

Genesee Family Restaurant and Coney Island, Inc.; International Bakery & Pastries, Inc.; Alex Branoff; Anastasia Branoff; and George Branoff and Local 24, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Cases 7-CA-35051, 7-CA-35440(1), and 7-CA-35969

September 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On December 5, 1995, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed a limited cross-exception, a supporting brief, and a brief in support of the judge's decision.

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 and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondents, Genesee Family Restaurant and Coney Island, Inc.; International Bakery & Pastries, Inc.; Alex Branoff; Anastasia Branoff; and George Branoff, Flint, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities and sentiments.

(b) Coercively interrogating employees concerning how they voted in the Board representation election.

¹ We agree with the judge that International Bakery & Pastries, Inc. (International) is the alter ego of Genesee Family Restaurant and Coney Island, Inc. (Genesee). In his cross-exception, the General Counsel contends that the judge erred in failing to address whether International is also a successor to Genesee as defined in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). It is unnecessary for us to pass on the issue the General Counsel raises because finding International to be a *Burns* successor would not affect our remedial Order.

In *White Oak Coal Co.*, 318 NLRB 732 (1995), the Board clarified the standard for imposing personal liability on shareholders for the unfair labor practices committed by corporations, i.e., piercing the corporate veil. We find that the judge's analysis in this case is consistent with that set forth in *White Oak*.

² We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

(c) Threatening employees with closing the restaurant, discharging all employees, and operating as a self-serve restaurant if they voted for the Union.

(d) Threatening employees with closing the restaurant if the Union comes in.

(e) Threatening to send employees home because they voted for the Union.

(f) Threatening to find out if employees voted for the Union.

(g) Recruiting employees to determine the union sentiments of other employees.

(h) Ordering employees not to vote for the Union.

(i) Telling employees that it knows how they voted in the election.

(j) Threatening to make employees look sick and weed out those employees who support the Union.

(k) Engaging in surveillance of employees' union activities.

(l) Creating the impression that employees' union activities are under surveillance.

(m) Treating employees harshly because they supported the Union.

(n) Promising to take care of employees if they vote against the Union.

(o) Threatening to fire employees for getting out of line because they voted for the Union.

(p) Threatening to fire employees for minor infractions because they voted for the Union.

(q) Accusing employees of hating the owner because the Union came in.

(r) Threatening employees with hatred because they support the Union.

(s) Discharging employees because of their support for the Union.

(t) Suspending employees because of their support for the Union.

(u) Threatening employees that someone from the Union will be killed for engaging in union activities.

(v) Threatening employees with unspecified reprisals if they engage in union activities.

(w) Unilaterally changing terms and conditions of employment without notifying and according the Union an opportunity to bargain beforehand.

(x) Installing video cameras to watch employees because they supported the Union.

(y) Refusing to furnish the Union with information relevant and necessary to its representational duties promptly on request.

(z) Failing to accord the Union notice and an opportunity to bargain about any decision to close the restaurant, discharge all the unit employees, and reopen as a self-serve restaurant.

(aa) Failing to accord the Union notice and an opportunity to bargain over the effects of closing the restaurant, discharging all the unit employees, and reopening as a self-serve restaurant.

(bb) Closing the restaurant and discharging employees because they selected the Union as bargaining representative.

(cc) In any other 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) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement:

All full-time and regular part-time employees at Respondent Genesee's Flint, Michigan facility, excluding guards and supervisors as defined by the Act.

(b) On the Union's request, rescind the unilateral changes in work rules and disciplinary system, the installation of the video cameras, and the change in operations, and restore and resume restaurant operations in a manner consistent with the operations before the unit positions were eliminated on January 19, 1994.

(c) Within 14 days from the date of this Order, offer Michael Davis and all unit employees appearing on the Genesee payroll on January 19, 1994, or who do not so appear because they were on leave, sick, or on temporary layoff but who are considered regular employees, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(d) Make whole Michael Davis and all unit employees appearing on the Genesee payroll on January 19, 1994, or who do not so appear because they were on leave, sick, or on temporary layoff but who are considered regular employees, for any loss of earnings and other benefits suffered as result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(e) Make whole Ronald McKellar and Jack Scarbrough for any loss of earnings and other benefits suffered as result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Michael Davis and the other unit employees and the unlawful suspensions of Ronald McKellar and Jack Scarbrough and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges and suspensions will not be used against them in any way.

(g) Accord the Union timely notice and an opportunity to bargain about any future decision to change

mandatory subjects of bargaining and the effects on unit employees prior to implementation.

(h) Promptly furnish the Union with all requested information necessary and relevant to the performance of its duties in representing the bargaining unit employees.

(i) Preserve and, within 14 days of a 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.

(j) Within 14 days after service by the Region, post at their Flint, Michigan facility copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 28, 1993.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

³If 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 coercively interrogate our employees concerning their union activities and sentiments.

WE WILL NOT coercively interrogate our employees concerning how they voted in the Board representation election.

WE WILL NOT threaten our employees with closing the restaurant, discharging all our employees, and operating as a self-serve restaurant if our employees voted for the Union.

WE WILL NOT threaten our employees with closing the restaurant if the Union comes in.

WE WILL NOT threaten to send our employees home because they voted for the Union.

WE WILL NOT threaten to find out if our employees voted for the Union.

WE WILL NOT recruit employees to determine the union sentiments of other employees.

WE WILL NOT order our employees not to vote for the Union.

WE WILL NOT tell our employees that we know how they voted in the election.

WE WILL NOT threaten to make our employees look sick and weed out those employees who support the Union.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT treat our employees harshly because they supported the Union.

WE WILL NOT promise to take care of our employees if they vote against the Union.

WE WILL NOT threaten to fire our employees for getting out of line because they voted for the Union.

WE WILL NOT threaten to fire our employees for minor infractions because they voted for the Union.

WE WILL NOT accuse our employees of hating the owner because the Union came in.

WE WILL NOT threaten our employees with hatred because they support the Union.

WE WILL NOT discharge our employees because of their support for the Union.

WE WILL NOT suspend our employees because of their support for the Union.

WE WILL NOT threaten our employees that someone from the Union will be killed for engaging in union activities.

WE WILL NOT threaten our employees with unspecified reprisals if they engage in union activities.

WE WILL NOT unilaterally change our employees' terms and conditions of employment without notifying

and according the Union an opportunity to bargain beforehand.

WE WILL NOT install video cameras to watch our employees because they supported the Union.

WE WILL NOT refuse to furnish the Union with information relevant and necessary to its representational duties promptly on request.

WE WILL NOT fail to accord the Union notice and an opportunity to bargain about any decision to close the restaurant, discharge all our unit employees, and reopen as a self-serve restaurant.

WE WILL NOT fail to accord the Union notice and an opportunity to bargain over the effects of closing the restaurant, discharging all our unit employees, and reopening as a self-serve restaurant.

WE WILL NOT close the restaurant and discharge our employees because they selected the Union as their collective-bargaining representative.

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

WE WILL recognize and, on request, bargain with Local 24, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement:

All full-time and regular part-time employees at Respondent Genesee's Flint, Michigan facility, excluding guards and supervisors as defined by the Act.

WE WILL, on the Union's request, rescind the unilateral changes in work rules and disciplinary system, the installation of the video cameras, and the change in operations, and restore and resume restaurant operations in a manner consistent with the operations before the unit positions were eliminated on January 19, 1994.

WE WILL, within 14 days from the date of the Board's Order, offer Michael Davis and all unit employees appearing on the Genesee payroll on January 19, 1994, or who do not so appear because they were on leave, sick, or on temporary layoff but who are considered regular employees, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Michael Davis and all unit employees appearing on the Genesee payroll on January 19, 1994, or who do not so appear because they were on leave, sick, or on temporary layoff but who are considered regular employees, for any loss of earn-

ings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL make whole Ronald McKellar and Jack Scarbrough for any loss of earnings and other benefits resulting from their suspensions, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Michael Davis and the other unit employees and the unlawful suspensions of Ronald McKellar and Jack Scarbrough and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges and suspensions will not be used against them in any way.

WE WILL accord the Union timely notice and an opportunity to bargain about any future decision to change mandatory subjects of bargaining and the effects on unit employees prior to implementation.

WE WILL promptly furnish the Union with all requested information necessary and relevant to the performance of its duties in representing our bargaining unit employees.

GENESEEE FAMILY RESTAURANT AND
CONEY ISLAND, INC.; INTERNATIONAL
BAKERY & PASTRIES, INC.; ALEX
BRANOFF; ANASTASIA BRANOFF; AND
GEORGE BRANOFF

Linda Hammell, Esq., for the General Counsel.
Patrick M. Kirby, Esq., of Flint, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., Administrative Law Judge. I heard the consolidated cases on 11 days between October 1994 and February 1995 in and around Flint, Michigan, pursuant to complaints issued respectively to the Respondents, Genesee Family Restaurant and Coney Island Inc., International Bakery & Pastries, Inc. and Alex Branoff, Anastasia Branoff, and George Branoff— (Genesee, International, or the Branoffs—the latter sometimes individually identified) listing on October 29, 1993, March 1, and June 20 both in 1994. The allegations are that the Respondents committed many unfair labor practices against their employees including closing the Genesee restaurant, firing employees, and reopening as International without reinstating most of the former employees due to employees' union activities and election of the Union to represent them in a Board-conducted election in October 1993, unilaterally changed working conditions without notice to the Union, refused to supply the Union with information relevant to its representational duties, refused to recognize and bargain with the Union in good faith, and refused to bargain over the effects on employees of closing its restaurant thereby violating Section 8(a)(1), (3), and (5) in the Act. Also alleged is that International is a successor and alter ego

of Genesee and that the Branoffs are personally and jointly liable for these violations.

On the basis of the entire record including the demeanor of the witnesses and the parties' briefs, I make the following

FINDINGS OF FACTS

I. JURISDICTION

Genesee, at times material, operates a restaurant in Flint, Michigan, which annually derives gross revenues over \$500,000 and purchases supplies valued in excess of \$5000 from suppliers located within the State of Michigan, which received such supplies directly from sources outside Michigan. As admitted, I find Genesee is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Given that International is found to be but a disguised continuance of Genesee, an admitted employer engaged in commerce under the Board's jurisdictional standards, there is no impediment to the continuing assertion of that jurisdiction over International arising merely from the allegation that revenues for International had not yet risen to the same level as Genesee's at the time of the hearing, and possibly would not do so in a full year's operation, as speculated by counsel for Respondent. The two are the same under law. To hold otherwise is to permit Respondent to escape the consequences of its unlawful conduct against employees and deprive them of rights established under the law merely by changing names, and continuing operations downsized by either design or happenstance. The parties consented to an election thereby communicating to employees the reasonable belief that their union activities fell within Board jurisdiction and were protected under the Act; to hold otherwise at this juncture amounts to an inequitable deprivation of employees' rights, a result not to be countenanced by the Board. *Princeton Health Care Center*, 294 NLRB 640, 641 (1989). In any event, the order requires Respondent to restore Genesee restaurant operations, which admittedly do satisfy Board jurisdictional standards. Accordingly, there is no merit in Respondent's contention.

Admittedly the Union is a labor organization as defined by the Act.

Alexander Branoff and Anastasia Branoff are owners of Genesee, General Manager Carol Greene served in this capacity from November 1, 1993, to January 19, 1994, Bill Davis is night supervisor and labor relations consultant, and Edwin Ricker serves as an agent of Genesee in collective-bargaining negotiations. I find further that the Branoff's son, George Branoff, an admitted corporate officer is invested by his parents with, and exercises ownership-like supervisory authority over employees and is an agent of Respondent at material times.

The Union is currently the exclusive bargaining agent for employees (certified by the Board on November 19, 1993) in the following unit:

All full-time and regular part-time employees at Respondent Genesee's Flint, Michigan facility, excluding guards and supervisors as defined by the Act.

II. THE UNFAIR LABOR PRACTICES

The principal events took place from August 1993 into September 1994. Employee efforts to gain union representation began in August when second-shift restaurant dishwasher Mike Davis telephoned Union Representative Lisa Canada to get matters underway. She and Davis met with other employees from the second shift on several occasions, when union authorization cards were distributed and later collected by Davis, who served as the principal go-between, and encouraged employees' interest by leading discussions at union organizing meetings, and distributed union literature. There were about 25-27 employees on the restaurant staff. Davis informed waitress Patricia Barlow while working about union meetings on September 3, 16, and October 6. Employee James Coleman signed a union card and gave it back to Davis at work. Employee Tina Reeves typed up notices for the employees concerning their meetings. Second-shift cook Jack Scarbrough assisted Mike Davis the most, passing out union authorization cards outside the restaurant in the parking lot right at the back door around 4 p.m. When he and Mike Davis went inside, the Branoffs were there.

A. *Interrogation in Early September*

The Union filed a representation petition on September 13, which Respondent gets a copy of 3 days later from the Region 7 office. The news is unsettling and Respondent mobilizes into action. Shaking the envelope's contents at her the very next day, George Branoff asks Tina Reeves in the wait area if she knows anything about a union, that he heard they're bringing a union in, and when she disclaims knowledge, declares he knows who's behind it and leaves the area. Alex Branoff confronts three employees in the breakroom with George present and when he sees Jack Scarbrough, second-shift cook filling out a card pertaining to social services, demands to know what he is filling out and whether it has anything to do with the Union. He then asks Amy Babbitt if she knows anything about, or if she is for the Union. Continuing to probe, he asks Nancy Keating and Scarbrough if they know anything about it and all answered no. Alex tells them someone had to know about the union because he is getting calls from what he then labels as the *union* board. (Emphasis added.) Cook James Coleman recalls that Alex confronts him at the food cooler and asks who signed union cards; whether he and his son did so, and whether Mike Davis gave them cards, about the same time. This hasty, agitated and resentment-filled widespread grilling of employees focused into what they knew and did about the Union by top restaurant officials and the owner—husband to the other co-owner—puts a hostile and coercive stamp on the inquisition-like questioning which occurs. It is no wonder that employees disclaim any such knowledge. I find Respondent coercively interrogated employees concerning their union activities and sympathies thus violating Section 8(a)(1) in the Act.

B. *The Respondent's Threat to Close*

The parties meet at a Board-scheduled representation petition hearing on September 27 in a cramped hearing room in Flint, Michigan, attended by numerous employees and their relatives. An accountant representing Respondent, Anthony Michael, demands to know which employees signed union cards and who the others are in the room. When Tina

Reeves' husband is mentioned as in attendance Alex Branoff calls him a union spy, and Michael said he preferred they (the other attendees and employees) leave. Alex then angrily demanded to know why the Union had targeted his business, declaring he knew "you" hold union meetings and pass out cards. A brief exchange of little consequence ensues whereupon according to Reeves, Alex Branoff states, "As the Union come in, I'll close my doors. I don't need 27 worthless employees; I'll turn it into a self-serve, and I'll run it myself." Patricia Barlow, Lisa Canada, and Jack Scarbrough corroborate Reeves, recalling this account in all major respects. Alex is not asked to deny the statement and Anthony Michael says he doesn't recall it. The corroborating accounts are credited. The threat made, Branoff and Anthony, forcing the hearing officer aside against the window, depart the room. The Board agent nonetheless perseveres and due to his good offices an election agreement is reached by the parties for an election. The next day Respondent's ad appears in the local paper stating it is now hiring for all positions.

Repeating the threat before the October 12 scheduled election, Alex asks James Coleman over 10 times to vote no against the Union, saying ". . . if we didn't vote no, if a union came in, he'd close the restaurant down and make a smorgasbord out of it and hire his family to run it." Coleman recalls Branoff told him this five or six times. There is no denial and Coleman is credited. Shortly after the election Branoff told second-shift grill cook Ronald McKellar, "Before the Union comes in here I will close this place down." Near in time to Christmas, cook Scarbrough testifies Alex tells General Manager Carol Greene in the employee's presence that he wants her to direct all employees that no one is going to tell him how to run his business, not even the Union, that he'd just close the restaurant down and everyone'd be out of a job. There is no denial by Branoff or Greene and Scarbrough's account is also credited. Respondent's threatened actions linking a change in the nature of Respondent's business operations and employees' termination from employment due to employees' union activities by the described threats violates Section 8(a)(1) in the Act. By telling Coleman and his son to vote "no," Respondent interferes with employee rights in further violation of Section 8(a)(1) in the Act.

C. *Respondent's Impression of Surveillance and Further Interrogation*

Respondent's agents are frequently pictured creating the impression that employees' activities on behalf of the Union are under surveillance by the Company. George Branoff tells Tina Reeves in mid-September he knows who is behind the employees' efforts to bring the Union in after unlawfully interrogating her, naming employee Nancy Keating. He tells her he knows how she and Patty Barlow voted in the election—that they are one of the yes votes. Alex Branoff tells George Branoff in Scarbrough's presence before the election to send Ron [McKellar] home if he was any later because he knew he was for the Union anyway. About October 26 George Branoff asks Patricia Barlow how she voted in the election telling her when she replied it was none of his business that "Well I will find out how you voted." George Branoff asks Ronald McKellar how he voted. Alex Branoff tells Coleman he has enough votes to beat "them" [the Union] if he and his son voted no. Coleman tells Branoff

he'd go to the October 6 union meeting when Branoff asks him to do so to find out who signed cards during the conversation. The day after, Branoff tells Coleman he already learned about the matters from Carol Keltner and tells Coleman he will make them look sick and weed some people out of there. Carol Keltner, according to Coleman, tells Coleman that Branoff sent her to the meeting. Keltner does not deny this, nor does Branoff. After the election, Coleman hears George Branoff talking to Trina Lucas about how she voted. He testifies that Branoff tells Lucas he knows how she voted. Anna Branoff, as described in fuller respects below, tells Jack Scarbrough he used to be a nice young man but he and everyone hates her now since the Union came in—around December—implying she knew Scarbrough and other employees supported the Union. Anna Branoff tells James Coleman after the election in the breakroom that she thought he was on [Respondent's] side. Anna and Alex Branoff stop speaking to Coleman after the election though they normally are comfortable talking together. Coleman asks Alex later why he is being treated in such manner and Branoff replies it was Coleman and his son who put the Union in. Attributing the present possession and ability to secure further information in the future of all this information and knowledge concerning the employees' union activities and employee voting choices in the Board election is calculated to create the impression of surveillance among employees, because it logically follows, that the only way Respondent could gather such information is by keeping employee activities of such nature under close surveillance. By creating such an impression, Respondent unlawfully interferes with employees' union activities in violation of Section 8(a)(1) in the Act. In addition, by recruiting employees to attend a union meeting and report back what transpires there, Respondent coercively interferes with employees' rights to engage in such activities thereby violating Section 8(a)(1) in the Act. Further, by interrogating employees Ronald McKellar and Barlow concerning how they voted in the then-present context of Respondent's threats to close the restaurant and turn it into a different operation resulting in the termination of current employees, Respondent coercively interrogated employees in violation of Section 8(a)(1) in the Act.

D. Respondent's Promise of Benefit

On election day Alex Branoff, continuously after Coleman and his son to vote no in the election, again tells Coleman to vote no and "he would take care of him." There is no denial and Coleman is credited. Respondent's conduct interferes with the employee's rights under Section 7 of the Act to cast his ballot free from the coercion inherent in a promise of unspecified benefit designed to influence such choice and thereby violates Section 8(a)(1) in the Act.

E. Respondent's Further Threats

Noted above in Alex Branoff's threat to Coleman upon learning from Carol Keltner about the employees' union meeting the night before that he ". . . will make them look sick and weed some people out of there." Coleman testifies that after the voting on election day he hears Alex tell George Branoff that no union is in yet and if anybody got out of line to fire them. Neither Branoff denies the statement. Second-shift cook Jack Scarbrough testifies that at some

point in this time Alex Branoff finds a dish in the trash and states if he knew who put it there they'd be on the unemployment line because they're all for the union anyway—Alex is not asked to deny the testimony. Also close to Christmas Anna Branoff tells Scarbrough he used to be a nice young man until the Union came in and now he hated her and everyone there as well. Scarbrough protested that he didn't hate anyone but Branoff replied ominously that the "Bible said if you sow the seeds of hatred then hatred comes back on your ass." Branoff does not testify and Scarbrough's accounts are credited. On November 12, Friday, the Union stages a demonstration at the restaurant with nonemployees peacefully sitting at several tables in the restaurant, where they leave flyers protesting Respondent's unilateral changes in employment conditions. After the efforts are underway Alex Branoff says in Ronald McKellar's presence, "I'm going to kill somebody in this Union if they keep this up." He does not deny this conduct. I find by all this described conduct Respondent (a) threatened employees with harsher working conditions inasmuch as employees are to be discharged if they so much as "get out of line," (b) threatened employees with discharge for a minor missteps such as leaving a dish in the trash; and because Respondent intends to "weed out" employees, (c) threatened employees with unspecified but certain dire consequences for bringing in the Union to the restaurant, and (d) threatened to kill someone in response to union-supporting activity on employees' behalf thereby coercively interfering with employees' exercise of their rights under Section 7 in the Act, in each instance in violation of Section 8(a)(1).

F. Respondent Suspends McKellar and Scarbrough

On November 12 on the very heels of this activity, the same day, Alex Branoff confronts second-shift grill line cook Ronald McKellar and the shift cook Jack Scarbrough. He tells them each that the union demonstration hurt business and the company lost so much money that each will suffer an extra day off that week. Neither McKellar or Scarbrough took part in the nonemployee activity; and Respondent fails to explain how Branoff knew so quickly the restaurant lost so much money that it is necessary to immediately suspend the cook staff, of all employees, on a regularly scheduled day of operations without substituting other cooks at the same cost or closing thereby losing even more money. Moreover, it comes to pass at this hearing that the records do not show a loss but rather that the level of restaurant income for this day is on average. (G.C. Exh. 35.) Scarbrough, the second most principal employee union supporter, serves as union observer at the election in October, and McKellar is a union steward in the employees' bargaining committee and an active union adherent as well, as admittedly known to Respondent whose general manager, Carol Greene, testifies that the Branoffs tell her they know both are for the Union. The hostility harbored by all the Branoffs towards employees' union activities is impressively demonstrated, especially Alex Branoff's animosity at a fever pitch during the demonstration. Respondent's flimsy and wholly unsupported advanced reason for the suspensions is unpersuasive and reveals merely that Respondent fueled by the annoying demonstrations jumped at the chance to target two employees favoring the Union with retaliatory discipline. The General Counsel's evidence establishes a prima facie case that the action is dis-

criminary, thereby shifting the burden of proving it would have suspended the two even aside from the union demonstration and their support for the Union. This Respondent fails to do. I find Respondent threatened the employees with suspension and suspended them because they supported the Union; Respondent thereby violated Section 8(a)(1) and (3) of the Act.

G. Respondent Discharges Michael Davis

Michael Davis is dishwasher on the second shift and the principal employee activist for the Union, initiating calls to the Union in August, leading meetings and discussions about it among employees in September, circulating union authorization cards inside the restaurant and parking lot including times when the Branoffs are present inside, distributing union literature and promoting the idea of representation among employees. He attends union meetings, including a meeting held on September 16. Shortly beforehand, Alex Branoff announces to employees Coleman and Scarbrough inside the restaurant that he believes Mike Davis is the one who started "the whole [Union] mess." Branoff does not deny the statement attributed to him.

On September 17, the day following Davis' union meeting with other employees in attendance as well, Davis is working as second-shift dishwasher near a disposal sink located next to the "dish washing window," which is open to the adjoining break or "wait" room and is set in to the partition or wall separating the two areas. Sometime in the evening Anna Branoff carries a coffee urn containing hot liquid towards the window, says excuse me to Jack Scarbrough—who is mopping the floor—and jettisons the liquid through the window in the direction of the sink. Scarbrough hears Davis instantly scream, a shout is heard exclaiming "what happened?," and Davis yells "that [expletives] Anna scalded me, the one who doesn't care about anyone." James Coleman is by the drive-in window with his back turned around. He hears Davis cry out that "the (expletive) just threw hot coffee on me"; turns around and sees the hot coffee all over Davis and sees Anna there.

Coleman testifies he later hears Anna Branoff fire Davis for slamming the dishwasher door down, but states that over a month's long period he hears no more than a normal slamming of the dishwasher. Tina Marie Reeves says she hears Anna Branoff tell the night-shift cook she fired Davis for slamming the dishwasher but hears no such abuse of the machine from her nearby vantage point in the "wait" room—and that Davis tells her Branoff had fired him moments after the scalding. Scarbrough testifies that Branoff says that Davis is slamming the dishwasher door up and down and slamming dishes and stuff around, but says he would be able to hear that from his vantage point as he was still there mopping in the breakroom and that he hears no such noise. He says Branoff, after firing Davis instructs Scarbrough to walk Davis to the back door and lock him out, lock the door behind him. The corroborated employee accounts raise the important question why Anna Branoff creates a dangerous hazard to Davis, whose duties require him usually to be in near proximity to the disposal sink vulnerable to splashing and serious injury from a scalding hot liquid sent suddenly without warning or safeguards through the window. Tina Reeves testifies to common good practice in the restaurant to stick your head in the window for safety and to avoid accidents before

draining liquids. Further conduct by her of suspicious import is the immediate industrial capital-punishment-like discharge and escorted expulsion of Davis from the restaurant through the promptly thereafter locked back door. Anna Branoff, however, is not called to the stand to explain any of this and Respondent offers no elucidation why it fires Davis through any of its own witnesses or in its answer to the complaint, or on brief.

I find that under the *Wright Line* (supra) teachings, the General Counsel, whose evidence clearly shows union activity by Davis, Respondent knowledge, and remarkable animus motivating the action against him, establishes a prima facie case of discriminatory discharge, thereby shifting the burden of proof to Respondent of showing that it would have discharged Davis even aside from his activities in support of the Union. This it fails to do. Accordingly, I find that by discharging Michael Davis, on September 17, Respondent violated Section 8(a)(1) and (3) in the Act.

H. Respondent's Unilateral Actions

After the Union's election, and before the parties' contract negotiations held on November 20, December 10, and January 14, are held, Respondent hires a new general manager, Carol Greene, on November 1, who formulates new work rules, including a new progressive disciplinary system, which Respondent puts into place without according notice or an opportunity to bargain about this action to the Union beforehand. Shortly after November 1 another version of the modified rules is circulated to employees and implemented unilaterally.

In mid-November Respondent installs four video cameras throughout its restaurant allegedly to deter employee theft and crime in general, again with no notice to or any discussion with the Union. Even during negotiations with the Union for a contract Respondent continues ignoring the employees' bargaining representative, making changes in employee breaks on December 20 revising those changes on January 14 and then reinstating them shortly afterward.

The rules' changes, contrary to Respondent, are not mere clarifications given the undenied and credited employee testimony that 10 rules are new and not before October 9 enforced in the restaurant; moreover, there is no progressive disciplinary practice or system in place before its adoption on October 19. There is no question about the significance to employee working conditions of the mid-November installation of video cameras to monitor employee conduct in their workplace; in fact, Respondent uses a tape from the videos to buttress its disciplinary action against an employee who is discharged. It is noteworthy also, that Respondent fails to offer any proof that an immediate emergency-like need to engage in such surveillance is present based upon any probative evidence or reliable testimony. Respondent's contention that a need existed due to employee unrest to make some changes is unsupported by any evidence and is without merit. By its conduct failing to accord the union notice and an opportunity to bargain about material and significant changes to employees' working conditions before instituting these changes, some of which occurred before contract negotiations and others in the very course of such negotiations, Respondent failed to bargain in good faith as discussed further below, and by its unilateral action both postelection precertification and thereafter further violated Section 8(a)(5) in the Act.

The many findings so far made in this decision establish employee union activity, a barrage of offenses against employees because of their lawful exercise of rights under the Act, and a settled hostility, Respondent's owner going so far as to threaten to kill. Thus, the General Counsel's allegation that Respondent installed the video cameras as a discriminatory retaliation against employees for supporting the Union also deserves serious consideration. Noted first is that under *Wright Line* the evidence establishes a prima facie case of discriminatory motivation and thus Respondent has the burden of showing by a preponderance in the evidence that it would have installed the video cameras even aside from the employees' support for the Union. This it fails to do. Respondent's witness accountant, Anthony Michael, merely testifies that Alex Branoff talked about cameras months before the union campaign. Labor consultant Edwin Ricker says the contract for the installation of the video cameras predates the Union's "presence" but the contract is not offered to support this assertion, nor is any other evidence to this effect when it is reasonable to expect there would be some objective proof easily available. Neither witness is corroborated. The Respondent's general manager, Carol Greene, arrives as a new general manager in November and sees that the video cameras are in the original cartons. The employees' organizing campaign begins in August—4 months earlier. To accept Respondent's unproven assertion that it contracted for the videos because of pressing concern about crime at the restaurant well before the Union's "presence" and thus no basis exists to find discriminatory intent, one must first accept a chronological scenario in which Respondent contracts for the equipment months well before August yet the videos are still in their shipping boxes uninstalled as late as November, an improbable sequence in events rendered even more dubious by Respondent's failure to produce any proof. I find, therefore, that Respondent's conduct also violates Section 8(a)(3) and (1) in the Act.

Contrary to the General Counsel's position I do not find that Respondent's negotiator, Edwin Ricker, is without the requisite authority to engage in meaningful negotiations. I credit Bronson's account that Ricker advises her early on in negotiations at the first session on November 23 that he is unable to make any decision and had to take everything back to his client. He tells her later at the second meeting, December 20, he doesn't have the authority to accept any of the Union's proposals—that everything had to be run back by his client before anything would be settled. To address Bronson's concerns, Ricker tells Bronson at the second meeting he will bring Alex Branoff to the third meeting inter alia to clarify that Ricker had complete authority to represent Branoff at negotiations, and Branoff is in fact present during the third meeting on January 14, 1994. "[A]n employer is not required to be represented by an individual possessing final authority to enter into an agreement, [however] this is subject to a limitation that it does not act to inhibit the progress of negotiations." *Wycoff Steel, Inc.*, 303 NLRB 517, 525 (1991). According to Ricker's un rebutted testimony the negotiations between the parties led to union agreement on 19 significant issues he negotiated, and there is no evidence or assertion that Ricker's obligation to report back to Respondent inhibited the progress of negotiations. *Industrial Chrome Co.*, 306 NLRB 79, 84 (1992). See also *Exxon Co.*

U.S.A., 313 NLRB 1193, 1195 (1994), and *Coastside Scavenger Co.*, 273 NLRB 1618, 1628 (1985).

I. Respondent's Failure to Provide January 14, 1994 Requested Information

During the early stages in negotiations contract proposals are exchanged but Respondent refuses to bargain over economics, Ricker advancing the reason to Bronson that the Company cannot afford any movement. Bronson asks for financial statements to support such contention and Ricker brings in statements at the next meeting on January 14, along with Alex Branoff. Bronson reviews the summaries and sees many entries which raise significant questions, including whether many alleged liabilities are authentic ones. The reason this is relevant should be obvious for if the so-called liabilities are bogus, the records will distort the true financial ability of the Company; thus she has the right to question them. However, Branoff is recalcitrant, or stubborn, or unresponsive in answering valid questions raised for details. Bronson thereupon asks to see supporting data. While Ricker seemingly agrees and sends a letter to the Respondent's accountant, he also, I find, tells Bronson he will call her on a conference call with the accountant so as to arrange a date when he can be present with Bronson and the union accountant to go over the records. This he does not do, and, as shown below, other serious events overtake the Union's unrequited desire to see the books for contract bargaining purposes. While this failure to provide information is not specifically alleged in the complaint, it is a very thoroughly litigated matter identical in kind to other such conduct, occurring in the same matrix and continuum in events as those of like ilk that are part of the complaint. I find Respondent failed to bargain in good faith and violated Section 8(a)(5) further by refusing information relevant and necessary to the Union's exercise of its representational responsibilities towards unit employees on whose behalf it is trying to negotiate an agreement. *Stroehmann Bakeries, Inc.*, 318 NLRB 1069 (1995).

J. Respondent Closes

Without prior warning, in midstream bargaining the Branoffs abruptly close the restaurant's doors and terminate employees on January 19, 1994, the Union being told by phone call from Ricker just the day before. The complaint alleges that the failure to provide timely notice concerning the closing denies the Union an opportunity to engage in meaningful bargaining over the effects on employees of the closing. Of course, when the Respondent fires all its employees, bars their entry to the premises with signs announcing the closing on January 19 with only 1 day's notice beforehand this action presents "... the Union with a fait accompli at a time when that Union no longer retained its bargaining power." *Los Angeles Soap Co.*, 300 NLRB 289, 296 (1990). The record shows that there then follows in the place of any meaningful bargaining letters and phone calls between the parties, including certain requests by the Union for data concerning the closing which are denied by Ricker on grounds the Company is defunct, all of which serve to accomplish nothing, Respondent also refusing to provide other information sought by Bronson necessary and relevant to the Union in order to fulfill its duties to pursue effects

bargaining—all because as in the case cited above, Respondent failed to comply with its obligation to give timely notice. See also, *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 (1990). By failing to accord timely notice to the Union concerning the closing, and information related to the closing as well as to effects bargaining, Respondent violated Section 8(a)(5) in the Act.

K. *The Respondent's Reasons for the Closing*

Respondent asserts a variety of different causes for closing the restaurant doors, asserting the enterprise is losing money, but only provides General Counsel with partial records and unlawfully fails to provide the Union with either an audit beforehand, or after the closing as is requested in writing; Ricker informs Bronson cryptically there is no point in auditing a defunct company. Yet Bronson then sought information about the alleged defunctness and is refused that as well. As developed below, it turns out \$30,000 is indeed available to open a new eatery to the Branoffs' son shortly after the closing the record devoid of any reason why the capital is not used to infuse the restaurant with greater longevity since the Branoff parents are present as de facto operators in their son's newly opened "Bakery."

Then, there is an assertion that Mrs. Branoff is not well, but no facts are advanced about this, why with the collection of a large supporting number of employees and officials to help out, the restaurant cannot stay in existence without her, and it turns out fortunately she is well enough to join in operations at the reopened eatery shortly afterward. Next in the line of alleged reasons is the assertion by a Respondent witness that labor costs are not a factor only to be followed by another Respondent witness, the company accountant, who testifies that labor costs are indeed a cause for the closing. Still further the reason advanced is that nearby construction work influenced a regular group of customers to seek food elsewhere but the construction is a temporary inconvenience completed 3 months before the closing and it is unexplained why its impact or competition from another restaurant is fatal to a restaurant in business since 1971. Mention is also made of a deterrent to trade arising from 2 days on which pamphlets are left at some of the tables occupied by demonstrators protesting some of Respondent's unilateral changes, described above, but it turns out the income from patronage in these instances is actually average according to Respondent's own records.

Then still further is the so-called "ratio" between costs and revenues at the restaurant being allegedly out of line with industry norms and therefore untenable to continued operation, yet the data on which this touted theory is based is concealed from the Union; as are specific other underlying relevant documents specifically requested of Respondent counsel while its witness is on the stand by this Court, with no reason advanced for such failure. A fair inference arises that Respondent would have complied with the Court's request, General Counsel's subpoena, and the Union's valid request unless it had something to conceal unfavorable to its position and that inference is drawn.

Respondent's accountant, and financial reports, prove unreliable. His partisanship is evident from his unpaid, volunteer status, his volunteering to play the role of labor relations adviser at the representation hearing where his inexperience and belligerence towards employees and others in attendance

led to further open hostility and disrupted the process. His accountant training is limited to 2 years and he is not certified. His light-handed manner seemed to reflect a superficial understanding of the significance of the charges and this hearing. With remarkable ease he testified he is not at all able to vouch for the accuracy of the Respondent's financial records produced by a bookkeeper at his own office. Moreover, he testified he could not recall how he and a then attorney for Respondent prepared the figures underlying financial reports and that he hadn't looked at the books in a long time.

The findings described in full detail above reflect the employees' substantial activities seeking union representation are known to Respondent including by unlawful surveillance, and that Respondent harbors deep animus towards such employee activities, Alex Branoff threatening to close if the Union comes in, and Anna Branoff ascribing the closing to God's punishment against employees for what they did to the Branoffs—having earlier threatened an employee with unspecified retribution for supporting the Union. The midweek suddenness, secretive nature, and timing in midstream negotiations of the closing are further factors considered in evaluating motive. As described in detail below, this discriminatory conduct does not arise in the context of a lawful permanent closing under the Supreme Court's holding in *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263 (1965), and thus Respondent's actions are not insulated from responsibility under the Act. This preponderance in the evidence establishes a prima facie case of a discriminatory closing with its concomitant discharge of employees in violation of the Act, which shifts the burden onto Respondent to prove it would have closed the restaurant and fired its employees aside from their union activities. Given the unproven, invalid, and unpersuasive reasons asserted for this action, this Respondent fails to do. *Ferragon Corp.*, 318 NLRB 359 (1995). I find by this conduct Respondent violates Section 8(a)(1) and (3) in the Act. I agree with General Counsel that Respondent's discriminatory discharges of all its employees is fueled as well by its intense desire to avoid its bargaining obligations to the Union in violation of Section 8(a)(5) in the Act.

L. *Alter Ego Status of International Bakery & Pastries, Inc.*

Just 30 days later George Branoff incorporates International Bakery & Pastries, Inc. (International)—a news item also reports he applies for a license to operate in the same premises—using unsecured loans from Alex Branoff's brother and Alex's brother-in-law as to which no payments or efforts to collect same are noted. Between January 19 and the opening of International 10 weeks later on April 7, 1994, the original equipment stays on the premises and utilities continue to be furnished. Some mixers and baking ovens are purchased. In response to Bronson's letter earlier, described above, wherein he tells her Genesee is defunct, Ricker also says George is to use the facility as a bakery and pastry shop; that Alex and Anna are "helping." (G.C. Exh. 22.) In fact, International employs Alex, Anna, and George Branoff, as well as Theodoros Brayanis, Alex's brother on April 7, all of whom perform work. Theodoros Brayanis is prep cook, both at Genesee earlier and then at International. Alex continues to own the building. By April 13 the work force includes two other former Genesee employees, Janell Olenick

and Barbara Gilbert. An additional employee is added each of the next 4 months, who are not from the former Genesee staff, to handle the self-serve style of operations threatened by Alex to be put in place to thwart employee union activity as described above.

Although George reportedly is to be the only officer for International, this turns out to be a ruse for Alex continues to sign for supplies, signs checks against the International account, including for its startup costs, and signs checks for services furnished to International, well after the startup and his name is on the tax receipt into 1994, the tax office receipt still showing the name of Genesee. George signs a lease for Alex but then George deposits the payments directly to the bank mortgagee of the realty owned by Alex and on which International is based, and which Alex owned beforehand, the amounts of such deposits exceeding the lease requirements substantially, another in a long line of dealings inter se family members present in this case. George is out of the premises making deliveries all day long; while Alex and Anastasia work at International 16 hours a day, 6 days a week; their sole employment. They discuss the business with George and Alex advises him what to do, but does not pay them, allegedly.

The building housing International is the same as housed Genesee. The premises' floor plan and capacity remain virtually unchanged, Genesee having had 31 tables in 2 rooms for 124 persons; while International has 29 tables in 2 dining rooms for 120 customers. International uses the same cooler, freezer, refrigerator, grill, bun warmer, steam table and oven Genesee used. There is no record information that any Genesee equipment is removed, and several International vendors and suppliers serviced Genesee as well. International now pays for the health insurance plan covering the Branoffs that Genesee formerly provided; and International assumed the contract payments for the video cameras without signing a contract for this assumption. The same accountant who provided services for Genesee does so for International. International paid for legal services provided to Genesee.

The food supplies ordered by International disclose a wider range in ingredients than needed for cooking limited to pastries; 65 pounds of french fries, various cheeses, turkey breasts, cod loins, peas, olives, gallons of relish, barley, and onion rings. (G.C. Exh. 28.) By September 1994, International is selling prepared soups, fish and chips, omelets, french toast, bacon, hamburgers, turkey and ham delicatessen sandwiches, greek and tuna salads, french fries, onion rings, cottage cheese and cole slaw, the same kinds of prepared foods Genesee offered. The operation is akin to that of Genesee restaurant. Patrons merely carry their trays to their tables and thereby Respondent eliminates the need to employ its union-supporting waiters and waitresses along with those employees' livelihood. In the same sequence in developments Respondent advertises how Alex and Anna Branoff continue to serve the public in a local television commercial showing them behind the serving counter, a voice announcing that International, formerly Genesee, is open to serve bread and pastries.

The General Counsel alleges that International is the alter ego of Genesee and the record supports this view. The management, supervision, and ownership by the three Branoff family members of both firms is heavily documented. The Board often treats ownership by other family members as

personal ownership. Common ownership by any family member satisfies the requirement of common ownership. *Bryar Construction Co.*, 240 NLRB 102, 104 (1979); *Gilroy Sheet Metal*, 280 NLRB 1075 fn. 2 (1986); *MP Bldg. Corp.*, 165 NLRB 829, 831 (1967), enfd. 411 F.2d 567 (5th Cir. 1969); *Campbell-Harris Electric*, 263 NLRB 1143 (1983), enfd. 719 F.2d 292 (8th Cir. 1983). Alex is owner of Genesee, not shown to be legally defunct though proof is requested for such assertion and is not provided—in fact both tax, health insurance and equipment leasing documents continued to identify Genesee after International commences operations; and George is ostensible owner of International. Management and supervision clearly rest in the family's control. The food preparation, sale, and consumption of food on the premises along similar lines same for the self-service feature is substantially the same operation and business purpose, as is the equipment which is devoted to it; and they basically have the same body of customers, i.e. they do business in the same market offering a comparable bill of fare *Good N' Fresh Foods, Inc.*, 287 NLRB 1231, 1233–1234 (1988). The somewhat lesser variety of choices at International is hardly significant given the operation's propensity to expand far beyond bakery pastries to full-fledged meals since its opening.

In *Advance Electric*, 268 NLRB 1001, 1002 (1984), the Board held that in determining whether an alter ego status is present, it would also consider as an illuminating tho (sic) not required element "whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." Here there can be no doubt that International, quickly formed after Genesee employees are illegally discharged, and the Genesee operations in their then-existent form nominally halted for unlawful reasons as established above, is created to evade its duties under the Act after an insignificantly short period of time. Its very nature at the same location still owned, operated, and supervised by the Branoffs exactly in the form Alex threatened to use to punish employees for their union support evidences its illegal origins.

The overall commonality in their character, in all major respects combined with the illegal purpose behind the creation of International so that the three Branoffs could evade bargaining with the employees certified collective-bargaining representative and escape obligations under the Act lead me to conclude that International is the alter ego of Genesee. *Schmitz Food*, 313 NLRB 554 (1993); *Kenmore Contracting*, 289 NLRB 336 (1988); and *Apex Decorating Co.*, 275 NLRB 1459 (1985).

M. Refusal to Recognize and Further Failure to Provide Information

Given the foregoing alter ego status of International it is clear without more being said, that Respondent's failure to recognize and bargain with the Union for a contract, including recall rights of employees, and to provide it with relevant information, namely the names and address of all employees hired at the "bakery shop" pursuant to the requests lettered to Ricker on April 15, 1994, by the certified bargaining representative of Respondent's employees, further violates Section 8(a)(5) of the Act as alleged in the complaint. (GC-1W attachment exh. D.)

The aforementioned findings of fact and conclusions of law establish unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has committed violations of Section 8(a)(1), (3), and (5) of the Act, I recommend it be required to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent presents no evidence that a restoration of regular waitress and waiter service operations at its restaurant would be unduly burdensome. The restaurant is fully equipped, utilities in use, furnishings and space remain virtually unchanged, and the site remains identical to that used when Respondent operated as Genesee; in fact a fully operational restaurant continued in existence after the nominal closing of Genesee, save for the unlawful termination of wait service and conversion to a self-serve method in operations. Respondent failed at numerous occasions in the respects described above, to even authenticate any valid financial need behind the action taken and there is no basis to infer that a genuine financial hardship to returning to the employment of its former waitress and waiter services is present. I find a restoration order is appropriate and shall recommend that Respondent be required to reestablish its Genesee operation in order to restore the status quo ante existing prior to its nominal closing and commission of unfair labor practices. See *Lear Siegler, Inc.*, 295 NLRB 857 (1989). *Stroehmann Bakeries, Inc.*, supra; *Ferragon Corp.*, supra; and *We Can, Inc.*, 315 NLRB 170 (1994). After having done so, it will be required to offer the terminated unit employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits that they may have suffered from the time of their termination to the date of the Respondent's offer of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹ Michael Davis' backpay period runs from the date of his unlawful discharge on September 1, 1993; the period for second shift employees from January 19, and the period for first shift employees allowed to work on January 19 runs from the following date, January 20, 1994.

The order requires Respondent make Ronald McKellar and Jack Scarbrough whole for losses resulting from their unlawful 1-day suspensions, plus interest as set forth in *Ogle Protection Services*, 183 NLRB 682 (1970). Further, Respondent will be ordered to expunge from its records any reference to the unlawful suspension of McKellar and Scarbrough and unlawful discharge of Davis and to inform them in writing that its unlawful conduct will not be used as a basis for further personnel actions against them. Further I shall recommend that Respondent also be ordered to rescind its other unlawful unilateral actions described above, and to furnish the Union

¹ Under *New Horizons*, interest on and after January 1, 1987, is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. §6621.

with relevant information requested by it and which Respondent refused to furnish as detailed in this decision.

Having found that Respondent refused to recognize and bargain with the Union as the certified bargaining representative for employees in the appropriate unit, as requested in the Union's letter dated April 15, 1994, I shall make the necessary order to remedy its unlawful action.

Respondent's unlawful actions curtailing its normal restaurant business nature and converting to a self-serve restaurant is akin to subcontracting its waiter and waitress service to the customers. The action had a direct impact on terms and conditions of employment of the bargaining unit employees and clearly is a mandatory subject of bargaining. The remedy herein is directed to the requirements that Respondent, upon compliance with the restoration order, also notify and bargain with the Union on request before reaching any decision to disperse with wait service in the future, and refrain from making such a decision until lawful bargaining to agreement or lawful impasse. Next, should this process result in a lawful decision, as to this subject, Respondent will be required to accord reasonable notice to the Union so timed as to accord the Union an opportunity for meaningful bargaining over the effects on unit employees resulting from such decision. The Union's legally presumed status as employees' certified bargaining representative having long been denied the Union and employees by Respondent's marked animus prompted unlawful actions, the one year certification rule irrebuttable presumption of the Union's majority status is hereby extended for an additional year from the date of Respondent's compliance with the remedial Order in this decision. *Dominguez Valley Hospital*, 287 NLRB 149 (1987); *Mar-Jac Poultry Co.*, 136 NLRB 785, 786 (1962).

Personal Liability of the Branoffs

In *Schmitz Food*, supra at 554, the Board noted:

It is appropriate to "pierce the corporate veil" and hold a corporation's officers or owners personally liable for violations of the Act when the corporate form is used to perpetrate fraud, evade existing obligations, or circumvent a statute. [Citing *Riley Aeronautics Corp.*, 178 NLRB 495, 501 (1969).]

George is ostensibly the only *de jure* officer and owner in the newly created employing entity International, which is the alter ego of Genesee, but the continuing three Branoffs' de facto ownership and control is evidenced in the record. Thus the three share in overseeing, running, and profiting from International's revenues. International pays for the bills incurred by the Branoffs' use of their credit cards for commuting, vehicle repair, and other personal costs, including cable television costs at George's home, shared with his parents Anna and Alex. The Branoffs unaccountably ignored my order to produce the billing statements for the credit card, though their relevancy at that point was clear on the issue of both financial ability and alter ego, without any reason being advanced. Genesee pays for George's automobile, the title being assigned to Genesee without consideration. In April 1994, again no arm's-length dealing is manifested when George transferred the title to International which thereafter made the payments without consideration. Alex uses a Chevrolet truck for personal use and testifies Inter-

national, which holds title, is supposed to pay him rent for its use; but no agreement exists and no rent is paid. The Respondent asserted various loans are being paid by Genesee to family members—these “loans” are of course asserted as liabilities against the corporation assets during negotiations with the Union on January 14, 1994, to establish inability to bargain over economics; as well as asserting buyout costs under which Genesee is making repayments. Further, a so-called lease agreement under which Alex is receiving rent from Genesee is asserted to exist—but no documentary evidence is furnished to support these “liabilities” rendering the corporation unable to improve any economic employment term or condition of employment.

Assertedly, according to Alex, he and Anna take only enough money from Genesee to pay for personal bills and home operating costs but regular paychecks are issued to them by International, and he offers no elaboration for amounts listed in the Genesee corporation’s financial statement as “personal draw.” Moreover, International, rather than paying rent to Alex, makes Alex’s mortgage payments directly to the bank; while allegedly paying Alex and Anna the equivalent of only 52-cent-an-hour wages by making the Branoff’s personal residence house payments to the bank. All the above personal use of the corporate format is further manifested—and facilitated—by the absence of compliance with normal corporate indicia, such as Board meetings, minutes, director resolutions, or documentation of any kind attesting to the alleged defunctness of Genesee.

This lack of procedural formality allows the Branoffs to commingle corporate assets and affairs with those of Genesee and International such that no distinct corporate lines

have been maintained without being implicated in responsibility for misusing the corporate form of business. Comfortable with its easy use, the Branoffs launched a campaign against employees and when that didn’t work, simply created another corporate structure through the volunteer accountant’s easy one-step filing, careful to name only George as having all the offices therein, yet Anna and Alex are always present at International to monitor and direct the operations when George is absent on deliveries most of the time. There is no proof at all Genesee is defunct—or cannot be “re-opened” at will; the only reason for the creation of International being to serve as an escape route for the Branoffs from their collective-bargaining obligation under the Act, which I find to be the case. Finally, the Respondent’s own unexplained conduct failing to furnish data underlying its suspect financial statements on request to the certified bargaining representative of its employees, to the General Counsel and this judge, and thus to the Agency, when such information is relevant to the issues under investigation, raises the inference that such evidence is adverse to its position, and, as well frustrates a monetary obligation, such as backpay. Genesee and International are, as noted by General Counsel on brief, merely facades for the personal business activities of Alex, Anastasia, and George Branoff and it is necessary to pierce the corporate veil to avoid the circumvention of the remedial purposes of the Act. *Greater Kansas City Roofing*, 305 NLRB 720 (1991). I find them jointly and personally responsible as the only real force behind the corporate structures.

[Recommended Order omitted from publication.]