafter he was placed in charge of the recliner cell, apparently on a temporary basis.

Both Garcia and Olivarez testified that they believed that Steven Gonzalez possessed supervisory authority at the time he made the statement to them, and the Respondent has presented no evidence to the contrary. I find that, in fact, Gonzalez was their supervisor at the time he made the statement. Such a statement is coercive in nature as it implies that the Respondent was aware of Garcia's union activity and that such activity was being monitored. By such conduct the Respondent has violated Section 8(a)(1) of the Act.

David Salinas testified that on March 26, several days after it became known that he had attended the union meeting, he was called into Bouldin's office and, in the presence of Juan Leon and Stella Hanna, was told by Bouldin that he was messing up by becoming involved with the Union. Bouldin further told him that he was not only jeopardizing his own job, but also the jobs of the people in his family who worked for the Respondent. Further, Bouldin told him that if he was interested in a management position, he would have to change his attitude.

Leon could not recall this conversation. Stella Hanna did not testify in this proceeding. Bouldin testified that he did call Salinas into the office and criticize him for a poor attitude and "talking badly about the company on a continuing basis," but that the criticism was not directed toward his support of the Union. Further, Bouldin denies that he mentioned the possibility of a promotion to a managerial position if Salinas would change his attitude. It is noteworthy that two witnesses to this conversation, Leon and Hanna, did not corroborate Bouldin's testimony, as Hanna was not called as a witness, and Leon could not remember the meeting. I credit Salinas' account of the conversation, and find that Bouldin threatened him with the possibility of discharge, and, in addition, held out to him the possibility of a promotion, in an effort to cause Salinas to cease his support of the Union.

A total of seven employees testified that during the course of the May 9 union rally in the Respondent's parking lot, Ricardo Sanchez told the employees that they looked pretty wearing the caps and buttons they had been given by the union representatives, but that they would not look so pretty after they were no longer working for the Respondent. I credit the testimony of these employees, and find that Sanchez made the remarks attributed to him. Such remarks explicitly convey the message to employees that their support for the Union may result in their termination, and are violative of Section 8(a)(1) of the Act.

I credit the testimony of Evonne Acy and Tom Norton, and find that on or about May 9, the manager of the Alamo Restaurant, James Gimble, told them that if a union was voted in the Respondent would close the Alamo and take away some of the employees' benefits. Gimble was not called as a witness by the Respondent. Advising employees that benefits which they enjoy will be taken from them if they elect to have union representation constitutes conduct violative of Section 8(a)(1) of the Act.

Martha Moya attended two employee meetings after the May 14 layoff. One of the meetings was held on the afternoon of May 14, and the other was held on May 21. Moya testified that at the first meeting, Bouldin stated that the employees had been laid off due to lack of work; he also gave as a reason for their layoff that they had been causing problems, and added that they would not be recalled when work picked up. During the second meeting, according to Moya, Bouldin told the assembled employees that the people who had been passing out cards and "running about with secrets" were never going to come back to work.

The complaint does not specifically allege, and the General Counsel apparently does not contend, that the aforementioned statements should be found to be violative of Section 8(a)(1) of the Act. However, the General Counsel apparently maintains that Moya's testimony, if credited, constitutes explicit evidence of the Respondent's unlawful motivation in selecting the employees who were laid off. It seems unlikely that Bouldin would have uttered these inculcating comments to a group of employees which apparently included a number of known union supporters. No other employee corroborated Moya's testimony in this regard, and it is significant that employee Ofelia Solis, who apparently attended the same meeting, testified to other matters but was not questioned about the alleged remarks of Bouldin. For the foregoing reasons, I find the record evidence to be insufficient to support a finding that Bouldin made the comments attributed to him by Moya.

Moya also testified that on May 15, the day following the layoff, Ricardo Sanchez called her into his office and advised her of the fact that she would be receiving a merit pay raise. He also asked her what she was thinking about the Union. I credit Moya, and find that by such a question Sanchez unlawfully interrogated Moya regarding her feeling toward the Union, in violation of Section 8(a)(1) of the Act.

It is alleged that Maria Leon is an agent of the Respondent, and that certain remarks she made to employee Ofelia Solis regarding the closing and subsequent reopening of the Company for the purpose of getting rid of union adherents, and, also, about keeping a record of union adherents on the Respondent's computer, are therefore attributable to the Respondent. Maria Leon is the mother of Juan Leon, one of the Respondent's principals. Formerly a supervisor, she became a rank-and-file employee long before the union activity began. She worked with the employees in her cell as a seamstress performing the same work as other seamstresses, and the record does not show that she enjoyed any special privileges as a result of her relationship to Juan Leon. Although she was salaried rather than hourly paid, the record does not show that her coworkers were aware of this fact. I conclude that the record evidence is insufficient to show that Maria Leon was an agent of the Respondent, as a familial relationship, without more, is insufficient to establish that by her remarks, Maria Leon was reflecting company policy and speaking for management. See *Sonicraft, Inc.*, 295 NLRB 766, 770 (1989), *enfd.* 905 F.2d 146 (7th Cir. 1990); *Foodland*, 233 NLRB 708, 713 (1977). Therefore, I shall dismiss this allegation of the complaint.

Javier Rico, now a supervisor, recanted the statement in his affidavit, given at the time he was a rank-and-file employee and active union supporter, to the effect that Ricardo Sanchez remarked to various union supporters on June 27,

shortly before the scheduled election, that they would be fired if the Union did not win. I do not credit Rico's testimony, which was clearly unresponsive and evasive, that he was not certain that Sanchez made the remark. I find that the credible version of what transpired is reflected in Rico's affidavit, taken prior to Rico's promotion to a managerial position, which specifically identifies Sanchez as the speaker. I find that such a remark is violative of Section 8(a)(1) of the Act, as it conveys the message to the employees that their job tenure is directly related to the outcome of the representation election.

As alleged in the complaint, the aforementioned conduct of the Respondent's officers, managers, and supervisors constitutes unlawful conduct violative of Section 8(a)(1) of the Act. See *Rossmore House*, 269 NLRB 1176 (1984); *Pennsy Supply*, 295 NLRB 324 (1989); *Rockwell International Corp. v. NLRB*, 814 F.2d 1530 (11th Cir. 1987); *Goodman Investment Co.*, 292 NLRB 340 (1989); *DeCasper Corp.*, 278 NLRB 143 (1986); *Koons Ford of Annapolis*, 282 NLRB 506 (1986); *Maremont Corp.*, 294 NLRB 11, 19-23 (1989); *Uniontown Hospital Assn.*, 277 NLRB 1298 (1985).

2. The 8(a)(3) violations

a. *The layoff of Michael Cantu (April 30)*

There is no contention in this proceeding that the April 30 layoff of some 65 employees was motivated by considerations proscribed by the Act. While virtually all the individuals in this group were administrative employees, several of them, including Michael Cantu, although not considered to be production employees, were nevertheless unit employees fairly encompassed by the unit description in the representation petition and worked in departments which directly supported the production process. It is alleged that Cantu was singled out for discharge because of his union or concerted activity.

The record evidence shows that each of the six employees in the leather department were disgruntled with their department manager, Davis, and with their leadman, Navarro. Cantu's activities in this regard were not exceptional or conspicuous, and it appears that he was merely a member of the group seeking to present collective complaints to management. I find that the evidence does not support the General Counsel's position that Cantu was selected for discharge because of such protected concerted activity.

I conclude, however, that the General Counsel has presented a prima facie case supporting the complaint allegation that Cantu was selected for layoff because of his union activity. Regarding the necessary element of employer knowledge, the evidence shows that the day after Cantu signed a union card, Production Manager Sanchez asked him if he knew anything about the Union and laughed after Cantu said no. Sanchez' laughter upon Cantu's denial that he knew anything about the Union, may be reasonably characterized as an expression of disbelief. Coupled with the fact that Sanchez did not supervise Cantu and would therefore, insofar as the record shows, have no day-to-day contact with him, it may be reasonably inferred that Sanchez' question was more than one of merely passing interest. It is also noteworthy that Supervisor Davis, upon observing that the leather department employees were holding a group meeting, asked them if the meeting concerned the Union.

Further, uncontroverted record evidence shows the following: that Cantu had more seniority than all but one of the leather department employees; that he was admittedly a good worker and, upon being advised of his layoff, Supervisor Davis told him that there was nothing wrong with his work; that there were newly hired employees who were not laid off; and that, contrary to what Davis initially told the assembled employees, namely, that he would be making the layoff selection, Cantu was subsequently advised by Davis that the decision had been made by Davis' superiors rather than by Davis.

The foregoing prima facie evidence was not contradicted; Supervisor Davis was not called as a witness to explain the Respondent's rationale for selecting Cantu. The Respondent did not present any evidence on this issue; rather it elected to rely on the contention that the General Counsel has failed to show that the Respondent knew or suspected that Cantu was engaged in union activity.

In addition, the following unlawful conduct of the Respondent, found herein, supports the General Counsel's prima facie case: that both Bouldin and Ricardo Sanchez, prior to April 30, had made threatening remarks to union supporters to the effect that their jobs were in jeopardy or that they should be careful; and that 2 weeks after Cantu's layoff the Respondent, as found below, unlawfully laid off 25 other employees because of their union activity.

While there is no direct evidence that the Respondent had knowledge of Cantu's union activity, I conclude that the General Counsel's prima facie case, supported by circumstantial evidence, is sufficient to establish a reasonable inference of such knowledge. See *Abbey's Transportation Services*, 284 NLRB 698, 700-701 (1987), enfd. 837 F.2d 575 (2d Cir. 1988); *BMD Sportswear Corp.*, 283 NLRB 142, 143 (1987); *Darbar Indian Restaurant*, 288 NLRB 545 (1988); *Alumbaugh Coal Corp.*, 247 NLRB 895, 900-901 (1980); *Yaohan of California*, 280 NLRB 268, 269-270 (1986).

As the Respondent has elected to present no evidence regarding its reasons for selecting Cantu for layoff, the General Counsel's prima facie case stands unrebutted. I conclude, therefore, that it has been established that Cantu was selected for layoff because of his actual or suspected activity on behalf of the Union, in violation of Section 8(a)(1) and (3) of the Act. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

b. *The May 14 layoff*

Clearly the Respondent was experiencing serious financial difficulties because of declining profits; and a related cash flow problem caused it to be unable to timely pay its most important suppliers for large quantities of leather which the Respondent had purchased in anticipation of a continued increase in sales. As a result the Respondent laid off some 65 nonproduction employees on April 30.

It is significant that contemporaneously with this layoff, the Respondent granted virtually all of its employees a seniority raise, and granted about half of its employees a merit raise, in significant amounts. Given its professed precarious financial position, the timing of the raises makes no economic or business sense, as the record shows that the raises in late April and early May were neither automatic nor con-

sistent with the Respondent's alleged prior promise to the employees that they would be given a seniority raise 1 year after the July to September 1989 period during which time the Respondent had changed from a piecework to an hourly method of compensation. Since it may reasonably be concluded that prudent businessmen would not exacerbate an already difficult situation by granting employees a sizeable wage increase when faced with serious financial difficulties, it is further reasonable to presume that the Respondent believed that the various cost-saving measures it implemented, particularly the April 30 layoff of a large number of employees, was sufficient to both resolve the financial problems and, at the same time, to justify the granting of raises.

It is admitted by the Respondent that at the April 28 meeting the Respondent's principals made a specific determination not to lay off any production employees. The reason for this determination, according to the Respondent, was two-fold. First, the Respondent wanted to delay any production layoffs in anticipation of an influx of showroom written sales. While the evidences shows that the Respondent relies heavily on its weekend sales volume and that it advertises sales promotions virtually every weekend, it is also clear that the Respondent places a special emphasis on its annual 3-day holiday weekend sales. Since such a sale was scheduled to occur during the Memorial Day weekend at the end of May, just two weeks following the May 14 layoff, the Respondent's decision to effectuate the layoff is inconsistent with its original determination to retain the employees in anticipation of the large Memorial Day sale orders.

The second, and related, reason given by the Respondent for delaying a decision to lay off production employees was due to the mechanics of the Respondent's "just in time" production process. The rationale, although only alluded to by the Respondent and not fully developed by record evidence, is as follows. Because the Respondent maintains no inventory of furniture and commences to manufacture it only after an order has been received, and further, because the production employees are sent home when there is no work to be done, there simply was no compelling economic need for a formal layoff. Thus, when the employees are working they are always cost efficient, as the Respondent emphasized that it does not write orders or sell furniture at a loss just to keep employees employed or to get rid of excess inventory; and since the employees are not paid when there is no work to be done, the Respondent incurs little or no costs by retaining employees rather than laying them off.⁹

The Respondent has presented no convincing evidence to explain, therefore, under the foregoing circumstances, the necessity of effectuating a formal layoff of employees at a time when it was anticipated that sales would soon be increasing, since, in the interim, there would be little or no expense incurred by retaining a full complement of employees on its payroll.

Further, it is clear that a paramount reason for maintaining a full complement of on-call production employees rather than laying them off involves the matter of overtime: the

⁹There was no evidence presented by the Respondent to show that it was more cost effective to lay employees off rather than to simply retain them as employees on an "as needed" basis. Indeed, this is the admitted reason why the transportation employees (truckdrivers) who were not included in the petitioned-for collective-bargaining unit, were not laid off.

greater the number of employees available to perform the work during the regular workday, the fewer overtime hours needed to produce the furniture. As overtime is clearly less cost-effective than regular or straight time pay, it is advantageous to minimize overtime. While the Respondent's "just in time" production method has regularly necessitated an extensive number of overtime hours, it is significant that the second and third greatest number of overtime hours during the 16-month period reflected in the record were in June and July 1990, which were necessitated by the tremendously successful Memorial Day sale. Under the circumstances, it is clear that had the Respondent not laid off the 25 production employees in mid-May, the overtime hours for June and July would have decreased proportionally, with concomitant cost savings to the Respondent.

The Respondent argues in its brief that the laid-off employees were not immediately recalled after the highly successful Memorial Day sale because the sales volume for several specific styles of furniture, rather than for a wide range of furniture, exceeded all expectations, and that the Respondent simply did not have a sufficient quantity of those particular patterns, which are overlaid on the leather hides prior to cutting, to facilitate the production process. Thus, according to the Respondent, since the first step in the manufacturing process is the cutting of the hides from the patterns, this bottleneck delayed the entire process; accordingly, under these circumstances, a larger complement of employees would not have been able to decrease the amount of overtime.

The record shows that the only reference to a limited supply of patterns was made by Fernando Sanchez who mentioned, in passing, that the orders for a particular style were so great that the Respondent "didn't have patterns to cut the hides with." Respondent's counsel did not pursue this matter or ask Sanchez how this effected the number of overtime hours. And Sanchez was not asked, nor did he explain, that a limited supply of patterns had anything to do with the Respondent's failure to recall the employees. Rather, immediately following his aforementioned testimony about the limited supply of patterns, Sanchez was asked the following question by Respondent's counsel:

Q. If you were so pressed to get the product out, though, why did you not call—or did you call back any of these employees you had just laid off.

Sanchez answered:

No. Because we didn't think that sales were going to be up again, and this was something that we were going to get through in two or three weeks. There was no need for that. It took us longer, though, than anticipated because of the mix.

Thus, Sanchez' testimony does not support the Respondent's argument.

In fact, the 2 or 3 weeks catch-up period mentioned by Sanchez stretched into months, as the record shows that substantial amounts of overtime were worked in the months thereafter. Indeed, although Bouldin's affidavit, dated August 1, states that he was in the process of meeting with the employees and informing them "that we will be working a 40-hour weeks [sic] in the month of August," the August and September overtime hours show that this was not the case.

A significant factual issue is the date on which the decision to lay off the employees was made. Both Fernando Sanchez and Kent Bouldin testified that the decision was made during the course of a meeting on May 8, the day before the May 9 union rally in the parking lot. However, the pertinent part of Bouldin's affidavit, quoted above, is very clear and unambiguous, and establishes that the meeting in question was held on May 11 rather than May 8. On being directly confronted with the apparent discrepancy between his testimony and his affidavit, Bouldin stated that the May 8 date was correct as he had reviewed both his appointment calendar and the appointment calendar of Fernando Sanchez shortly prior to giving testimony. Significantly, however, the Respondent did not introduce either appointment calendar into evidence to corroborate Bouldin's asserted basis for establishing the true date of the meeting. Under these circumstances, it is reasonable to infer that, contrary to the testimony of Bouldin and Fernando Sanchez, the claimed appointment calendars would establish that the layoff decision was made subsequent to, rather than before, the union rally and the filing of the representation petition. *Town & Country LP Gas Service Co.*, 255 NLRB 1149, 1151 (1981); *Master Security Services*, 270 NLRB 543, 552 (1984).

Further, it is significant that Ricardo Sanchez testified that the meeting he attended on May 11 lasted approximately 2 hours, that he was given financial documents during the meeting, and that he was unable to recall any details. Had the decision been previously made on May 8, and had the meeting on May 11 been held for the limited purpose of advising Ricardo Sanchez to commence selecting the employees for layoff, as the Respondent contends, there would have been no necessity for a 2-hour meeting.

I conclude from the foregoing that the meeting occurred on May 11, as specified in Bouldin's affidavit, and thus that the decision to lay off the employees was made 2 days after, rather than 1 day before, the union rally and the filing of the representation petition. This sequence of events, coupled with the finding that the Respondent has endeavored to conceal the date of the layoff decision, suggests that the layoff was motivated by unlawful considerations.

It is apparent that the Respondent, in order to give some plausibility to its contention that the layoff decision was made on May 8, was placed in the awkward position of formulating an explanation to account for the fact that Ricardo Sanchez was given a very limited amount of time to commence making his layoff selections. The resultant scenario advanced by the Respondent is, on its face, ludicrous. Thus, the Respondent asserts, it was feared that should Ricardo Sanchez, on May 8, ask the human resources department for a computer printout of the names and employee numbers of the production employees, this would somehow alert certain human resources personnel to the likelihood that a production layoff was imminent; and further, that the word would be spread from the human resources department to the employees by way of the husband of one of the human resources persons, a production supervisor, who would have been told by his wife that Ricardo Sanchez had requested such a list.

This contrived scenario defies credulity, and has as its premise that the only conceivable reason for a production manager to request a current list of production employees under his ultimate supervision and control would be for pur-

poses of implementing a layoff. Clearly, there are a variety of readily apparent reasons why a production manager should be able to request such a list without arousing suspicion, and the Respondent has failed to show that its methods of supervision or administration were such that furnishing a list of production employees to the production manager would be tantamount to announcing that a layoff was imminent. Nor was it even necessary for Ricardo Sanchez to request such a list, as any of the Respondent's principals could have done so.

The Respondent maintains that, contrary to prior situations, department supervisors or managers were not permitted to make the layoff selections because Sanchez was considered to be disinterested and evenhanded, and therefore less biased against employees who may have demonstrated support for the Union. A more probable explanation, however, advanced by the General Counsel, is that Sanchez was instructed to lay off the staunchest union adherents because the supervisors, if permitted to make the selections, would have tended to select the least productive employees rather than the most vocal union supporters.

Thus, the Respondent has presented no evidence to support its contention that the supervisors harbored any bias or animosity toward known union adherents on their teams. Nor has the Respondent advanced a rationale for believing that supervisors would fail to heed specific instructions to lay off the least efficient employees and retain the most productive, regardless of their union sympathies. On the other hand, Ricardo Sanchez has clearly exhibited a strong bias against union supporters as exemplified by his utterances in the parking lot on May 9, and his unlawful interrogation of Diana Garcia during which he constructed an analogy between rape and clandestine union activity. Further, the evidence shows that Sanchez was unerring in his selection of ostensible union supporters for layoff. Each of the 19 laid-off employees who testified in this proceeding said that they wore caps and buttons at work during the 2 days between the union rally and their discharge; all but two of them, according to the credible testimony of Union Representative Tom Keane, were on the union organizing committee; and the Respondent has not demonstrated by credible evidence that any of the laid off employees who did not testify in this proceeding were, in fact, opposed to the union or did not wear a union cap or buttons at work during the relevant time period. Given the foregoing facts, I am convinced that Sanchez' selections were influenced by the employees' ostensible support for the Union, and that this was the Respondent's motivation for directing Sanchez, rather than the various department supervisors, to make the layoff selections.

While the record evidence does not establish with any certainty the number of employees who were wearing union caps or buttons during the 2 working days between the union rally and the layoff, it appears that as many as 80 to 100 of the total employee complement of about 200 employees wore them on the day of the rally, and thereafter the number declined. Assuming the reliability of the estimate given by employee Juana Rodriguez, a witness called by the Respondent, that approximately 40 employees were wearing union buttons or caps on Friday, May 11, and, given the fact that 25 of them were laid off on the morning of the following workday, Monday, May 14, the message to the remaining employees was unmistakable: Ricardo Sanchez' threat during the May

9 union rally to the effect that employees who elected to wear union insignia would be fired, had, in fact, come to pass.

Following the General Counsel's presentation of a prima facie showing that the Respondent's May 14 layoff of 25 production employees was discriminatorily motivated, it is incumbent upon the Respondent to establish that it would have laid off the employees for lawful business reasons. *Lear Siegler, Inc.*, 295 NLRB 857 (1989); *Wright Line*, supra; *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). I find that the General Counsel has clearly made the requisite showing. I further find that the Respondent has failed to carry its burden of proof, as the evidence it has presented and the arguments it has advanced do not withstand scrutiny.

Accordingly, for the reasons set forth above, I find that the May 14 layoff of the production employees was not motivated by valid and lawful economic considerations, as contended by the Respondent; rather, as alleged in the complaint, I find that the Respondent implemented the layoff in order to rid itself of employees who demonstrated that they were union adherents. By such conduct, the Respondent has violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

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

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

3. The Respondent has violated Section 8(a)(1) of the Act by interrogating employees regarding their union activity, by threatening employees with discharge, loss of benefits, or other reprisals because of their union activity, and by suggesting that an employee would receive a promotion if he discontinued his union activity.

4. The Respondent has violated Section 8(a)(3) and (1) of the Act by laying off employee Michael Cantu on April 30, 1990, and by laying off 25 employees on May 14, 1990.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, I recommend that it be required to cease and desist therefrom and from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, the Respondent shall be required to post an appropriate notice, in both English and Spanish, attached as "Appendix."

Having found that the Respondent unlawfully discharged its employees named in the complaint, I recommend that it offer the employees named herein immediate and full employment, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered by reason of the Respondent's discrimination against them. Backpay is to be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]