

Federal Security, Inc. and Joseph Palm. Case 13–
CA–31155

August 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

On September 14, 1994, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply 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 conclusions, to modify the remedy, and to adopt the recommended Order as modified and set forth in full below.

The judge found, and we agree, that the Respondent violated Section 8(a)(1) of the Act by, inter alia, terminating its security guards for participating in a protected concerted walkout from their posts at multi-residence public housing sites operated by the Chicago Housing Authority (CHA),² and misinforming the CHA as to the nature of the walkout, with the result that participants were included on a list of employees barred from working at the CHA properties.

The Respondent in its exceptions alleges as error the General Counsel's failure to join the CHA as an indispensable party-respondent in this proceeding. It argues that the CHA is indispensable because it is a joint employer of the Respondent's security guards and because, assuming affirmance of the judge's findings and recommended Order, the Respondent is powerless to secure their reinstatement if those guards are on the CHA's "bar list." We find no merit in the Respondent's contentions, which we view as a belated effort to question the Board's exercise of its discretionary jurisdiction over the Respondent under current Board precedent. We find that because the Respondent failed

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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully reviewed the record and find no basis for reversing the findings.

² Contrary to his colleagues, Member Truesdale would find that in light of the nature of the security guards' duties and the nature of the facilities at which they worked and, in the circumstances of this case, the inadequacy of the notice given, their walkout was not protected because it compromised the safety of the residents of the CHA properties and of the nonstrikers who were left alone at some locations.

to raise the issue of the Board's discretionary jurisdiction previously it is precluded from doing so at this juncture. *Crispus Attucks Children's Center*, 299 NLRB 815 fn. 3 (1990).³

In any event, we find, in agreement with the General Counsel's position in its answering brief, that the evidence with respect to the CHA's contractual authority, i.e., in setting minimum wages, establishing hiring criteria, monitoring compliance with the contract, and retaining authority to remove security guards from its property, is insufficient to demonstrate a sufficient degree of control over the Respondent's employees either to establish joint employer status or to exempt the Respondent from the Board's jurisdiction. *Old Dominion Security*, 289 NLRB 81 (1988).

We also reject the Respondent's further contention that the CHA is indispensable to achieving a full remedy because the Respondent lacks any independent authority, absent the CHA's agreement, to deploy security guards on the bar list to CHA properties. As an initial matter, we find, in agreement with the judge, that the Respondent's erroneous and incomplete report to the CHA regarding the nature of the walkout and its participants led the CHA to place their names on its bar list. Accordingly, the Respondent must bear the burden of fully remedying, so far as possible, its unlawful conduct by attempting to have these names removed from the bar list, in furtherance of its reinstatement obligation. In view of the prospect that this may prove unsuccessful, and that there might not be a sufficient number of substantially equivalent positions available, we shall modify the judge's recommended remedy and Order by requiring the Respondent to make whole the named security guards, irrespective of whether the CHA grants permission for their deployment on CHA properties.⁴

³ Member Stephens finds that exercise of jurisdiction in this setting is a statutory question and therefore cannot be waived. He agrees however with his colleagues that the record evidence does not establish that the CHA exerts sufficient control over the Respondent to find that the latter is exempt from the Board's jurisdiction. See his concurring opinion in *Res-Care, Inc.*, 280 NLRB 670, 675–677 (1986).

⁴ In this connection, we note and reject the Respondent's argument that, because it unsuccessfully requested the CHA to remove Jackson, Thomas, Dudley, Green, and Wright from the bar list, backpay for them should be limited to the period between their offer to return to work and the Respondent's removal request. Cf. *BPS Guard Services v. Plant Guard Workers Local 228*, 45 F.3d 205, 208–209 (7th Cir. 1995) (regarding reinstatement and backpay remedy for guard fired in violation of collective-bargaining agreement, court affirms rejection of employer's "impossibility defense" to a contempt citation, where employer's "grudging" request for access to owner of the guard duty site could "be read as a virtual invitation to [the site owner] to deny . . . access" to the guard and thereby prevent her reinstatement).

THE REMEDY

The judge found that the Respondent unlawfully disbanded the sweep team and reduced the rank and pay of the affected guards because some of its members participated in the subject walkout. He failed, however, to require reinstatement of the sweep team or direct that backpay be provided for all guards affected by this unlawful act. Rather, he recommended only that the Respondent be required to reinstate the former sweep team members who had participated in the walkout to their former rank and rate of pay, or to substantially equivalent positions if those positions no longer exist. We shall modify the judge's recommended Order by affirmatively ordering the Respondent to reinstate the sweep team classification which was unlawfully eliminated, and provide a backpay remedy to restore the status quo ante for all guards affected by this misconduct.⁵

The judge further found that the striking security guards were placed on the CHA's bar list because of misleading information supplied by the Respondent, but he recommended only that the Respondent be required to request the CHA to take immediate action to remove those names. In order to assure the named security guards a complete make-whole remedy, we shall order the Respondent, in addition to requesting the CHA to remove those names from its bar list, to make whole the named employees for all lost wages and benefits from the time of their unconditional offer to return to work until the Respondent reinstates them to their former positions or until they obtain substantially equivalent employment elsewhere. See *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773, 774 (1981).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Federal Security, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Cease and desist from

(a) Maintaining any rule or regulation that prohibits employees from engaging in or supporting a protected strike, work stoppage, or other concerted refusal to perform duties.

(b) Threatening employees with termination if they engage in protected concerted activities.

(c) Coercively interrogating employees about their protected activities.

(d) Terminating and/or reinstating employees at lower ranks and wage rates because they have engaged in a protected strike or walkout.

(e) Eliminating the sweep team classification, rank, and pay rate because some sweep team members engaged in a protected strike or walkout.

(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) Rescind its rule or regulation prohibiting employees from engaging in or supporting a protected strike, work stoppage, or other concerted refusal to perform duties.

(b) Offer to Kelvin Brewer, Elliot Burdan, Tilman Dudley, Everett Green, Kendell Harris, Harry Hurd, Samuel Jackson, Zachary Jernigan, Jr., Jerry Johnson, Natline Jones, Charles O'Neal, Joseph Palm, Charles Robinson, John Salley, Dwaine Taylor, James Thomas, Sylvester Wilder, Leslie Williams, and Kenneth Wright immediate and full reinstatement to their former positions as members of the sweep team, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits they may have suffered as a result of their unlawful discharges, plus interest, until they are reinstated to their former positions or until they obtain substantially equivalent positions elsewhere.

(c) Restore the sweep team classification, rank, and rate of pay for all employees formerly employed in that classification, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits they may have suffered as a result of the unlawful elimination of the sweep team classification.

(d) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Notify the Chicago Housing Authority that the above-named employees were engaged in concerted activity protected by Section 7 of the Act when they walked out on August 11, 1992, furnish it with copies of this decision, and request that it take immediate action to remove the above-named employees from its bar list, if it has not already done so.

(f) 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.

⁵Backpay shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971).

(g) Post at its facilities in Chicago, Illinois, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 13, 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.

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

⁶If 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 maintain any rule or regulation prohibiting our employees from engaging in or supporting a protected strike, work stoppage, or other concerted refusal to perform duties.

WE WILL NOT threaten our employees with discharge or being placed on the CHA's bar list for engaging in concerted activities protected by the Act.

WE WILL NOT coercively interrogate our employees concerning their protected concerted activities.

WE WILL NOT discharge our employees and/or reinstate them at a lower rank or wage rate because they engage in a strike, walkout, or other concerted work stoppage protected by Section 7 of the Act.

WE WILL NOT eliminate the sweep team classification, rank, and pay rate because some sweep team members engaged in a protected strike or walkout.

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 rescind our rule or regulation prohibiting our employees from engaging in or supporting a strike, work stoppage, or other concerted refusal to perform duties which is protected by the Act.

WE WILL offer to Kelvin Brewer, Elliot Burdan, Tilman Dudley, Everett Green, Kendall Harris, Harry Hurd, Samuel Jackson, Zachary Jernigan Jr., Jerry Johnson, Natline Jones, Charles O'Neal, Joseph Palm, Charles Robinson, John Salley, Dwaine Taylor, James Thomas, Sylvester Wilder, Leslie Williams, and Kenneth Wright immediate and full reinstatement to their former positions as members of the sweep team, without prejudice to their seniority of other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits they may have suffered as a result of their unlawful discharges, plus interest, until they are reinstated to their former positions or until they obtain substantially equivalent positions elsewhere.

WE WILL restore the sweep team classification, rank, and rate of pay for all employees formerly employed in that classification, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits they may have suffered as a result of the unlawful elimination of the sweep team classification.

WE WILL notify each of the above-named employees that we have removed from our files any reference to his or her discharge and that the discharge will not be used against him or her in any way.

FEDERAL SECURITY, INC.

Richard Kelliher Paz, Esq. and *Daniel E. Murphy, Esq.*, for the General Counsel.

Holly Hirst, Esq. and *Ralph H. Morris, Esq.*, of Chicago, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. On a charge filed by Joseph Palm on August 20, 1992, the Regional Director for Region 13 of the National Labor Relations Board (the Board) issued a complaint on January 27, 1993, alleging that Federal Security, Inc. (the Respondent) committed certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed an answer denying that it had committed any violation of the Act.

A hearing was held in Chicago, Illinois, on January 18 through 21 and January 31 through February 2, 1994, at which the parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the

General Counsel and the Respondent have been given due consideration.¹ On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a corporation with offices in Chicago, Illinois, engaged in the business of providing security guard services. During the 12-month period preceding January 1993, the Respondent, in the conduct of its business operations, provided services to the Chicago Housing Authority (CHA) valued in excess of \$50,000. CHA has purchased goods and services valued in excess of \$50,000 from sources located outside the State of Illinois for use at its facilities in the State of Illinois. 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.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent provides security services by means of armed guards at various multiresidence public housing sites in Chicago, pursuant to contracts with CHA. James Skryzpek is the owner and president of the Company and his wife Janice is a vice president and co-owner. During 1992,² the Respondent's security personnel, in descending order of authority, consisted of commanders, chiefs, lieutenants, sergeants, and officers. All had to have "blue cards," indicating they had met the minimum training requirements of the State of Illinois and "tan cards," indicating they were employed by the Respondent and authorized to carry a service weapon. Their duties on CHA properties included maintaining control of the building lobbies, checking the identification of persons entering the buildings, and assuring that guests entered with the consent of a resident and were logged in. CHA maintains a guard removal list, commonly referred to as the "bar list," indicating those individuals who are prohibited from working as security guards on its property. Should a security firm such as the Respondent deploy someone who is on the bar list on CHA property, it could be denied payment for that person's services.

For several months prior to August 1992, the Respondent maintained a "sweep team," under the supervision of Chief Carlton Short. At its peak, the sweep team consisted of over 80 employees who were assigned to CHA buildings which had been the objects of room-by-room sweep searches by the Chicago police, Federal agents, and CHA security personnel to remove weapons and illegal drugs and to assure that only authorized persons were living there. After a building was swept, the Respondent's sweep team members were assigned to a post in the lobby where they were responsible for seeing that only properly identified tenants or guests were allowed into the building. Each building was covered 24 hours a day by two guards working on three shifts and a sweep team member was not permitted to leave a post until relieved by

a replacement. Members of the sweep team were designated as sergeants, they received training provided by CHA, and attended biweekly in-service meetings conducted by Skryzpek and various chiefs.

The Respondent has had in force a series of general orders which were distributed to its employees and constitute its personnel policies, rules, and regulations. Among those in effect in August 1992 was general order 92-10, rule 21, issued June 1, 1992, which provides:

No member will call, institute, authorize, participate in, sanction, encourage, or ratify any strike, work stoppage, or other concerted refusal to perform duties by any member or member group, or concerted interference with, in whole or part, the full, faithful, and proper performance of the duties of employment with the company. No member, while on duty, shall refuse to cross any picket line, by whomever established.

B. The Walkout

On the evening of August 10, approximately 20 to 30 sweep team members met at the Queen of the Sea Restaurant, as they often did. Chief Short arrived at the restaurant and was asked about various matters of concern to the employees that had previously been raised at in-service meetings. Short discussed the assignments of sweep team members to the Robert Taylor Homes site, showed them a new sweep team uniform and boots, and told them where these items could be purchased. During the discussion about uniforms, Short was asked about bulletproof vests that employees had been told they would be provided and he responded that Skryzpek had said the vests were at the Respondent's northside office. Short was asked about insurance and said that Skryzpek was putting together an insurance package for them. Other matters discussed included the fact that the employees were required to pay for the pagers they carried so that the Company could reach them at all times, that all sweep team sergeants were to be paid \$6.50 per hour, a possible reduction in the unlimited overtime available to sweep team members, and the possibility that they would be given a \$100 bonus instead of the paid vacation employees wanted. There was also some discussion of the possible termination of sweep team member Larry Smith who earlier that day had left his post without being relieved after learning that his son had been injured. Before leaving the meeting, Short said that he would get in touch with Skryzpek about the matters that had been discussed.

Short, who was scheduled to begin work at 7 p.m., spent about an hour at the restaurant and arrived at the Respondent's office at about 7:45 p.m. After he arrived, it was discovered that no security guard was covering a United Airlines' location and as a result Short was held responsible and terminated by James Skryzpek. At about 7 a.m. on August 11, as Short was leaving the office with some of his belongings, he met sweep team members Joseph Palm and Karon Gaspar outside. Palm credibly testified that they asked Short why he was loading things into his car and he responded that he had been "suspended pending termination" because the United Airlines' post had not been covered, that another chief had responsibility for scheduling coverage for that location, but that he was being held responsible. Palm was not scheduled to work that morning but had come to the office

¹The unopposed motion of counsel for the General Counsel to correct errors in the hearing transcript is granted.

²Hereinafter, all dates are in 1992.

to see if any post was unfilled that he might be assigned to cover. After speaking with Short, Palm and Gaspar drove to a CHA building at Madden Park where Charles Robinson and Larry Smith were on duty. When they arrived, they found that a Sergeant Prince had been sent to replace Smith and to inform him that he was being terminated for leaving his post the previous day. Palm informed Robinson that they had just learned that Short had also been terminated for something that was not his responsibility.

According to the credible and consistent testimony of Palm and Short, they discussed what they considered Skryzpek's renegeing on promises to provide bulletproof vests, insurance, unlimited overtime, and paid vacations and the unfair terminations of Smith and Short and decided to demand that Skryzpek meet with them about these matters or they would walk off the job. At about 8:30 a.m., Robinson attempted to contact Skryzpek by telephone at both of the Respondent's offices. When he was unable to do so, he left a message with a dispatcher that unless Skryzpek contacted them by 10 a.m., they would walk out. Robinson began telephoning other sweep team members who were on duty at CHA buildings to advise them of what he was planning and enlisting their participation. After speaking with them, Robinson called the Respondent's office again and asked Lieutenant Lovetta Short, who did scheduling and supervised the dispatchers, if Skryzpek had been given his message. When Short said that she was still trying to reach him, Robinson told that if he did not get a response by 10 a.m. they were going to walk out. Short said that she did not believe him and later called back to ask if they were really going to walk out. Between 9 and 10 a.m., sweep team members Dwaine Taylor and Kendall Harris came from their building to Robinson's post to discuss what was going on. Robinson informed them of their plans to walk out if Skryzpek did not agree to meet and discuss the benefits he had promised and both said they would join in the walkout. Sergeant Kelvin Brewer credibly testified that after he arrived at his post that morning he received a call from Robinson who told him that he was organizing a walkout if Skryzpek did not agree by 10 a.m. to talk to them about the promises he had made. Brewer agreed to join the walkout and at 9:30 a.m. he called the Respondent's office and spoke to Lovetta Short. He told Short that they were getting ready to walk out because of Skryzpek's failure to keep his promises regarding bulletproof vests, insurance, and pagers and asked her for the telephone numbers of other posts so he could let others know about the walkout, which she gave him.

When Skryzpek had not contacted Robinson by 10 a.m., he called in a "1099" on his radio, indicating he was leaving his post.³ Robinson, Palm, Smith, Gaspar, and Sergeants Denise Pruitt and Raymond Jamison, who had arrived after being telephoned by Robinson, left the building together, leaving behind Prince who declined to join them. After other security officers began calling in "1099s," Skryzpek came on the radio, identified himself, and said that anyone that walked off a post would be suspended pending termination, their blue and tan cards would be pulled, and they would be

put on a bar list, "per Lundin," a reference to CHA Director of Contract Security Brian Lundin. Chief Paul Tackett also informed several employees who called in to the office that if they left their posts, "they would be barred by Contract Security."

After 10 a.m., Palm, Robinson, and a group of sweep team members left and traveled to other CHA buildings where they talked to sweep team members about the walkout and asked them to join them. Robinson testified that he and others went to the Respondent's office and asked to speak with Skryzpek who refused to see them. The group eventually went to a park where each put his or her name and pager number on a sheet of paper as did others who walked off later and joined the strikers that evening. There are a total of 27 names on the sheet. While at the park they spoke with Chief Short who had joined them and decided to prepare a list of demands and to make signs. They collected the radios they had with them to be returned to the Respondent's office and agreed to meet later at the Queen of the Sea. Palm testified that they didn't know how to go about striking and the purpose of this meeting was to draw up proposals and to set up picketing. The wife of Kendall Harris was present and she gave them some advice as to how to go about it. At about 8 a.m. on August 12, they began picketing outside the Respondent's office, walking around in a circle on the sidewalk with the signs they had made, until about 5 p.m. They picketed again on August 13 but ceased on August 14 because it was raining.

Shortly after the walkout began on August 11, James Skryzpek informed Lovetta Short, who did scheduling, that the officers who left their posts were to be terminated immediately because they were barred from CHA property. The Respondent sent letters, dated August 17, 1992, to the employees involved in the walkout stating that because they had abandoned their posts on August 11 and had not returned to work they had been replaced and directing them to turn in their cards and pagers by August 20. The parties have stipulated that from August 11, 1992, to the date the hearing began, the Respondent had open and available positions at its CHA jobsites. The names of the employees who participated in the walkout were provided to CHA by the Respondent and most, but not all, were placed on the bar list. Some of the employees, who submitted requests to the Respondent that they be reinstated, have had their names removed from the bar list and have returned to work for it at CHA jobsites.

C. *The No-Strike Rule*

There is uncontradicted evidence that, effective June 1, 1992, the Respondent maintained a rule or regulation broadly prohibiting employees from engaging in any strike, work stoppage, or other concerted refusal to perform duties. I find that the Respondent violated Section 8(a)(1) of the Act by maintaining this rule which prohibits all work stoppages including those protected by Section 7 of the Act. *Sani-Serv*, 252 NLRB 1336, 1339 (1980).

D. *Threats and Interrogation*

As the walkout began on August 11, James Skryzpek made an announcement on the radio to all employees that anyone who walked off a post would be suspended pending termination, their blue and tan cards would be pulled, and

³While there appears to be some dispute as to what the term "1099" actually means, it is clear that on the morning of August 11, the Respondent understood that those employees who called in "1099s" were walking off their posts.

they would be put on the bar list. Chief Tackett testified that as the walkout commenced he made announcements to employees over the radio that if they walked out they would be barred. Sergeant Michael Davenport credibly testified that near the end of his shift at a CHA project he received a call from Robinson who told him there was going to be a walkout because Skryzpek had lied about paying them more money, insurance benefits, and other things. After the end of his shift, Davenport drove over to the Respondent's office where Lovetta Short and Chief Tackett were present. When he entered at about 8:15 a.m., Tackett asked him if he was going to join the walkout. Davenport said he didn't know and Tackett said that if he left his post he would be automatically terminated.

The threats by Skryzpek and Tackett to terminate anyone who participated in a walkout, regardless of the reason, clearly interfered with rights protected by Section 7 and tended to coerce employees seeking to exercise those rights. *Bridgeport Ambulance Service*, 302 NLRB 358, 363-364 (1991); *Polynesian Hospitality Tours*, 297 NLRB 228 fn. 1 (1989). After considering the surrounding circumstances, pursuant to the Board's decision in *Rossmore House*, 269 NLRB 1176 (1984), I find Tackett's asking Davenport if he was going to join the walkout was coercive and violated Section 8(a)(1). Tackett's inquiry had no purpose other than to ascertain whether he was going to engage in protected activity, inasmuch as Davenport had just finished his shift and there was no need to cover his post if he joined the walkout. The question was accompanied by an unlawful threat that those who participated in the walkout would be automatically terminated.

E. Whether the Walkout Was Concerted Activity Protected by the Act

The Respondent contends that the walkout was not concerted activity protected by the Act. It argues that the employees who left their posts on August 11 did so for different reasons which were unrelated to the terms and conditions of their employment and were not protected, that they failed to communicate any demands to the Respondent, and that their actions in staging the walkout were so improper as to render them unprotected. I find for the reasons discussed below that the walkout was both concerted and protected by the terms of the Act.

1. Concerted activity

Palm and Robinson, who organized the walkout, credibly testified that the reasons for it were to protest the unrelated terminations of Chief Short and Sergeant Smith and the failure of Skryzpek to provide benefits that he had promised to the sweep team members. While it appears that other sweep team members who joined the walkout may have felt more strongly about one or more of these reasons than another, there need not be unanimity on the merits of every issue nor a direct benefit to every participant in order for their activity to be concerted and protected by Section 7 of the Act. See *Cub Branch Mining*, 300 NLRB 57, 58 (1990). The standard for determining whether an employee's activity is concerted is found in the Board's decision in *Meyers Industries*, 281 NLRB 882 (1986), where, on remand, it reaffirmed the definition set forth in its prior decision in that case, *Meyers In-*

dustries, 268 NLRB 493, 497 (1984), that it must "be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." There can be little doubt but that the walkout and subsequent picketing engaged in by the Respondent's employees involved actions that were both with and on the authority of other employees. Their walkout followed discussions of mutual concerns and involved acting with and in reliance on one another. I find that this group action falls within the Board's definition of concerted activity. *Trident Recycling Corp.*, 282 NLRB 1255, 1261 (1987); *Daniel Construction Co.*, 277 NLRB 795 (1985).

2. Protected activity

It appears from its reliance on *NLRB v. Marsden*, 701 F.2d 238, 242 (2d Cir. 1983), that the Respondent's real argument is that its employees' concerted activities were not protected under the terms of the Act because they were not in support of a demand for a change in the Employer's policies involving terms and conditions of employment, which was communicated to it. The evidence does not support that argument. On the contrary, it establishes that prior to August 10 there had been several meetings with members of management in which employees had raised their concerns about such personnel issues as being provided bulletproof vests, unlimited overtime, insurance, paid vacations, and other benefits. At the informal meeting of several off-duty sweep team members at the Queen of the Sea Restaurant on August 10, Sweep Team Commander Chief Short, who was on duty at the time, discussed the current status of some of these issues, based on a recent meeting with Company President Skryzpek, as well as other personnel matters. Before leaving the restaurant, Short said that he would be in further touch with Skryzpek about their concerns. On the morning of August 11, Palm and Robinson discussed the fact that not only had these issues not been resolved, their principal contact and means of communication to and from the Employer, Chief Short, had been terminated, as had Smith. It was this combination of factors which led them to demand a meeting with Skryzpek and to which they referred in enlisting the support of the other sweep team members for the walkout when he failed to respond.⁴ I find that the evidence establishes that

⁴There is ample evidence in the credible testimony of Palm and Robinson that they told other sweep team members that one of the reasons they were walking out was that Skryzpek had reneged on promises to provide equipment and benefits. I do not consider the unsworn, hearsay statements contained in the memos in the record written by certain strikers in order to try to get their jobs back to be credible or probative accounts of what occurred on August 11. The Respondent presented testimony of only one of these persons, Natline Jones, who said she was asked to join the walkout to protest the termination of Chief Short "because he went to bat to see about getting us a raise." After observing Jones while testifying and considering her testimony as a whole, I find it casts no doubt on the veracity of Palm or Robinson. Jones, who was reinstated by the Respondent after the strike on the basis of her claim that she was coerced into joining it, was openly hostile when questioned by counsel for the General Counsel and had to be cautioned. She appeared extremely confused about who was present and what she was told and did not identify who spoke to her. While she may have initially misunderstood why the walkout occurred and joined because she thought it was to protest Short's termination, her testimony was that after leaving her post she went with the others to the Queen of the

the employees resorted to the walkout in order to protest the terminations of Short and Smith and what they considered Skryzpek's reneging on promises to provide them with various benefits. Their action was a protected exercise of Section 7 rights. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *Trident Recycling Corp.*, supra at 1261.

The Respondent also contends, based on *NLRB v. Marsden*, supra, that the walkout was not protected activity because the strikers' demands were not communicated to the Employer at some relevant time and that their demand for promised benefits was an after-the-fact attempt to "bootstrap" a dispute over the termination of a supervisor into a dispute about terms and conditions of employment, citing, *Abilities & Goodwill, Inc. v. NLRB*, 612 F.2d 7 (1st Cir. 1979). The record shows that the employees involved in the walkout were not particularly sophisticated or articulate, that they had no bargaining representative, and that they had learned that the supervisor they relied on to press their demands to Skryzpek had been terminated. As was the case with the employees who walked out in *Washington Aluminum Co.*, supra, "under these circumstances, they had to speak for themselves as best they could." Id. at 14. Although it was not essential that they make a specific demand on the employer before walking out in order for their action to be protected under Section 7, they did so. The credible testimony of Robinson and Brewer establishes that, before the walkout started, Supervisor Lovetta Short was informed by telephone that if Skryzpek did not agree to meet the walkout would occur, and that she was told the reasons they would do so, viz, the termination of Chief Short and Skryzpek's failure to provide the equipment and benefits he had promised. In her testimony, Short claimed that she did not speak with Robinson that morning and that Brewer only mentioned the firing of Chief Short as the reason for the threatened walkout. I do not credit her testimony insofar as she denies being told that the sweep team members would walk out because Skryzpek had reneged on promises to them since that and other statements she made at the hearing are contradicted by an affidavit she gave the Board in November 1993.⁵ Robinson's credible and uncontradicted testimony establishes that during the picketing outside the Respondent's office on August 12, he spoke with another supervisor, Chief Kevin Jackson, asked to speak to Skryzpek, and was told that he did not want to talk or negotiate with them. On the same day,

Sea where she obviously learned that it also involved a protest over Skryzpek's failure to provide promised benefits, as she was the one who actually wrote out the employees' list of demands. She was also present at the picketing in front of the Respondent's office the following morning.

⁵ At the time Short gave her affidavit she was not employed by the Respondent as she been terminated on September 3, 1992. By the date of the hearing however, she had been reemployed by it, as had her husband. In her affidavit, Short stated that Brewer told her that the sweep sergeants were going to walk out because Skryzpek had reneged on promises to them and because Chief Short had been fired. She also stated that she had spoken to Robinson as well as other sweep team members before the walkout started. In the affidavit, she also stated that she was told about the threatened walkout and the reasons for it by a dispatcher when she arrived at work that morning but, at the hearing, she denied that she had said that. I have concluded, based on my observation of Short's demeanor while testifying and the evidence as a whole, that she was not testifying truthfully at the hearing and I do not credit her testimony.

he spoke to Chief Wilson and told her they were "trying to better our conditions and see Jim, but he did not want to see us, so we were going to strike." After Skryzpek's refusal to meet with them, the strikers picketed with signs demanding bulletproof vests, insurance, better wages, and reinstatement of Chief Short. I find that the Respondent was notified of the employees' intention to walk out if Skryzpek did not meet to discuss their demands and it was informed of the reasons for the walkout both before and after it commenced.⁶ This was sufficient to meet any requirement that the employees' demands be communicated to the Employer at some relevant time. I also find that the demand that the Respondent provide the employees with the equipment and benefits they had been promised was, from the beginning, an integral part of their reasons for walking out and was not merely an afterthought added in order to try to legitimize the walkout.

The Respondent admits that the subjects of providing bulletproof vests and benefits had been raised and discussed at employee meetings with Skryzpek, who "did not refuse to discuss these items, or defer them to someone else." That appears to have been the problem. Despite continuing discussions and promises, nothing was forthcoming. Once they learned that their principal intermediary with Skryzpek, Chief Short, had been terminated,⁷ they were faced with dealing directly with Skryzpek and decided on a walkout as a certain means to get his attention and let him know they were serious about their demands. The employees' group walkout in protest over working conditions and benefits was protected concerted activity under the Act. *NLRB v. Washington Aluminum Co.*, supra; *Cargill Poultry Co.*, 292 NLRB 738 (1989); *Trident Recycling Corp.*, supra.

The other two reasons for the employees' walkout also involved protected activity. Palm and Robinson testified that they learned on the morning of August 11 that Sergeant Smith and Chief Short were both suspended pending termination, Smith, because he left his post without permission to be with his injured son and, Short, because of a scheduling problem he claimed he was not his responsibility. They discussed these terminations as well as their belief that Skryzpek had reneged on promises to them and concluded: "[I]t was obvious that this man, Mr. Skryzpek, who we

⁶ Although the evidence establishes that a written list of demands was drawn up by the strikers at the Queen of the Sea on the evening of August 11 and Palm testified he gave it to Chief Tackett, the latter denied receiving it and there is no copy of it in the record. In a letter Skryzpek sent to CHA, dated August 17, he refers to newspaper reports, quoting Palm, in which the reasons for the walkout include "dissatisfaction with wages, lack of benefits and overtime."

⁷ There is no credible evidence to support the Respondent's claim that Palm or anyone else attempted to mislead employees to believe Short had been terminated while knowing that he had not but was merely suspended. The evidence is clear that the strikers learned that Short had been "suspended pending termination" because of a scheduling foulup that was not his responsibility, from Short himself, on the morning of August 11. A report prepared by Short concerning this incident also refers to the fact that Skryzpek told him he was suspended pending termination. It states that on August 12 he was relieved of his radio, pager, badges, and credentials by a company representative. Chief Tackett testified that he received several telephone calls on the morning of August 11 from employees who told him they were walking out because they had heard Short "had been terminated, fired or whatever." He said nothing to contradict what they had heard.

worked for, he didn't care about us." Their decision to walk out if Skryzpek would not agree to meet with them followed. A walkout in support of what is considered the unfair treatment or discharge of a fellow employee is protected by the Act. *Bridgeport Ambulance Service*, supra; *Cub Branch Mining*, supra; *Go-Lightly Footwear*, 251 NLRB 42, 44 (1980).

I have found that the termination of Short was one of the several factors that precipitated the walkout. Contrary to the Respondent's contention however, the evidence establishes it was by no means the only factor. In any event, under Board decisions, a work stoppage to protest a supervisor's discharge can constitute protected activity depending on the circumstances of the particular case. *Puerto Rico Food Products Corp.*, 242 NLRB 899, 900 (1979). Generally, in order to be protected, the employees' action must result from their close relationship with the supervisor whose discharge can reasonably be expected to have a negative impact on their own terms and conditions of employment and not merely because of their concern about the personal loss suffered by the supervisor. *AFSCME*, 262 NLRB 946, 947-948 (1982). I find that to be the case here. Short did not ask for any support from the strikers and made it clear he could handle his situation by himself. The evidence establishes that almost all of the employees involved in the walkout were members of the sweep team which Short commanded and had recruited them to join. He was seen as their advocate in their attempts to get the equipment and benefits they had requested and had been continually promised by Skryzpek, but which were never forthcoming. On the night before the walkout, Short met with sweep team members, advised them of the status of their requests, and promised to meet with Skryzpek again to press them. Immediately after the walkout began, the strikers contacted Short and asked him to meet with them. When he met with them at the park, they sought and received his advice as to how they should proceed. While at the park, Short told them that because of his termination Skryzpek was going to disband the sweep team and reduce their pay from \$6.50 to \$6 per hour and would form a new sweep team under the command of Chief Jackson. I find the evidence establishes that insofar as the termination of Chief Short was a motivating factor in the employees' decision to strike it was because of the perceived effect it would have on their own working conditions. Accordingly, I find this aspect of the walkout was also protected under the Act.

The Respondent contends that the walkout was unprotected because it endangered the residents and nonstriking guards who remained at CHA posts, involved the use of threats and intimidation and false information to induce employees to join, and was undertaken without reasonable notice to the Employer. None of these contentions is supported by credible evidence. The false information argument is based on the contention that Palm told other employees that Chief Short was terminated when he was merely suspended. As discussed above, the evidence establishes that Short, himself, told Palm and others that he had been "suspended pending termination," the same phrase used that morning to inform Sergeant Smith that he had been terminated. There is nothing in the record to suggest that Palm or any other participant in the walkout had reason to believe on August 11, or for weeks thereafter, that Short had not been terminated.

The Respondent has failed to establish that any employee joined the walkout due to intimidation. Its reliance on state-

ments in memos submitted by various employees attempting to get their jobs back is misplaced. These hearsay documents were put into evidence by the General Counsel to establish that the strikers had made offers to return to work. They were neither offered nor received for the truth of what is stated therein.⁸ The Respondent's attempt to establish that Natline Jones, who has since been reinstated by it, joined the walkout because she was threatened and intimidated was unsuccessful. Insofar as it can be understood, her testimony was that shortly after she went on duty at 4 p.m., a group of sweep team members, most of whom she knew at least by sight, arrived outside her building in cars. Some of them came to her post, told her that Chief Short had been terminated, and that they had walked out. They asked her if she was with them or against them and said, if she was with them, to do "a 1099" because Chief Short needed support. She said she was also told that she would be removed from the sweep team and that she would lose the raise she had received when she joined. I have already indicated that I found Jones' testimony confused and less than credible. It appears that she selectively remembered certain things that were said and/or took them out of context in order to obtain reinstatement by the Respondent and repeated them at the hearing. It further appears that she was told what Short had earlier told the strikers about Skryzpek's intention to abolish the current sweep team and reduce their wages and conjured it into a threat by the strikers as to what would happen to her if she did not join the walkout. I did not believe her and find the evidence as a whole establishes her participation in the walkout was voluntary and uncoerced.

The Respondent also points to the testimony of Mario Williams as establishing that the strikers engaged in acts of intimidation. Williams, who did not join the walkout and is still employed by the Respondent as a supervisor, testified that at about 10:15 a.m. on August 11 he saw a group of 15 to 20 officers approaching his building. He said that Palm and other leaders of the group came to the entrance of his building and asked him to walk out because the Company "pulled the guards too short." Williams told them that he would not join them. Sometime later he received a telephone call and identified the voice as that of Palm. The caller asked why he didn't walk out and said "something was going to happen to us if we didn't walk." I find that this testimony fails to establish that the strikers engaged in intimidating behavior and that it fails to establish that Williams was threatened by Palm in order to coerce him to join the walkout. Williams' claim that he considered the telephone call a threat because Palm was armed lacks credibility.⁹

⁸In addition to being hearsay, the truth of what is stated in several of the memos is suspect given the credible and uncontradicted testimony of Kelvin Brewer that when he inquired what had to be done to get his job back in September, Chief Jackson told him to write that Palm had forced him to leave his post.

⁹Because most of the strikers either walked off their posts or had just finished a tour of duty, most were armed and in uniform. There is no evidence that any striker made or threatened to make use of his or her weapon during the walkout or that anyone was ever accused of doing so. All those employees who were personally approached while on duty were similarly armed. There is simply no credible evidence in the record to suggest that the fact that the strikers were armed was used to influence anyone or that anyone joined

Using an objective standard, the evidence does not establish that there was any intimidation. The strikers only approached sites where other sweep team members were known to be on duty. The evidence indicates these individuals generally knew one another and often socialized together at the Queen of the Sea. While at some sites a group of several strikers arrived together, only one or two actually went to speak to the guards on duty and ask them to join the walkout. Palm, who all would agree is a large and imposing man, told some, "you are with us or you are against us." There is no evidence that this was accompanied by any threatening gestures and, while it may have put some psychological pressure on sweep team members to join their peers, it cannot reasonably be construed as a threat. See *Leaseco, Inc.*, 289 NLRB 549 fn. 1 (1988). Obviously, a large person is entitled to exercise rights protected by the Act and there is no evidence Palm attempted to use his size to intimidate anyone.

Finally, the Respondent contends that the walkout was unprotected because it compromised the safety of the residents of CHA properties and that of nonstrikers who were left alone at some locations. There is no evidence that any harm resulted from the fact that certain building posts were left unmanned for a brief period on August 11.¹⁰ According to the testimony of Chief Tackett, once the walkout began at 10 a.m., it took only 20 minutes to cover every post that had been walked off. Under the circumstances presented here, it is the Respondent's actions on August 11 which cannot withstand scrutiny. The evidence shows that it was made aware, by shortly after 8 a.m., of the possibility of a walkout at 10 a.m. unless Skryzpek agreed to meet with employees, yet, it took no action to either prevent the walkout by agreeing to meet, to have people available to cover posts once the walkout began, or to see that CHA security or the Chicago police were notified. There was no explanation as to why Skryzpek was silent from 8 to 10, but was on the radio threatening that participants in the walkout would be barred from CHA property within minutes of the first "1099" being called in. I find that the strikers acted reasonably in giving the Respondent adequate notice of the walkout sufficiently far in advance that it could have taken the necessary steps to see that no post was uncovered at any time. Accordingly, their actions did not lose the protection of the Act. *Columbia Portland Cement Co.*, 294 NLRB 410, 421-422 (1989).

F. The Strikers Were Unlawfully Terminated

The evidence shows that on learning that the walkout was taking place on August 11 the Respondent informed its employees that anyone who walked off a post would be placed

the walkout or felt threatened because of it. The Respondent's attempt to interject this as an issue is completely unwarranted.

¹⁰The only evidence of a disruption caused by the walkout was the testimony of Mario Williams that up to 200 residents congregated in the lobby of his building when a group of 15 to 20 strikers walked up to the outside of the building and asked him to join them. According to Williams, the residents wanted to know what was going on and it took him and the building president nearly an hour to restore order there. There was nothing in his testimony to indicate that the strikers made any attempt to communicate with or agitate the residents. It appears that the only reason there was a crowd in the lobby was that Williams had locked the doors and would not let anyone in or out.

on the bar list. Skryzpek made such an announcement over the radio. Tackett told several employees who telephoned the office that morning the same thing and told Michael Davenport that anyone who walked off a post was automatically terminated. Skryzpek informed Lovetta Short that anyone who walked off was to be terminated because if they were barred from CHA properties there were no other jobs for them. The Respondent effectively terminated Palm and the employees who walked off their posts on August 11 by failing to assign them to any further duty. Tackett signed identical disciplinary forms, dated August 11, for each striker, except Palm, stating: "officer abandoned post, also removed 2 way radio, telephone and all paper work." Each form also indicates that the officer was "replaced."¹¹ All of the strikers, including Palm, were sent letters, dated August 17, stating that they had "been replaced" because they had abandoned their posts on August 11 and had not returned to work and informing them to turn in their credentials and pagers by August 20. James Skryzpek also testified that they were "replaced," however, it is clear that use of this term does not mean that their positions had been filled by replacement workers, it means only that as far as the Respondent was concerned, "they were not coming back to work." It made this determination immediately after the walkout and before any employee had actually been placed on the bar list by CHA.¹² Although it claims to have conducted an investigation of the walkout, there is no evidence that it did anything other than identify some of the employees who participated in it.¹³

The complaint alleges that the Respondent requested that CHA place the employees who participated in the walkout on the bar list. While the evidence fails to establish that such a request was made, it does show that the Respondent was responsible for the fact that some of its employees were put on the bar list and were thereby disqualified from further employment not only with it but any CHA contractor. The testimony of Brian Lundin, who was director of security for CHA at the time, and documents from CHA files show that except during the beginning of the walkout on August 11, when he sent two field coordinators out to see what posts were affected and checked one location himself, he made no independent investigation or evaluation of the walkout, but relied solely on what the Respondent told him about it before he took action to place certain of the participants on the bar list or, thereafter, to remove them from it.

¹¹Tackett testified that he did no investigation concerning the walkout. The evidence shows that radios were removed in cases where no officer remained at a post and that all were turned in to the Respondent's office. I find this additional evidence that what actually had occurred during the walkout was of little concern to the Respondent and that it was mainly interested in justifying its termination of the strikers.

¹²Shortly after the walkout began, Company Vice President Jan Skryzpek told Lovetta Short that they were going to terminate all of those who walked out and "Joe Palm, especially, because he was the ringleader."

¹³Skryzpek testified that the matter was investigated by William Buford, who submitted some reports to him. Buford was not called as a witness, and no written reports were produced. Palm, who was identified as a leader of the walkout by the Respondent, credibly testified that when he went to the office on August 16 and attempted to speak to him, Buford told him, "you don't need to talk to me, you need to talk to Jim."

It also appears that the employees were placed on the bar list as a result of erroneous and/or incomplete information supplied by the Respondent. Although the Respondent advised Lundin, in a August 17 letter, that it was investigating the reasons for the walkout and that statements by the strikers' spokesman indicated that they were dissatisfied with wages, benefits, and overtime, it subsequently advised him, in a series of letters seeking removal of certain persons from the bar list, that the sole reason for the walkout was to protest the action taken against Chief Short and had "nothing to do with any labor dispute as earlier reported." The evidence shows that Skryzpek accepted and passed on to Lundin memos he received from various participants in the walkout¹⁴ which stated, inter alia, that they were threatened and forced to leave their posts by other strikers. In forwarding these memos and asking that the writers be removed from the bar list, Skryzpek implied that the statements in the memos were true when in fact the Respondent had made no meaningful investigation of what occurred.¹⁵

Despite its attempt to place the onus for their termination on the strikers for not returning to work, I find that, on August 11, the Respondent terminated the employees who participated in the walkout. *Lenape Products*, 283 NLRB 178, 181 (1987). I also find that it did so solely because they had participated in the strike.¹⁶ In doing so, it violated Section 8(a)(1) of the Act. *Trident Recycling Corp.*, supra at 1261; *Holiday Inn*, 274 NLRB 687, 690 (1985). Because it was responsible for getting the strikers placed on the bar list by means of the misinformation it provided Lundin about the walkout, the Respondent cannot use their being on the list to avoid responsibility for failing to reinstate them. Finally, its "bar list defense" fails for another reason. The evidence shows that CHA had no regulation or policy which purports to limit the rights of its contractors' employees to engage in a lawful strike and that Lundin exercised what he considered to be his personal discretion in placing strikers on or removing them from the bar list. It is clear however that neither

¹⁴These include memos from Kendell Harris, Dwaine Taylor, Charles O'Neal, Harry Hurd, and Natline Jones.

¹⁵The credible and uncontradicted testimony of Charles Robinson establishes that Dwaine Taylor and Kendell Harris, who were never placed on the bar list, were early and enthusiastic supporters of the walkout and that both came to Robinson's post to discuss it well before the walkout started. The memos submitted by O'Neal and Jones identify Taylor as one of those soliciting them to join the walkout. It was Harris' wife who counseled the strikers at the Queen of the Sea Restaurant on the evening of August 11, long after the walkout commenced. Yet, by also being among the first to denounce the walkout and claim intimidation, Taylor and Harris, with the help of the Respondent, avoided ever being put on the bar list and were returned to work. The reason is obvious. The work involves low pay, long hours, and considerable risk and it is difficult to get people to do it. Once the strike was over, the Respondent was more than willing to take back anyone who was willing to come back with the exception of Palm and Robinson, whom it undertook to make examples of for leading the walkout. The credible and uncontradicted testimony of Kelvin Brewer was that, in September, when he went to the Respondent's office to see about getting his job back, Chief Jackson told him to write a letter stating that Palm had forced him to leave his post by threatening him and showed him a copy of one written by Natline Jones to use as an example.

¹⁶Its claimed reliance on the fact the strikers were barred from CHA property amounts to a pretext as, at that point, none of them were on the bar list.

CHA nor its officials have any power to limit rights conferred by Section 7. See *Machinists Lodge 76 v. Wisconsin Commission*, 427 U.S. 132 (1976); *San Diego Unions v. Garmon*, 359 U.S. 236 (1959).

G. Joseph Palm and Charles Robinson

In addition to its claim that certain of the strikers were precluded from continued employment solely because they were put on the bar list by CHA, the Respondent contends that it was justified in terminating Palm and Robinson because of their actions during the walkout. This requires an analysis of its motivation for its actions with respect to those employees in accordance with the test outlined by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 800 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once that has been done, the burden shifts to the respondent to demonstrate that it would have taken the same action even in the absence of protected activity on the part of its employees.

It is undisputed that it was the employees' participation in the walkout that resulted in their being terminated. I have found that the walkout constituted protected concerted activity and that terminating the participants violated Section 8(a)(1). This satisfies the General Counsel's burden under *Wright Line*. I find that the Respondent has not established that Palm and Robinson engaged in misconduct during the walkout which justified their termination and denial of reinstatement. As noted above, there is no evidence that the Respondent made any real effort to investigate what occurred during the walkout. None ever talked to Palm and Robinson about their actions or gave them the opportunity to defend themselves against allegations that they got employees to join the walkout through intimidation. The Board has considered an employer's failure to provide employees with specific information about their alleged misconduct or to afford them the opportunity to explain their actions to be significant factors in findings of discriminatory motivation. E.g., *Burger King Corp.*, 279 NLRB 227, 239 (1986); *Syncro Corp.*, 234 NLRB 550, 551 (1978). The Respondent relies on the general testimony of Jan Skryzpek that during the walkout she received telephone calls from unidentified employees who said they were being threatened and the memos various walkout participants subsequently submitted to the Respondent in an effort to get their jobs back as establishing that Palm and Robinson were involved in intimidating employees to join the walkout. The self-serving nature of the statements contained in some of the memos is obvious, yet, it appears that the Respondent not only accepted them as true without any attempt to corroborate them, but suggested that others adopt the same approach. I do not credit Jan Skryzpek's testimony concerning the telephone calls she allegedly received as it was totally lacking in detail as to who was threatened or what the alleged threats involved. The testimony of Lovetta Short that Jan Skryzpek told her at the start of the walkout that Palm would be terminated for his role in leading it shows that she and the Respondent had decided to punish him before there were any allegations of intimidation made against him. I find that the Respondent has failed to

provide any credible evidence that Palm and Robinson engaged in misconduct during the walkout that disqualified them from further employment by it or that it had a reasonable basis for believing that they had engaged in such misconduct. *Ornamental Iron Work Co.*, 295 NLRB 473, 478 (1989); *Clear Pine Mouldings*, 268 NLRB 1044, 1046 (1984). Accordingly, I find that it has not established that it would have terminated and failed to reinstate them in the absence of protected activity on their parts and that its actions violated Section 8(a)(1).

H. Supervisory Status of Joseph Palm

The Respondent contends that Palm's actions during the walkout were not protected because he was a supervisor. The burden of establishing supervisory status is on the party alleging that it exists. *Soil Engineering Co.*, 269 NLRB 55 (1984); *RAHCO, Inc.*, 265 NLRB 235, 247 (1982). In making determinations concerning such status, it is important not to construe it too broadly lest an employee be denied rights which the Act is intended to protect. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970). That is particularly pertinent in the unique situation presented here where the employer, although it did not confer any supervisory authority on Palm, claims that he exercised it and, therefore, should be denied the protection of the Act. The Respondent's argument is that Palm was a supervisor because he did "a considerable amount of scheduling and awarding overtime work to certain employees." There was evidence that Palm regularly assisted Chief Short in preparing schedules for the sweep team and in seeing that posts in swept buildings were covered. I find the evidence fails to establish that this involved the exercise of true independent judgment "in the interest of the employer" or was more than routine and clerical in nature. Palm held the same rank of sergeant and was paid at the same rate as other sweep team members. There is no evidence that he had any actual authority to put himself or anyone else on the work schedule, that he was ever assigned by the Respondent to do so, or that he was ever compensated by it for doing so. The evidence was that Palm, who obviously took pride in being part of the sweep team, often, on his own time, assisted Chief Short, whom he considered a good friend, in sending sweep team members to various posts that needed sweep team coverage. This involved telling members, who were already scheduled to work as "floaters," to which buildings they should go and finding members who were not scheduled to work but were willing to cover open posts by working overtime. He did this by contacting them and asking them if they would be willing to work overtime or, in some cases, sweep team members who wanted to work overtime would call him to see if any posts were open. There is no evidence that he had authority to direct any employee to take a particular post or to work overtime or that he acted independent of Short's supervision and direction.¹⁷ Chief Tackett testified that, in early June

¹⁷ The Respondent points to a memo that Palm wrote in July 1992 as establishing his supervisory status because he states therein that he was "in charge" of the sweep team. When read in context, the statement is entirely consistent with the evidence that he often voluntarily assisted Chief Short in seeing that posts in swept buildings were covered. Not only did the Respondent not put him in charge

1992, he was informed by some employees that they had gone to posts other than to those they were assigned because Palm told them to do so. Even if he did this and acted without specific orders from Short, this alone does not make him a statutory supervisor. According to Tackett, once he learned about it, he informed Chief Short what had happened and he stopped Palm from doing so "within a week." It is clear that "the exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks," *Chicago Metallic Corp.*, supra at 1689.

I. Elimination of the Sweep Team

Following the walkout, the Respondent disbanded the sweep team. This meant that those few employees, who participated in the walkout and were allowed to return to work, were reduced in rank from sergeant to security officer and were paid at a lower hourly rate than they had received as members of the sweep team. There was no evidence of any substantial or legitimate business justification for such action. On the contrary, the testimony of Jan Skryzpek was that this was done because sweep team members had walked out. The Respondent's failure to return these employees to their former or substantially equivalent positions of employment because they participated in protected activity violated Section 8(a)(1). *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967).

CONCLUSIONS OF LAW

1. The Respondent, Federal Security, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The walkout engaged in by the Respondent's employees on August 11, 1992, was concerted activity protected by Section 7 of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by:
 - (a) Maintaining a rule or regulation which prohibited its employees from participating in or supporting any strike, work stoppage, or other concerted refusal to perform duties.
 - (b) Threatening employees with termination and being barred from working on CHA property if they participated in a protected walkout.
 - (c) Coercively interrogating an employee concerning protected activities.
 - (d) Terminating those employees who participated in a protected walkout on August 11, 1992.
 - (e) Misinforming CHA as to the nature of the walkout, which resulted in certain of the participants being barred from working on CHA property.
 - (f) Reducing the rank and wage rates of those sweep team members who were permitted to return to work after participating in the walkout and disbanding the sweep team because certain of its members had participated in it.

of the sweep team, it never gave him authority to make assignments for its members. In this instance, he was being threatened with disciplinary action by Chief Wilson for leaving his assigned post in order to go to a swept building to see that it was properly covered. If anything, this is further evidence of Palm's lack of authority to exercise any independent judgment.

4. The aforesaid unfair labor practices are unfair labor practices affecting 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 shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(1) by unlawfully terminating employees Kelvin Brewer, Elliot Burdan, Tilman Dudley, Everett Green, Kendell Harris, Harry Hurd, Samuel Jackson, Zachary Jernigan Jr., Jerry

Johnson, Natline Jones, Charles O'Neal, Joseph Palm, Charles Robinson, John Salley, Dwaine Taylor, James Thomas, Sylvester Wilder, Leslie Williams, and Kenneth Wright, I shall recommend that it be required to offer them immediate and full reinstatement to their former positions as members of the sweep team or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits they may have suffered as a result of their unlawful discharges, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]