

Best Plumbing Supply, Inc. and Local 456, International Brotherhood of Teamsters, AFL-CIO.¹ Case 2-CA-24805

January 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On April 15, 1992, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a brief in support of the administrative law judge's decision, and an answering brief in response to the Respondent's exceptions and in support of the General Counsel's cross-exceptions. The Respondent then filed an answering brief in reply to the General Counsel's cross-exceptions.

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,² and conclusions as modified and to adopt the recommended Order.

The judge found, *inter alia*, that the Respondent discharged employee Brett Beigert because of his union activities, in violation of Section 8(a)(3) and (1) of the Act. In its exceptions, the Respondent argues that the General Counsel failed to show that its decision to discharge Beigert was in any way motivated by unlawful animus, or that it even had knowledge of any union activity in which Beigert might have been involved. The Respondent asserts further that even if the General Counsel made out a *prima facie* showing of discrimination, the Respondent has demonstrated that legitimate business considerations were in fact the reason for Beigert's discharge.³ For the reasons that follow we find no merit to the Respondent's exceptions.

In *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Manage-*

ment Corp., 462 U.S. 393 (1983), the Board explained its causation test for cases alleging violations of the Act that turn, as does this case, on employer motivation. First, the General Counsel must establish a *prima facie* showing sufficient to support an inference that the protected conduct, such as an employee's union activity, was a motivating factor in the employer's decision. The elements commonly required to support a *prima facie* showing of discriminatory motivation under Section 8(a)(3) are union activity, employer knowledge, timing, and employer animus. Once such *prima facie* unlawful motivation is shown, the burden shifts to the employer to demonstrate that it would have taken the adverse action against the employee even in the absence of the protected activity. It is within this framework that we analyze the evidence, the arguments of the parties, and the judge's findings concerning Beigert's discharge.

We agree with the judge that the General Counsel has demonstrated that the Respondent had knowledge of Beigert's union activity. It is undisputed that at a meeting the Respondent called with employees on November 9, 1990,⁴ to express its opposition to Teamsters representation of its warehouse personnel, employee Vivello got up and made several antiunion statements. Beigert took issue with Vivello's statements, explaining that the Union would not prevent drivers from delivering to nonunion firms as Vivello had contended, but would only prohibit deliveries across picket lines. Warehouse Manager Leadbitter testified that Beigert sounded very "professional" when he spoke, as well as "very direct," "very well-spoken," and that "he understood what he was saying." Beigert was discharged approximately 30 minutes after this meeting ended.⁵

Although the Respondent does not concede that Beigert's comments were prounion, we find that his comments in rebuttal to Vivello's antiunion remarks sufficed to disclose to the Respondent where his union sympathies lay, namely, that he supported the Union. The meeting in which Vivello's and Beigert's comments were made was held by the Respondent to combat the Teamsters' efforts to organize the employees and not for the general purpose of holding a forum on the pros and cons of unionization. That being so, we conclude that all in attendance likely understood that any comments made by employees for or against unions represented not only the employee commentator's views about unions in general, but his sympathies toward the Teamsters and its campaign to represent the employees as well. Here, that understanding was heightened by the fact that, among the employees, only Beigert disagreed with Vivello's antiunion remarks. In-

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² The Respondent and the General Counsel have 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.

³ Beigert was hired as a backup driver/warehouseman in September 1990, and began organizing the employees in the warehouse almost immediately. Shortly thereafter, the Respondent became aware that there was talk of union representation, but denied knowledge of any union activity on Beigert's part.

⁴ All dates are in 1990, unless otherwise indicated.

⁵ The Respondent's assertion on brief that the discharge occurred several hours later is not supported by credited testimony.

deed, employee Albury testified that he was aware that Beigert was speaking in defense of the Union, as Beigert's own testimony confirms. In this regard, we also note that both Leadbitter and Respondent's co-owner Weiner, while testifying that they could not recall what Beigert actually said, acknowledged that Beigert had disputed the antiunion comments of Vivello.

In any event, we find, as did the judge, that even if the Respondent did not obtain direct knowledge of Beigert's union activities from his comments at the November 9 meeting, the totality of the circumstances supports an inference of knowledge. Those circumstances include the Respondent's general knowledge of union activity among its small group of employees, Beigert's comments in contradiction of Vivello's antiunion remarks at the meeting, the summary discharge of Beigert and its suspicious timing, the Respondent's contemporaneous 8(a)(1) conduct, and the absence of any incident or conduct involving Beigert that would explain his sudden discharge.⁶ Further, that inference has not been rebutted by the Respondent because the judge discredited the testimony of Leadbitter and Weiner that economic considerations motivated their decision to discharge Beigert.

The General Counsel has also demonstrated Respondent's animus toward the Union. In addition to the Respondent's lawful statements indicating that it was absolutely opposed to the Union, Leadbitter also made unlawful threats to a group of four employees that if the shop became unionized, there would have to be timeclocks and more strict procedures, and that such procedures could result in employees being replaced. The judge found, and we agree, that these statements violated Section 8(a)(1) of the Act. The Respondent's animus was further demonstrated by Leadbitter's questioning of Beigert in October about who was behind the Union, whether he was involved in the Union, and whether anyone had approached him about the Union. The judge found, and we agree, that this constituted unlawful interrogation, also in violation of Section 8(a)(1). These violations more than meet the General Counsel's burden of proof on the animus issue. Having shown knowledge, animus, and that the discharge happened immediately after the Respondent apparently gained knowledge of Beigert's union support, the General Counsel has made out a prima facie case that Beigert's union sympathies were a motivating factor in the discharge decision.

With respect to the Respondent's asserted economic defense, the Respondent claims that during 1990 it was facing increasingly adverse economic conditions which necessitated companywide cutbacks. The Respondent

⁶*Darbar Indian Restaurant*, 288 NLRB 545 (1988); see also *Abbey's Transportation Services*, 284 NLRB 698 (1987), enf. 837 F.2d 575 (2d Cir. 1988).

further contends that at the time it discharged Beigert, it had neither the need nor the justification for retaining two backup drivers on its payroll, and that Beigert's discharge was part of its plan to scale back its operations and to adjust staff to reflect the difficult economic times. In this regard, Leadbitter and Weiner testified that they had decided to discharge Beigert before the November 9 meeting at which Beigert spoke up to rebut Vivello's antiunion remarks.

For the following reasons, as well as those set forth by the judge, we find that the Respondent's asserted reasons were used as a pretext to discharge Beigert for his union activities.⁷ The judge discredited Leadbitter's and Weiner's testimony regarding when they decided to discharge Beigert and that their decision was economically motivated. That adverse credibility resolution in itself seriously, if not entirely, undermines the Respondent's defense; in any event the remaining aspects of the Respondent's proffered defense cannot withstand scrutiny.

For example, Weiner asserted proudly to employees at a November 5 meeting that the Respondent had managed to get through some tough economic times without a single layoff, and that in fact it had brought on four new people since September. Consequently, the Respondent's assertion that laying off Beigert suddenly became a pressing financial necessity only 4 days later is inconsistent with Respondent's stated policy and its practice. Further, Beigert was the *only* employee laid off; and in laying him off the Respondent failed to follow its policy of letting employees finish out the workweek, because Beigert was discharged on Friday, right after lunch, a scant 30 minutes after making his pronoun sentiments known publicly.⁸

Although the Respondent accurately asserts that its staffing levels dropped in 1990, the evidence indicates that this was the result of attrition and not layoffs. In a document introduced at trial (the notes used by Weiner during a meeting held with employees in the late spring of 1990), Weiner sets forth his plan for down-scaling, which includes several cost-cutting measures (such as elimination of services not needed to attract customers, and shifting employees within the organization). Laying off workers was specifically re-

⁷The effect of a pretext finding is to leave intact the discriminatory motive established by the General Counsel. See, e.g., *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enf. sub nom. *NLRB v. Limestone Apparel Corp.*, 705 F.2d 799 (6th Cir. 1982).

⁸The Respondent asserts that Beigert was originally hired to replace employee Hardy, who had given notice, and that when Hardy decided to stay, it decided to lay off Beigert because an additional backup driver was not needed and because economic conditions necessitated cutbacks. The Respondent failed to call Hardy as a witness to corroborate any of its assertions in this regard. Beigert testified that it was not his understanding that his tenure was conditional on the tenure of Hardy.

jected as a means of reducing costs.⁹ Further, minutes of a staff meeting held on October 25, only 2 weeks before Beigert was discharged, do not mention the necessity of a layoff or that the Respondent was even considering layoffs as a possibility.

We also note that Beigert, although probationary, was considered to be an excellent employee, and had been told that he was in line for a raise and promotion. Employee Hardy, on the other hand, who was retained as a backup driver instead of Beigert (on the theory that he was more senior), was not nearly as well-regarded, had been demoted in the recent past, and was known to be unhappy in his employment with the Respondent. Even employee Rawlings, hired as a warehouseman *after* Beigert, would seem to be a more logical choice to be laid off, as he had no experience driving and had the least amount of seniority. Thus, it would seem that, of the three of them, the Respondent discharged the employee with the best work record and the greatest flexibility in that he could capably perform both driving and warehouse tasks, unlike either Hardy¹⁰ or Rawlings.

In sum, we find that the General Counsel has established that Beigert was terminated for his union activities and that the Respondent has not demonstrated that it would have discharged Beigert in the absence of such activities. We therefore agree with the judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Beigert.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Best Plumbing Supply, Inc., Yorktown Heights, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

⁹Also rejected were reductions in salaries, shortening the workweek, and compelling employees to take early retirement.

¹⁰The Respondent admitted that Hardy was not in line for a full-time driver position (as was Beigert), because Hardy "was not expedient enough. He took too long making his calls. He took too long on the road."

Suzanne K. Sullivan, Esq. and *David E. Leach III, Esq.*, for the General Counsel.

Andrew A. Peterson, Esq. and *Richard D. Landau, Esq.* (*Jackson Lewis Schnitzler & Krupman*), for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York, New York, on February 10 and 11, 1992. The charge and amended charges were filed on December 7, 1990, and April 25 and June 27, 1991. The com-

plaint was issued on September 17, 1991. In substance, the complaint alleges:

1. That in or about October 1990, the Respondent by one of its owners, Jesse Weiner, told employees that it would be futile to select a union and that the Respondent would never sign a contract if they did.

2. That in or about October 1990, Respondent by its warehouse manager, David Leadbitter, interrogated employees, solicited grievances, threatened to discharge employees, and threatened to impose more onerous conditions on them if they supported the Union.

3. That on November 9, 1990, the Respondent discharged Brett Beigert because of his activities on behalf of the Union.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

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

II. ALLEGED UNFAIR LABOR PRACTICES

The employer is engaged in the retail and nonretail sale of plumbing and related products. Its main place of business is located in Yorktown Heights, New York, and it also operates showrooms in other New York locations. The warehouse is located in Yorktown Heights and this is the locus of the events of this case.

Brett Beigert, the alleged discriminatee, was hired as a warehouse worker and backup driver in late August 1990. According to company witnesses Jesse Weiner and David Leadbitter, Beigert was hired to replace another employee, Hardy, who worked in this same job category and had given notice that he was going to leave at some unspecified time within a month.

Soon after beginning work, Beigert contacted the Union and began organizing the employees in the warehouse. In this respect, he solicited and obtained authorization cards from a sufficient number of warehouse employees to enable the Union to file a petition for election on October 30, 1990. Beigert's testimony was that he was the employee who was most active in supporting the Union. At the same time, Beigert did his job and the Employer concedes that he was an excellent worker.

Chris Albury, another warehouse employee testified that in September Leadbitter called him, Lance Lindsey, Randy Hardy, and Wendell Williams into the warehouse office. According to Albury, Leadbitter said that if a union came into the plant, they would have to have timeclocks and more strict procedures. He states that Leadbitter said that the employees could be replaced and that he asked them if they had any questions. According to Albury, he stated that he was dissatisfied with his evaluation. He doesn't recall what Leadbitter responded.

Leadbitter, the warehouse manager, although denying that he had any knowledge of Beigert's union activities, did concede that in September 1990, he became aware that there was talk of union representation among some of the ware-

house employees. He testified that three of the employees, Lindsey, Hardy, and Williams made evident (albeit in an implied way) their union sympathies. He also testified that on various occasions before October 20, 1990 (when he went on vacation), he had conversations with Romano, a warehouse supervisor, wherein they speculated as to which employees might or might not favor unionization. Finally, Leadbitter testified that sometime in September 1990, he told Jesse Weiner of this talk and that he was told to keep his ears open.

Beigert testified that toward the end of October 1990, Leadbitter, in the warehouse office, asked him if he was involved in the Union; who was behind the Union; and if anyone had approached him about the Union. Beigert states that he responded that he didn't know anything about the Union.

Beigert also testified that in October 1990, he was told by Leadbitter that he soon would be promoted to a regular driver's position with a raise in pay.

As noted above, the Union filed a petition for an election on October 30, 1990, in Case 2-RC-20975, wherein the Union sought to represent the employer's drivers and warehousemen employed at the Yorktown Heights facility. (It appears from the record that the employer retained labor counsel before the Petition was filed). In any event, Jesse Weiner gave speeches to employees regarding the prospect of unionization. The relevant ones are the speeches given to the warehouse employees on November 5 and 9, 1990.

Beigert testified that at the first of these speeches, Weiner stated among other things that he did not like the Teamsters and would not sign a contract under any circumstances if the Union won an election. Beigert also recalls that Weiner said that his door was open and that if employees had any questions they could come talk to him. On cross-examination, Beigert was not as certain as to the words used by Weiner and it is probable that he misconstrued the actual statements made. In this respect, Albury's testimony was consistent with the testimony of Weiner who stated that he said that he had a copy of a contract in his hand and said that he would not sign that particular contract. As Weiner credibly testified that he basically read from a speech which was reviewed by his attorney, the written text was received in evidence. It stated in pertinent part:

A. We are absolutely opposed to having the Teamster Local 456 represent you, our employees; and will exercise all of our legal rights to keep them out of our joint futures.

1. Over the next few weeks we will share with you information on why this or any union would hinder the success of this company and curb its growth.

B. Its important for us all to understand that this "is" Best against the Local 456—Not you against us. We will work very hard with all of you over the next few months to enlist your support to defeat this union's intrusion. Our wish is to keep Best as a competitive and growing force in our marketplace, offering continued opportunities for you and your families.

C. We promise to keep our information true and accurate, and hopefully correct any misinformation you may receive elsewhere. Please come to us . . . to con-

firm, deny or explain any of the promises you will undoubtedly hear.

. . . .
E. *Facts*

1. Local 456 will/has been showing you Teamster contracts with wonderful pay rates. Ask Local 456 if they can guarantee you those or any pay rates.

3. . . .

7(a) We have carried ourselves through this miserable economy without a single layoff. In fact four of us have come on board since Sept. Ask Local 456 how many members of theirs have been laid off.

At the speech given by Weiner on November 9, he informed the employees that there was going to be a conference at the offices of the NLRB to discuss election eligibility issues. He again expressed the Company's opposition to Local 456. In this speech, Weiner, referring to a Local 456 contract, stated:

After reading this through I can assure you that if asked by the Union to sign this contract, we would not. As we told you Monday, Local 456 cannot and will not guarantee you the rates in this document. I did note, when reading this contract through that Local 456 would want us as employers to deduct \$.50 an hour from your wages for their local dues. It went on to request that if you failed to join the union or remain a "member in good standing" (pay your dues) that we terminate your employment.

During the November 9 meeting one of the employees, Paul Varello, made a number of antiunion statements including a statement that the Union would or could prevent the company's drivers from delivering to nonunion customers. According to Beigert, he responded to these comments, stating that this was not so and that the Union would only prevent drivers from making deliveries across a picket line. Weiner and Leadbitter testified that they could not recall the actual dialogue between Varello and Beigert. They did concede, however, that they construed Varello's comments as being antiunion and that Beigert made some kind of reply. In Leadbitter's words, it looked as if there was going to be an explosion between the two employees and that Weiner intervened stating that Beigert was correct.

About a half hour after Weiner's November 9 speech, Beigert was laid off. The notice of layoff stated:

Reason For Termination: Manpower cutback due to market. Due to the continuing drop in market conditions, we find it necessary to eliminate further positions in the company. Among these positions is the position of backup driver. We no longer have the need for (2) two backup drivers. Therefore we must drop the least senior of these positions.

The Company concedes that Beigert was an excellent worker and does not assert that he was discharged for any misconduct. Rather, it asserts that Beigert was originally hired to replace Hardy, who had given notice, and that when Hardy decided to stay on the job, the Company decided to

lay off Beigert because he no longer was needed and because economic conditions necessitated cuts in costs.

As noted above, the employer basically asserts an economic defense. Weiner testified that the company's business slowed down in 1989 and the full import of the downturn was not apparent until he received his accountant's report in April 1990. Weiner states that at that time he and his brother drew up a plan of action to meet the decline and proposed a variety of cost cutting measures. While this plan (E. Exh. 2), called for the shifting around of employees to where needed, it did *not* by its terms, call for the layoff or discharge of existing employees. Indeed, Weiner's testimony was that although the company reduced its total complement of employees over the next 9 months, this was accomplished by first discharging marginal employees, (i.e., those whose work was not good enough), and thereafter eliminating positions through a process of attrition, wherein employees who quit or were discharged for cause, were not replaced except when absolutely necessary.

I am convinced by the Employer's evidence that there was a reduction in the Company's income during 1990. I am also convinced that the total complement of employees, (including warehouse employees), was allowed to drop over a period of time as a cost cutting measure. I am not convinced, however, that the Respondent laid off Beigert as a cost-saving measure.

The Respondent asserts that a manager's meeting was held on October 25, 1990, regarding measures to be taken to save money. Weiner states that when Warehouse Manager Leadbitter returned from vacation, around November 7, 1990, he informed him of the previous meeting and told him to reduce costs. As a consequence of these two meetings, it is asserted that the decision to lay Beigert off was made before the November 9 meeting wherein Weiner addressed employees about the Union and where Beigert spoke up to rebut the antiunion statements of another employee.

An examination of the Company's minutes of the October 25, 1990 meeting (E. Exh. 7) indicates a concern for the company's fiscal condition, albeit there is a prediction that the worst was behind them and that the final quarter may break even. A variety of suggestions were made to increase efficiency and productivity and there is one statement regarding employment levels. This states that it is "OK to taper off staff level at mgrs' discretion." There is however, no order, either direct or implied, to lay off employees and I view the quoted statement merely as an approval for the managers to continue to reduce payroll costs by attrition in accordance with the existing practice.

The fact is that the Company admits that not one employee other than Beigert was laid off due to the economic downturn. Moreover, Weiner bragged about this to the employees as late as November 5, 1990, 4 days before Beigert's termination. Thus, on that date, Weiner stated:

We have carried ourselves through this miserable economy *without a single layoff*. In fact four of us have come on board since Sept. Ask Local 456 how many members of theirs have been laid off. (Emphasis added.)

In short, while Weiner and Leadbitter asserted that the decision to lay off Beigert was made 1 or 2 days before No-

vember 9, 1990, and that their decision was motivated by economic considerations, I don't believe them.

III. ANALYSIS

The Respondent made no secret of its desire to avoid unionization by this Union. It explicitly asserted soon after the petition was filed that it would exercise "all of our legal rights to keep them out of our joint futures." The question here is whether the Company went beyond the boundaries of the law.

While the Respondent denies that it was aware of Beigert's union activities, the evidence shows that the Company was aware of the organizing campaign in September 1990, shortly after it began. The evidence also shows that Beigert was the employee most active in this campaign.

In my opinion, the General Counsel, pursuant to *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), has made out a prima facie case that Beigert was laid off because of his union activities. I note that the layoff occurred close in time to the filing of the election petition by the Union and immediately after the November 9 meeting, wherein Beigert responded to antiunion statements made by another employee.

The employer asserts that the General Counsel's case must fail because there is no evidence that the respondent had knowledge of Beigert's union activities. This contention is rejected. In *Darbar Indian Restaurant*, 288 NLRB 545 (1988), the Board stated:

[T]he Respondent contends . . . that the General Counsel failed to establish that it had knowledge of Saha's union activities. Although there is no direct evidence of the Respondent's knowledge, we believe that the circumstances here support an inference of knowledge based . . . on the Respondent's general knowledge of union activity among the small group of seven dining room employees, the timing of the discharge, the contemporaneous 8(a)(1) conduct, the shifting and pretextual reasons asserted for the discharge and the absence of any incident involving Saha or any conduct by him to explain his discharge on June 8.

In view of my conclusion that the General Counsel has made out a strong prima facie showing that Beigert was laid off for unlawful reasons, the burden is placed on the Respondent to demonstrate that it would have laid Beigert off notwithstanding his union and protected activities. And in my opinion, this is something that the Respondent has failed to do. I therefore conclude that the the layoff of Beigert on November 9, 1990, violated Section 8(a)(1) and (3) of the Act.

As to the other allegations of the complaint I find as follows:

1. I find no merit to the allegation that the employer told employees that it would be futile to select a union and informing them that it would never sign a union contract. This allegation is based on the testimony of employees Beigert and Albury who I believe honestly misinterpreted what Weiner said at the two meetings in November 1990. I conclude that Weiner read from speeches approved by his attorneys which, although indicating an aversion to the Union, only stated that the Company would not sign a particular contract with Local 456. I can understand how these state-

ments (while holding up a document purporting to be a contract) could easily be understood by the employees as meaning that the Company would never sign any agreement with Local 456. (Particularly as Weiner left out any mention or discussion of the negotiation process.) While flirting with the line of legality (and probably intended to suggest implicitly more than the explicit text), I do not believe that the statements made in the present case, constitute a violation of Section 8(a)(1) under existing case law. Cf. *O'Neil Moving & Storage*, 209 NLRB 713, 715 (1974); *Airport Express*, 239 NLRB 543, 548 (1978); *D & H Mfg. Co.*, 239 NLRB 393, 404 (1978).

2. I credit the testimony of Chris Albury regarding the occasion in September 1990, when Warehouse Manager David Leadbitter called together employees Albury, Lindsey, Hardy, and Williams, and told them that if the shop became unionized, there would have to be timeclocks, more strict procedures, and that it could result in employees being replaced. In my opinion, these statements were illegal threats and violative of Section 8(a)(1).

3. The complaint alleges that the Respondent, by Leadbitter, unlawfully solicited grievances and this relates to conversation that took place at the meeting described above in paragraph 2. In this regard, the testimony of Albury was that at one point in the meeting, Leadbitter asked if there were any questions, whereupon Albury stated that he was unhappy with his last review. According to Albury, his review was modified thereafter, with a concomitant increase in salary. As to this same meeting, Leadbitter testified that he asked the employees what was going on, whether something was wrong, and whether they wanted to talk about it. He states that Albury and Lindsey both brought up complaints regarding their evaluations which he subsequently reviewed. Whichever, version is correct (and they do not differ much), I do not believe the evidence here amounts to a solicitation of grievances. At most, there was a casual inquiry as to what was troubling the employees and nothing more.

4. Based on the credited testimony of Albury, I find that there was no unlawful interrogation that occurred at the above described meeting.

5. Based on the credited testimony of Beigert, I find that in October 1990,¹ he was asked by Leadbitter who was behind the Union and if he had been approached by the Union. Beigert's response was that he didn't know anything about the Union. In view of my other findings regarding the company's violations of Section 8(a)(1) and (3), I conclude that this interrogation was also unlawful. *Rossmore House*, 269 NLRB 1176 (1984), enf. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

6. Beigert testified that he was told by Beigert that he soon would be promoted to a regular driver's position. However, this statement took place before the Union filed its election petition, was not connected to any reference of the Union, and there is no evidence that it was motivated by union considerations. Accordingly, I shall dismiss the allegation that the employer promised wage increases to its em-

ployees in order to dissuade them from joining or selecting the Union.

CONCLUSIONS OF LAW

1. By discharging Brett Beigert because of his union activities and sympathies, the Company has violated Section 8(a)(3) and (1) of the Act.

2. By threatening employees with replacement and with more strict procedures, the Company has violated Section 8(a)(1) of the Act.

3. By interrogating employees regarding the Union, the Company has violated Section 8(a)(1) of the Act.

4. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Brett Beigert, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Best Plumbing Supply, Inc., Yorktown Heights, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their activities or support for Local 456, International Brotherhood of Teamsters, AFL-CIO or any other labor organization.

(b) Threatening employees with replacement, with more strict procedures, or with any other reprisals if they join or select the Union as their bargaining agent.

(c) Coercively interrogating employees about their union membership or activities.

(d) 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, except to the extent that those rights may be affected by an agreement requiring membership in a labor organization, as a condition of employment, as authorized in Section 8(a)(3) of the Act.

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

(a) Offer Brett Beigert immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority

¹ Although Beigert was not sure of the date of this conversation and placed it towards the end of October, it must have occurred somewhat earlier as Leadbitter was on vacation from October 20, to November 5. In any event, I do not find that Beigert's failure to pinpoint the date of this conversation with greater accuracy, as detracting from his overall credibility.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the Brett Beigert in writing that this has been done and that the discharge will not be used against him 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, timecards, 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 facility in Yorktown Heights, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2 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.

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

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 discharge or otherwise discriminate against employees because of their activities or support for Local 456, International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

WE WILL NOT threaten our employees with replacement, with more strict procedures or with any other reprisals if they join or select a union as their collective-bargaining representative.

WE WILL NOT coercively interrogate our employees about their union membership or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that those rights may be affected by an agreement requiring membership in a labor organization, as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL offer Brett Beigert immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

WE WILL remove from our files any reference to the unlawful discharge and notify the Brett Beigert in writing that this has been done and that the discharge will not be used against him in any way.

BEST PLUMBING SUPPLY, INC.