

**Service Employees International Union, AFL-CIO;
Building Service Employees Local Union No.
87 and GMG Janitorial, Inc. Case 20-CB-9949**

October 25, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On July 2, 1996, Administrative Law Judge Joan Wieder issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent filed a brief in response to the exceptions.¹

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Service Employees International Union, AFL-CIO; Building Service Employees Union Local No. 87, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

¹ The Respondent did not file exceptions; the Charging Party's exceptions, except as noted below, are addressed solely to the judge's remedy and recommended Order. We adopt the judge's recommended remedy and Order, except that we modify the narrow injunctive language in the recommended Order and conform the notice accordingly.

² We find merit in the Charging Party's exception to the judge's erroneous finding, in the final paragraph of her decision before the "Conclusions of Law," that the Respondent employs "between 23 and 27 [bargaining unit] employees" rather than the number "65" that she correctly set forth earlier in her decision. We further note that in the same paragraph cited above the judge stated that the Respondent submitted "9 to 10 or 11" union authorization cards in support of its representation petition (in Case 20-RC-17101); the record discloses, however, that 28 authorization cards were submitted. These errors do not affect our decision.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT threaten employees employed by GMG Janitorial, Inc., with discharge or other reprisals if they do not sign Service Employees International Union, AFL-CIO; Building Service Employees Union Local 87 union authorization cards.

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

SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO; BUILDING SERVICE
EMPLOYEES UNION LOCAL 87

Richard Fiol, Esq., for the General Counsel.
Stewart Weinberg, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of Oakland, California, for the Respondent.
Joseph P. Ryan, Esq., David Byrnes, Esq., and Alan M. Pittler, Esq. (Littler, Mendelson, Fastiff, Tichy & Mathiason), of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on August 14, 17, and 18 and November 8, at San Francisco, California. GMG Janitorial, Inc. (GMG or the Charging Party) filed a charge on April 17, 1995.¹ On June 14, the Regional Director for Region 20 issued a complaint which was amended at hearing, alleging Service Employees International Union, AFL-CIO; Building Service Employees Union Local No. 87 (Respondent or the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

¹ All dates are in 1995 unless otherwise indicated.

Specifically, the General Counsel alleges that (1) Jorge Arrospide (Arrospide), was a supervisor and agent of GMG and an agent of the Union; (2) the Union, by its agent Arrospide, while Arrospide was acting as a supervisor for GMG, solicited employees to sign union authorization cards on various dates at the employees' worksites; and (3) Respondent, by Arrospide, threatened employees with termination if they failed to sign union authorization cards.

Respondent's timely filed answer, as amended, admits certain allegations, denies others, and denies any wrongdoing. In particular, Respondent claims the General Counsel did not meet his burden of proof demonstrating GMG is an enterprise engaged in interstate commerce by failing to show at the time the alleged violations of the Act occurred, GMG met one of the Board's jurisdictional standards. Thus, Respondent argues the Board does not have subject matter jurisdiction. In addition, Respondent disclaims Arrospide was a supervisor while employed by GMG and denies he was the Union's agent at all pertinent times.

All parties were given full opportunity to appear and introduce evidence, to examine, and cross-examine witnesses, to argue orally, and to file briefs.

Based on the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The General Counsel asserts the Board has jurisdiction over GMG using "an indirect standard." See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). At all material times, Respondent admits the Charging Party GMG has been a California corporation with an office and place of business in San Francisco, California. GMG is engaged in the business of performing janitorial services for commercial buildings located in San Francisco and Oakland, California. Respondent also admits GMG has a contract with Williams-Sonoma, Inc., an enterprise directly engaged in interstate commerce.² It is undisputed the projected 12-month gross earnings from this contract exceeds \$50,000. Based on projected operations, GMG annually enjoys revenues from clients, one or more of whom satisfies the Board's direct standard for purposes of asserting jurisdiction, of an amount in excess of \$100,000.

GMG's contract with Williams-Sonoma, Inc., did not commence until April 20, a date subsequent to the alleged unfair labor practices. Accordingly, Respondent argues General Counsel failed to establish GMG was an employer engaged in commerce and subject to the jurisdiction of the National

²In 1994, Williams-Sonoma, Inc., a retailer, had gross revenues in excess of \$500,000, as the Union readily admitted. Its net sales in 1994 exceeded \$500 million according to its unquestioned annual report. It also maintains about five catalogue warehouses and has a database of more than 11 million customers "who have made mail-order or retail purchases from one or more of the catalogs or retail stores . . . shipping more than 45 million pounds of merchandise to our catalog customers." Therefore, it exceeded the discretionary \$500,000 gross revenue standard to retail enterprises and a reasonable inference is that in its catalogue operations, it purchased goods and/or services in excess of \$3000 which were directly or indirectly sold and shipped interstate.

Labor Relations Board at the time the alleged violations of the Act occurred.³ I find this argument lacks merit. While the General Counsel did not clearly establish GMG had sufficient business to meet the Board's discretionary jurisdictional standards at the time of the alleged unfair labor practices, by the date of the hearing, as found above, GMG did meet one of these standards, a conclusion Respondent does not dispute. Thus, it would be appropriate for the Board to assert jurisdiction herein. *Sheffield Industries*, 287 NLRB 1264 fn. 4 (1988); *Seafarers Pacific District (American Pacific Container Lines)*, 252 NLRB 736, 737 fn. 4 (1980); *Poor Richard's Pub*, 217 NLRB 102 (1975); and *NLRB v. Guernsey-Muskingum Electric Cooperative*, 285 F.2d 8, 11 (6th Cir. 1960).

I also note Respondent herein is the Respondent in Cases 20-CC-3284, 20-CC-3287, and 20-CC-3290 wherein Administrative Law Judge Anderson found GMG to have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act concerning complaints filed by GMG and others, with GMG's complaint having been filed on April 7, 1995.⁴ Based on Respondent's answers to the complaint, as amended, the uncontested allegations of jurisdiction in the *Cresleigh Management* decision and the evidence, I find GMG at all material times, meets one of the Board's jurisdictional standards and is and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Based on the admissions in the pleadings, I find the Union is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

GMG is in the janitorial maintenance business whose customers are principally managers of commercial buildings located in San Francisco and Oakland, California. It has about 65 employees and services between 23 to 27 buildings. Gina Gregori owns GMG and Operations Manager Larry Gregori is her brother. Ronnie Lee Dallas Jr. is the accounting manager and office manager. The standard services provided by GMG include, according to Larry Gregori, "basic general cleaning, going in after hours, dusting, vacuuming, kitchen and rest room cleaning, vacuuming, dusting, basic general cleaning, getting the office clean for the next day or premises cleaned for the next day."

In March, Respondent commenced a campaign to organize the employees of GMG. During March and up to April 12

³Respondent did not seek an advisory opinion from the Board pursuant to the provisions of Sec. 101.39 of the Board's Rules and Regulations or seek other informal means of obtaining advice from the Regional Office. Such an opportunity arose when, before the charge was filed herein, Respondent filed on April 10, by Cesar Martinez, the vice president of Local 87, a representation petition in Case 20-RC-17101. In the process of filing the representation petition, Martinez signed the petition, spoke to a Board representative, and timely submitted union authorization cards. There is no claim Respondent raised the issue of Board jurisdiction during this meeting.

⁴See *Service Employees Local 87 (Cresleigh Management)*, Case 20-CC-3284, JD(SF)32-96 (May 3, 1996).

or 13, GMG had three employees it designated supervisors, Jorge Arrospide, Jorge Cuadra,⁵ and Elvi Elliot. The claimed unfair labor practices herein were allegedly committed by Arrospide. The General Counsel and the Charging Party maintain Arrospide was a supervisor of GMG and agent of Respondent at all material times; Respondent denies these allegations.

Credibility resolutions will be the primary basis used in determining whether the alleged violations of the Act occurred. At the outset, I note the testimony of many of the witnesses was, at times, equivocal, inconsistent and/or hostile or evasive, and defensive. The problems engendered by the witnesses was exacerbated in some instances by language difficulties. Thus, after a careful review of the evidence, I base my credibility resolutions primarily upon my observation of the demeanor of the witnesses and have also considered, where appropriate, the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences which could be drawn from the record as a whole. *Northridge Knitting Mills*, 223 NLRB 230 (1976), cf. *Gold Standard Enterprises*, 234 NLRB 618 (1978); and *V&W Castings*, 231 NLRB 912 (1977).

B. Was Arrospide a Supervisor and/or Agent of GMG

1. Credited facts

Larry Gregori was a credible witness. His demeanor alone supports this conclusion. He appeared open and his testimony was given in a forthright manner. He gave the strong impression he was making an honest attempt to accurately recall the facts. He was very frank, readily admitting he could not recall if Arrospide carried a sign when he picketed GMG, and could not recall if the picketing occurred before or after Arrospide was fired. Another basis for crediting Larry Gregori was the lack of contradictory evidence.

Larry Gregori testified the supervisors are responsible:

. . . to go into the buildings in the evening time, during the business hours of nighttime, checking on the employees, checking on their job duties, making sure the job tasks are getting done. If there's any problems they can help them out with any difficult situation arises, such as burglar alarms aren't working and such. Just check every corner of the building before they go home, make sure everything was taken care of.

At the times here pertinent, Elliot was responsible for 4 or 5 buildings, Cuadra was responsible for 7 buildings, and Arrospide oversaw the workers in 11 buildings.⁶ In addition to the supervisors, each crew in a building has a team leader who reports to their assigned supervisor. The supervisors had

⁵In the transcript, Jorge Cuadra's name was misspelled as "Quadra."

⁶Elliot split her time between supervising and quality control and Cuadra also worked 3 hours as a janitor before commencing work as a supervisor. Arrospide supervised more buildings than the others and was the only supervisor who did not have regular assignments that could be considered rank-and-file work. In fact, the only evidence Arrospide ever performed janitorial work was on those occasions an employee was absent and a substitute could not be found in time. These occurrences were not shown to be frequent or consume a meaningful portion of Arrospide's worktime.

keys to the office and a desk in the office, in contrast to the other employees who did not work in the GMG office. The supervisors wore longsleeved white shirts with a supervisor patch while the other GMG employees wore gray shirts. All the shirts had the GMG logo. There is no evidence any other GMG employee visits their clients' offices to supervise the employees. Arrospide was called the lead supervisor because he supervised more employees and handled more of GMG's accounts. As lead supervisor he received greater remuneration than the other two supervisors.

The supervisors, including Arrospide, drive around to their assigned buildings to insure the janitors complete their jobs. They also drop off supplies and vacuums at these buildings. They distribute pay checks and, in the event of a work emergency where the supervisor cannot obtain a substitute janitor, fill in for janitors by dusting, vacuuming, shampooing carpets, mopping floors, and performing general cleaning. The frequency of such emergencies was not placed into evidence but as noted above, these occasions were not shown to constitute a frequent or marked portion of Arrospide's work.

Larry Gregori also testified Arrospide and the other supervisors conducted interviews with job applicants and on those occasions Arrospide came into the office early and the applicant spoke Spanish. Larry Gregori was not fluent in Spanish. GMG hired Arrospide's relatives and personal friends without interviews based solely on his recommendation. It is undisputed at least one of Arrospide's friends was hired by GMG based solely on Arrospide's recommendation. Otherwise, Larry Gregori or his sister interview applicants the supervisors considered potentially good workers. The Gregoris also interviewed job applicants who came in when there were no supervisors present or when the applicant spoke English.

The supervisors distribute job applications when they are out of the office to individuals they know are seeking employment with GMG. Arrospide has recommended such applicants. When GMG is short handed Arrospide has recommended calling such individuals, and his recommendations were followed. The following day, such individuals report to the office to complete the hiring documents. The new hires are given a code of conduct by the supervisors or Larry Gregori. Arrospide has signed employment verification forms known as I-9's, as the "Employer or Authorized Representative." Arrospide has also signed as GMG's agent other forms which new hires must complete.

With the exception of those new hires who report to the supervisors at a client's building in the event of an emergency, all other new employees report to GMG's office about 2 hours before the start of their shift. The new employee's assignment is determined at a weekly supervisors meeting, which Arrospide regularly attended with Larry Gregori, Elliot, and Cuadra. Once the supervisor meets the new employee, according to Larry Gregori, he or she:

. . . brings them to the building, introduces them to the team leader of the building, shows him his job station or her job station, gets him familiar with the janitors closet, shows where that's at. And kind of gets them going on their job. Gives them their pager number, have them give them a call if there's any kind of problem. And they go back and check on them throughout the evening.

Also at the weekly meetings, the supervisors determine each employee's assignments such as office cleaning, rest-room cleaning, kitchen cleaning, and the number of floors each employee is responsible for cleaning. Larry Gregori has accepted one or more recommendations for assignment from Arrospide.

Arrospide was authorized to fire employees without consultation with the Gregoris for serious offenses such as stealing. For less serious offenses, the supervisors have authority to discipline employees but not fire them without consultation with management. GMG has both verbal and written disciplinary practices. Arrospide has issued written disciplinary notices and has made notations regarding first verbal warnings to the effect he wanted the warning documented in the employee's file. Respondent does not claim these notations were meaningless or that they were not filed in the employee's personnel file as Arrospide directed. One Arrospide disciplinary note remarked if the documented behavior continued the employee would be fired. He never sought permission from Larry Gregori prior to issuing a disciplinary notice. If the infraction was of such a nature as to not require immediate action, the situation was discussed at the weekly supervisors meeting prior to the issuance of discipline.

One written warning Arrospide issued informed the employees they would be suspended or fined if there was another complaint by the client concerning the crew's taking breaks on the wrong floor. The notice also stated smoking was allowed only outside the building. Arrospide denied the crew's request to go home at 1:30 a.m. on Friday because "there was [a] complaint this week." Respondent did not claim or present any evidence this warning issued by Arrospide was beyond the scope of his authority.

Arrospide has recommended employees' termination at supervisors' meetings, and Larry Gregori acted on his recommendations without conducting an independent investigation.⁷ Larry Gregori has also rejected such recommendations made by Arrospide after discussions with the other supervisors at the weekly meetings. As he explained, it was determined not to immediately terminate the individual contrary to Arrospide's recommendation on one or more occasions, but these employees were later terminated.

The supervisors have the authority to authorize overtime and to authorize one particular employee to perform services beyond the contract terms, such as changing light ballasts, for which he is compensated by the supervisor's inclusion of such work in the payroll ledger he or she submits every 10 days. Arrospide has given Dallas a memo requesting an employee he directed to substitute for another employee be given \$240 for changing ballasts one weekend. Arrospide did not have to consult with Larry or Gina Gregori when granting this overtime. GMG paid the employee the requested amount. The supervisors are also responsible for getting workers to substitute for absent employees. Arrospide filed memos with Dallas to correct employee paychecks for overpayments or other errors and for overtime, including overtime for himself. Dallas complied with Arrospide's requests in these memos without further verification. I find Dallas

⁷Larry Gregori does not know if anyone else from GMG conducted independent investigations of disciplinary matters. There was no showing anyone else from GMG would engage in such investigations or attend the weekly supervisors' meetings

was a credible witness whose testimony was not refuted. Dallas appeared plausible and convincing; he testified in a candid manner. Both Larry Gregori's and Dallas' testimonies were generally corroborated by the employees who testified.

Arrospide denied he was a supervisor and claimed he was a "straw-boss." I conclude Arrospide was not a credible witness. This finding is warranted based solely on his demeanor. He manifested hostility toward GMG and tried to avoid answering questions he considered unfavorable to his expressed belief he was not a supervisor. His answers were repeatedly unresponsive. More than once he had to be directed to reply to questions when his answers were not responsive. He also volunteered information favorable to his position he was not a supervisor. I noted during the proceeding he was very uncooperative, at times not even attempting to give the impression he was attempting to give full and accurate testimony.⁸ Arrospide had filed an unfair labor practice charge with the Board and believed it was not pursued because the Board considered he was a supervisor.

He gave inconsistent and contradictory testimony.⁹ For example, when asked if his son worked for Respondent, he replied: "I don't know whether he works there. I don't think he works there. I don't know, I don't see him. He was working there." Immediately after this statement he admitted his son has typed letters and documents relating to the charge

⁸For example, during examination by Charging Party, Arrospide testified Larry Gregori filed a document with the State Workers Compensation where Larry Gregori's name was misspelled. Larry Gregori denied writing the document and had no knowledge of anyone employed by GMG preparing and filing the document. When questioned about the authenticity of the document and the description of Arrospide's job, Arrospide testified as follows:

Q. Is it fair to say that you've seen the last name Gregori typed on pieces of paper in the past?

A. Yes, yes.

Q. How many times?

A. A whole lot of times.

Q. A hundred times?

A. I don't know, a lot, I don't know how many.

Q. More or less than 100 times?

A. I don't know, I don't count them.

Q. How many times did you see Mr. Larry Gregori's signature?

A. I can prove to you that Gina signs with a "y" but in her signature she signs with an "i."

JUDGE WIEDER: That's not what he asked— . . .

Q. Do you know who signed the document entitled, description of employee job duties under the heading employer representative's signature?

A. A hundred percent Larry Gregori.

Q. How is it that you know that?

A. Because I have seen his signature ten billion times. And I can prove it to you if you'll let me talk.

Interestingly, Arrospide could not testify whether he observed Larry Gregori's name typewritten more than 100 times but claimed to have seen it "ten billion times." He admitted he did not know how to spell Larry Gregori's name. His failure to be responsive or to make the merest attempt at accuracy also requires discounting his testimony.

⁹Arrospide claimed he was feeling "a little bit dizzy" at the time he testified; yet he volunteered he could continue testifying and pledged he would inform me if he felt any dizziness or headache impaired his ability to testify. At no time during the proceeding did he indicate he felt his ability to testify was impaired or otherwise adversely affected by any illness or physical disability.

Arrospide filed with the Board. Arrospide also confessed he consulted with his son about whether he should appeal the Board's adverse decision. Arrospide gave his son all the documents he obtained in pursuit of his appeal to the Board. He did not describe how he was able to consult and provide the documentation without seeing or communicating with his son. Arrospide's paradoxical uncorroborated self-serving testimony is not believable.

I have taken into consideration that within the last 10 years, specifically on November 8, 1985, Arrospide was convicted, based on his guilty plea in United States District Court for the Northern District of California, of one count of mail fraud and conspiracy in 1986, a violation of Title 18, U.S.C., Section 1341. He was sentenced to prison and paroled on or about March 18, 1988. Arrospide's motion for reduction in sentence was denied "for the obvious reason that defendant was the architect and manager of the long-continued fraudulent scheme and the person who caused others to be involved in it." This decision was appealed to the United States Court of Appeals for the Ninth Circuit which affirmed the District Court's judgment on or about February 24, 1987.

The Charging Party, by Dallas, maintains, without contradiction, Arrospide did not inform GMG he was a convicted felon when he applied for employment and if this information was discovered during his tenure he would have been terminated. GMG learned of Arrospide's criminal history from an anonymous tipster who called Dallas after this proceeding initially closed.

This felony conviction relating to mail fraud and conspiracy, which bears on Arrospide's honesty, under Rule 609 of the Federal Rules of Evidence,¹⁰ was admissible in this proceeding and may not be disregarded in assessing his credibility. *Iron Workers Local 601 (PAPCO, Inc.)*, 276 NLRB 1273

¹⁰ Conference Report No. 93-1597 concerning the Federal Rules of Evidence (Public Law 93-595, 93rd Cong., 2d Sess.) respecting Rule 609 relating to impeachment by evidence of conviction of crime, declares, in part:

A. Rule 609(a)—General Rule

The House bill provides that the credibility of a witness can be attacked by proof of prior conviction of a crime only if the crime involves dishonesty or false statement. The Senate amendment provides that a witness' credibility may be attacked if the crime . . . involves dishonesty or false statement, regardless of the punishment.

The Conference adopts the Senate amendment with an amendment. The Conference amendment provides that the credibility of a witness, whether a defendant or someone else, may be attacked by proof of a prior conviction but only if the crime: . . . (2) involved dishonest or false statement regardless of the punishment.

By the phrase "dishonesty and false statement" the Conference means crimes such as perjury or subordination of the perjury, false statement, criminal fraud, embezzlement, or false pretense, or any other offense in the nature of crimen falsi, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully.

The admission of prior convictions involving dishonest and false statement is not within the discretion of the Court. Such convictions are peculiarly probative of credibility and, under this rule, are always to be admitted. Thus, judicial discretion granted with respect to the admissibility of other prior convictions is not applicable to those involving dishonest or false statement.

(1985); *NLRB v. Jacob E. Decker & Sons*, 569 F.2d 357 (5th Cir. 1978). Cf. *Ludwig Fish & Produce*, 221 NLRB 1306 (1975). I consider this conviction for mail fraud as confirming my determination Arrospide was not credible. However, I would have discredited his testimony based solely on the previously mentioned factors. Prior to the revelation of Arrospide's fraud conviction, I had determined to discredit his testimony for the previously stated reasons. He was a totally incredible witness, entirely unworthy of belief. I will not rely on any of his testimony in my findings unless they were admissions against his interests.

2. Conclusions

The allegations of violations of the Act stand or fall on whether the General Counsel met his burden¹¹ of demonstrating Arrospide was a supervisor and agent for GMG, as defined in Section 2(11) and (13) of the Act, and whether Arrospide was an agent of Respondent. Section 2(11) provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

These attributes are considered disjunctively and if Arrospide possess any one of them, he would be a statutory supervisor. *NLRB v. Health Care & Retirement Corp. of America*, 114 S.Ct. 1778 (1994). Based on the evidence, I find the General Counsel has met its burden of demonstrating Arrospide was a supervisor as defined in Section 2(11) of the Act. As lead supervisor, Arrospide could discipline employees by issuing verbal and first warning notices, which could lead to termination. In the case of serious infractions such as theft, Arrospide was authorized to discharge the offending employee without consultation or additional approval from GMG management. He could authorize overtime and direct one GMG employee to perform special electrical services for customers. GMG management and other supervisory personnel did not investigate the accuracy of Arrospide's reports of employee rule infractions and other work failures.

While Arrospide may have been expected to perform janitorial work on those occasions, he could not find a replacement for an absent employee, he did it occasionally and not

¹¹ Administrative Law Judge Norman Zankel found in *Operating Engineers Local 15 (Akron Wrecking Corp.)*, 231 NLRB 563, 567 (1977):

The burden rests with the General Counsel to prove both the existence of an agency relationship and the extent of the agent's authority. In the present case, there is no direct evidence that Pittlack was an agent of the Union. Such inferences as are reasonable may be drawn to sustain the General Counsel's burden of proof where there is no evidence to rebut them.²¹ . . .

²¹ *Chauffeurs, Warehousemen and Helpers of America International Brotherhood of Teamsters, Local Union No. 377 (All-American Stamp and Premium Corp. of New York)*, 159 NLRB 1313 (1966).

as a routine part of his duties. As Louis Barrios testified, he never saw Arrospide "just do the job," there had to be a special occasion such as performing particular shampooing or waxing work. I conclude the obligation to oversee the employees at 11 different buildings absorbed the great preponderance of his time.

The employees who testified considered Arrospide their supervisor. Donovan Demouchet said Arrospide was his supervisor and he saw him about twice a week when he would bring the rank-and-file employees supplies and their paychecks. "He'll correct us like if we have some problems in the building, you know, complaints or something, he'll correct me on that." For example, Arrospide "would show me what I'm doing wrong. Like if somebody called and had a complaint like I'm not vacuuming, just for example, and he'll bring me to the office and show me what I'm not vacuuming somewhere, not dusting." The disciplinary notices issued by Arrospide combined with the testimony of these employees clearly establishes he exercised independent judgment that was not routine, perfunctory or clerical. He informed one employee, Pedro Faison, in a first step disciplinary notice, the next time he was absent without calling, a second notice would be issued "that could result in suspension without pay or termination." As found in *Biewer Wisconsin Sawmill*, 312 NLRB 506 (1993), this is discipline of the most elemental type.

Demouchet gave his job application to Arrospide and Elliot. He was not given paperwork to complete by any other representative of GMG. He was hired by Elliot who was only a supervisor, not the lead supervisor. Accordingly, like Elliot, I conclude Arrospide has the authority to hire, to effectively recommend applicants for hiring, and to effectively recommend discharges even though the final decisions in those cases not involving direct relatives or friends of Arrospide were reserved to the Gregoris and or the consensus of the supervisors, including Arrospide, at their weekly meetings. *Delta Carbonate*, 307 NLRB 118 (1992).

James Kelly worked at two locations for GMG and was a crew chief at one building. Kelly was supervised by Arrospide. As a crew chief, Kelly did not possess authority to direct employees as to their assignments, only Arrospide had that authority. Like Demouchet, Kelly saw Arrospide about twice a week and Arrospide would bring to his attention any complaints from individuals occupying space GMG cleaned in the building, show Kelly the error or failure, demonstrate how the janitorial work was to be done, and assign the employee who was to perform the work.

If Kelly encountered a problem that needed immediate attention, such as a plumbing problem, he paged Arrospide. Arrospide would then telephone Kelly and direct him how to solve the problem, or if necessary, Arrospide would come to the building to endeavor to solve the problem. Only Arrospide could authorize overtime, according to Kelly. He also called off-duty personnel to report to work when they were not scheduled, he conducted orientation, and corrected employees' work. Based on this credited and not directly contradicted testimony, I find Arrospide possessed the authority to assign and/or responsibly direct employees independently and in the interests of GMG. *Debber Electric*, 313 NLRB 1094 (1994); *DST Industries*, 310 NLRB 957 (1993).

The testimony of Demouchet and Kelly was supported by the testimony of Louis Barrios, Francisco Sandoval, Julio

Quintanilla, and Ana Julia Diaz, all of whom were supervised by Arrospide. Sandoval testified he also was hired by Elliot and on the same day met with Arrospide. These employees appeared to be trying to answer the questions truthfully and completely. Based on their mein, I credit their testimony. Buttressing this conclusion is their general corroboration of each other.

Barrios convincingly testified Arrospide would direct him to work overtime on occasion. As a team leader, Barrios was responsible for insuring the other workers properly performed their work. Arrospide would walk through the building with him "and if there was something that was not right he would tell us to do it better, well, in other words, to fix it up and do a better job." If there was a serious problem, Barrios would report it to Arrospide. Barrios observed Arrospide training new employees; "[Arrospide] walked to the floor and the area which had to be cleaned, and he would indicate to [the new hire] whatever had to be done. And then he would leave and the employee would remain there to do his job."

Based on this testimony, I find the supervisors, including Arrospide, had the authority to hire, assign, and responsibly direct employees of GMG. There was no evidence Arrospide served as a mere conduit for information from his superiors.¹² Inasmuch as Arrospide handled client complaints and emergencies, his job was not routine and required independent judgment. I find his normal affiliation was with management. Arrospide independently directed and assigned work to the janitors in 11 buildings, he instructed them where to report to work, verified their hours worked, and solved the problems that arose at their workplaces. The employees who testified admitted they needed direction and there was no evidence any superior of Arrospide filled or otherwise met this need, demonstrating Arrospide had a major supervisory role at GMG. *Essbar Equipment Co.*, 315 NLRB 461 (1994).

In addition to possessing several primary indicia of supervisory status, the record also contains secondary indicia which Arrospide does not share with the rank-and-file employees, such as higher wages, different and distinctive work shirts, having keys to the office, having a desk in the office, and participation in the weekly supervisors meetings where such matters as discharges, assignments, and other managerial decisions are reached. The overwhelming preponderance of record evidence demonstrates GMG treats the supervisors, particularly Arrospide, as a member of management rather than a rank-and-file employee. Based on the foregoing, I find Arrospide has several of the enumerated indicia of authority contained in Section 2(11) of the Act and is also an agent within the meaning of Section 2(13) of the Act. See *Debber Electric*, supra; *Community Cash Stores*, 238 NLRB 265, 266 (1978), enfd. mem. 603 F.2d 217 (4th Cir. 1979).

¹² As noted by counsel for the General Counsel, assuming the record did not support the conclusion Arrospide was a supervisor, the GMG employees' testimony clearly establishes they believed Arrospide was their supervisor and reasonably believed his statements mirrored company policy and his statements were for and on behalf of GMG. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982); and *Aircraft Plating Co.*, 213 NLRB 664 (1974).

C. Arrosptide's Activities

1. Was Arrosptide Respondent's agent

Respondent argues: Arrosptide has not been shown to be an agent of the Union; that Arrosptide's actions benefited Respondent fails to establish agency; and, there was no evidence Arrosptide was on the Union's payroll or that he was appointed by anyone authorized to make such placements on behalf of Respondent. The Union also argues there was evidence the cards it turned in were solicited by either Martinez or Cardenas, thus the Union did not ratify any of Arrosptide's actions by relying on his acts.¹³

The only witness appearing for Respondent was Vice President Cesar Martinez of Local 87. It is undisputed the Union filed a petition for a representation election with one of the Board's agents in Case 20-RC-27101, which contained cards signed by GMG employees Quintanilla, Barrios, Diaz, and Sandoval. The parties stipulated the petition was filed by Martinez at the office of Region 20 on April 10 and at that time Martinez gave the authorization cards to the Region's docket clerk.

According to Martinez, Respondent commenced its organizing campaign at 433 California Street after learning GMG had taken over some accounts in various buildings. At this location Martinez spoke to Arrosptide. Martinez initially denied Arrosptide informed him he was a supervisor. After being shown his affidavit, which read: "Jorge told me that he was a supervisor for GMG," Martinez admitted Arrosptide made the statement. Regardless, Martinez gave Arrosptide a union authorization card, informed him of a lunch the Union was holding for the employees and discussed with Arrosptide "getting employees to show up to the luncheon."

While Martinez claims he and Cardenas were the only solicitors for the Union and they gathered GMG employee signatures by going to the buildings they were cleaning between midnight and 3 a.m., not one employee testified they were solicited by either of these union representatives. In fact, several of the employees who testified stated their assigned work times ended before midnight. Demouchet worked from 12 to 8 p.m., Kelly worked from 6 to 8:30 or 9:30 p.m. and then would go home, Diaz worked from 6:30 p.m. to 12:30 a.m., and Navarro worked from 4:30 p.m. to 12:30 or 1 a.m.¹⁴

Quintanilla, Barrios, Diaz, and Sandoval, whom I have found to be credible witnesses based on their demeanor,¹⁵ all testified they were solicited to sign union authorization cards by Arrosptide. None testified they were solicited by either Martinez or Cardenas. It appears unusual Respondent would start soliciting employees when some have finished work

¹³ Arrosptide was terminated by GMG on or about April 12. Respondent picketed GMG after Arrosptide was fired. In late March or early April Larry Gregori observed Arrosptide as one of the pickets. Gregori could not recall if Arrosptide's picketing occurred before or after he was fired. Since this picketing was not shown to have occurred prior to April 12, I find it is not probative of agency at material times. The basis for my conclusions concerning whether Arrosptide was an agent of Respondent at the material times is discussed below.

¹⁴ Quintanilla, Barrios, and Sandoval did not state their working hours on the record.

¹⁵ They appeared to be trying to answer the questions fully and honestly.

such as Kelly and Demouchet and continued their solicitations well after it appears the employees have finished and left work. It is also peculiar that no employee testified they were solicited by any admitted union representative.

Based on his appearance, I do not credit the testimony of Martinez unless it is an admission against Respondent's interests. His testimony was not given in a straightforward manner. He appeared less than candid. Martinez gave the impression he lacked any willingness to assist in the development of the record. He also exhibited poor recall. He could not recall if he knew any signatories of the union authorization cards. Supporting this conclusion is his changing testimony, such as that mentioned above concerning his knowledge Arrosptide was a self-described supervisor.¹⁶ His testimony contained other inconsistencies.¹⁷

Another example of Martinez' unbelievable testimony was his admission that he did not know who was an employee of GMG but just waited for them to go home. He failed to note they all wore shirts with a GMG logo which was clearly visible or they were the only individuals leaving those buildings. He merely claimed he and Cardenas waited for the GMG employees to leave work. Interestingly, Martinez did not claim to have solicited the cards of Diaz, Sandoval, Quintanilla, or Barrios. He could not identify by name any of the GMG employees he solicited on behalf of Respondent and not one of the employees whose union authorization cards he used to establish a showing of interest.

Bolstering this conclusion of lack of credibility is Martinez' admission he and Cardenas spent most of the hours they were supposedly soliciting GMG employees at times these employees were not shown to have been working. I also find Martinez was not responsive to questions from opposing counsel in particular; he was evasive during his testimony.¹⁸ Accordingly, I do not credit his disavowal of the

¹⁶ Martinez' admission even Arrosptide considered himself to be a supervisor is additional support of my conclusion he is a supervisor.

¹⁷ Martinez initially testified Arrosptide came to the Union's offices four or five times during the spring and he spoke to him "a couple of times." He could not recall any of the conversations but immediately thereafter testified these conversations did not contain any reference to the organizing drive at GMG. If he could not recall the content of these conversations, how could he so unequivocally deny there was any reference to the organizing drive? Martinez also testified Arrosptide's visits to the Union were not social, which is some indication he recalled some portion of one or more conversations. In fact, during examination by Respondent's attorney, Martinez recalled Arrosptide's visits to the union hall had at least one reason, seeking employment. As another example of inconsistency and contradiction, Martinez was asked if Arrosptide's son was hired by Respondent, and he responded, "I can't really remember." The next question was whether Arrosptide's son was still employed by Respondent, and he responded, "No, no, not anymore." This reply clearly indicates Martinez had some recall of the son's employment with Respondent, including the current status of his employment, the approximate age of this former employee, and his work duties as a researcher. Arrosptide's son's work duties included attempting to gather information about GMG's business. The exact dates of the son's employment by Local 87 were not placed in evidence.

¹⁸ For example, he testified:

Q. And you told Mr. Arrosptide to invite the other GMG employees to lunch?

A. I did.

Q. And was that before or was that after Mr. Arrosptide told you that he was a supervisor at GMG?

claims Arrospide was an agent of Respondent and Arrospide solicited signatures on behalf of the Union. I do not believe Respondent's lack of knowledge of Arrospide's solicitations on its behalf, based on Arrospide's access to blank cards and Respondent's access to at least four of the executed cards Arrospide solicited. I also do not credit his testimony that he recognized Cardenas' handwriting on the union authorization card of Francisco Sandoval.

Sandoval, whose card is dated April 6, testified Arrospide gave him the card at his work area. As previously found the GMG employees who testified were credible. In particular, I note Sandoval's recitation of events was done with substantially persuasive detail, and he gave the strong impression he was making an honest attempt to accurately recall the facts.

While Martinez claimed some of the writing on some of the union authorization cards he submitted to the Board was his, he never claimed he personally solicited those cards or was present when they were executed. The testimony and credible evidence is to the contrary. Martinez claimed to have written GMG on Diaz' union authorization card, however she convincingly testified Arrospide solicited her card during the first week of April. Her card is dated April 6. I specifically credit Diaz who appeared plausible and convincing. Diaz testified in an unequivocal, direct manner, appearing to be candid and forthright. She was not evasive or guarded.

Martinez' testimony was not corroborated by any other witness. Respondent did not call Cardenas; there was no explanation for this failure. Martinez admitted Cardenas works for him. Martinez did not deny giving Arrospide union authorization cards and asking him to solicit GMG employees for Respondent, he did not deny knowledge of Arrospide acts concerning such solicitations. Arrospide attended the luncheon to which Martinez invited him, so Respondent had knowledge of his sympathies and activities on its behalf. Arrospide had to acquire the union authorization cards he used to solicit GMG's employees and Respondent had to have an employee who was a conduit for Arrospide to give at least four of the cards he solicited to Respondent for Respondent submitted them to the Board.

Counsel for General Counsel argues an adverse inference should be drawn from Respondent's failure to call Cardenas and Arrospide as witnesses. Martinez admitted Cardenas worked for him but the exact position he held was not placed in evidence. There was no demonstration he was a manager or supervisor and no basis to find all parties could have confidence in his objectivity for the missing witness could be a rank-and-file employee of the Union. See *International Automated Machines*, 285 NLRB 1122 (1987); *SDC Investment*, 299 NLRB 779 (1990).

As an aside, I note the failure of an employee to testify against an Employer, if the basis for an adverse inference, would a fortiori, overrule the extensive line of cases that find an employees testimony that is adverse to their Employer is unlikely to be false for that employee is jeopardizing their own economic well being. *Parkview Acres Convalescent Center*, 255 NLRB 1164 (1981); *Durango Boot*, 247 NLRB 361, 368 (1980).

The record supports the conclusion Respondent requested Arrospide's assistance in its effort to organize the employees

of GMG. Martinez admitted knowing Arrospide was supervisor when he asked him to recruit employees to come to the luncheon. Martinez never withdrew this request. As detailed below, Arrospide clearly solicited union authorization cards some of which Respondent later presented to Board with its petition. In addition to the employees' credited testimony Arrospide solicited their signatures on union authorization cards, Larry Gregori, who saw Arrospide's signature and other handwriting thousands of times in the notes Arrospide left for him daily, identified some of the writing on the union authorization cards as that of Arrospide. I have previously found Gregori to be a credible witness.

While Martinez claimed some of the writing was his and other notations were made by Cardenas, as previously determined, he was not a credible witness and Cardenas did not appear and testify, thus Martinez' testimony was not corroborated. There is no credible evidence to support Martinez' testimony. The notations could have been placed on the cards after Local 87 received them from Arrospide. I conclude General Counsel has presented a persuasive case Arrospide was acting as Respondent's agent. Respondent has failed to adduce any convincing credible evidence to refute this conclusion.

Section 2(13) of the Act provides:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

In applying this provision, the Board held in *Davlan Engineering*, 283 NLRB 803, 804 (1987):

Application of this statutory provision leads us to conclude . . . in the absence of extraordinary circumstances, employees who solicit authorization cards should be deemed special agents of the union for the limited purpose of assessing the impact of statements about union fee waivers or other purported union policies that they make in the course of soliciting. When a union makes authorization cards available to employees with the understanding that they will solicit other employees to sign them, it thereby vests the solicitors with actual authority to obtain signed cards on its behalf. See Restatement 2d, *Agency* (1958). Additionally, when a union permits or acquiesces in employee's soliciting on its behalf without indicating to third parties that such solicitation is unauthorized, it thereby vests the solicitors with apparent authority to obtain signed cards on its behalf. In both cases, whether by action or inaction, the union has created a special agency relationship for the limited purpose of card solicitation. See generally Restatement 2d, *Agency* § 161A, 162 (1985).

See also *Salem Village I*, 288 NLRB 563, 564 (1988).

Respondent has failed to present any "extraordinary circumstances" or refutation of the General Counsel's persuasive case. Access to union authorization cards was not claimed or shown to be open and readily available to all. Arrospide not only had access to blank cards but also had a conduit to give the executed cards to Respondent, as evidenced by Respondent's submission of some of these cards

A. That was the night that I met him.

to the Board with its petition. The Union is the party that possess the information on how solicitors acquire union authorization cards and presented no evidence on the subject.

Inasmuch as the Union permitted Arrospide access to blank cards and accepted at least some of the cards Arrospide solicited, I conclude he was vested with actual authority to act as the Respondent's special agent in soliciting union authorization cards. Moreover, by accepting these cards and using them to establish a showing of interest, Respondent acquiesced in Arrospide's solicitation activities and vested him with apparent authority to act as its special agent. As their special agent, Arrospide's statement to employees while soliciting the cards are imputable to the Respondent. *Id.*; *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988).

Whether the Union knew of Arrospide's specific conduct during his solicitations of cards is not relevant in this case where the Union accepted and used the cards to establish a showing of interest; all the while knowing Arrospide was a supervisor by his own admission. In filing with the Board the cards solicited by Arrospide,

By allowing employees to engage in unfettered solicitation activities and by using the signed cards they obtain to support the filing of a petition, the union becomes "responsible for the information which comes to the mind of the third person" regardless of whether it knows of the specific conduct involved. The union in that situation either has "intend[ed] to cause the [unit employees] to believe that the [solicitor] is authorized to act for [it] or should realize that [the] conduct is likely to create such belief." *Davlan*, *id.* at 804 fn. 8, quoting Restatement 2d, *Agency* § 27 (1958).

In sum, by allowing Arrospide to have union authorization cards, to solicit signatures from employees he supervised, and by using some of these card in its showing of interest filing, I conclude the Union is responsible for Arrospide's actions and statements while he was soliciting GMG employees to sign the cards.

2. Did Arrospide coercively solicit union authorization cards

Several employees testified that in late March and early April Arrospide used his position as supervisor and threats to induce them to sign union authorization cards. I have previously found the employee witnesses credible and much more believable than Arrospide and Martinez.

a. Ana Julia Diaz

I have specifically found Diaz to be credible. She testified on or about April 6, Arrospide approached her at work and declared "That he had some union cards with him, and if we didn't sign those cards in about three days supposedly the union would have come into GMG." He informed Diaz he had a list of other employees and "that in about three days the union would probably win, and that if I did not sign the card, and the union would also go into the company, and if I did not sign the card I would probably be outside my company." Diaz readily admitted Arrospide did not use the term "outside the company."

When asked what Arrospide said exactly, Diaz testified he "told me to sign the card and probably in about three days the union would be in and that everybody had signed, that

there are only you and two more people who need to sign." She inquired if there would be any problems if she signed the card and he replied "no, nothing." Arrospide then gave her a union authorization card which she signed. When Diaz returned the card to him, Arrospide said he would "take it back to the Union."¹⁹ Diaz signed only one card.

While Diaz could not recall Arrospide's exact wording, she interpreted his remarks as jeopardizing her job when she recalled his statement included the concept failure to sign would mean she would be "outside the company." That she understood his message to be a threat of job loss is supported by her questioning Arrospide what would happen if she signed the card. Arrospide only assured her there would be no adverse consequences if she signed. He did not assure her she would not suffer adverse consequences if she refused to sign.

b. Luis Barrios

On or about the same day,²⁰ during work, Barrios was approached by Arrospide, who was his supervisor and had previously authorized him to work overtime. Barrios and Diaz worked in different locations. Arrospide had union authorization cards which he showed Barrios and stated, "That the union had come into the company and that the great majority of the people had already signed up." When Barrios informed Arrospide he was confused, Arrospide directed him to call two coworkers²¹ who were working at the same location at the time.

These three rank-and-file employees then met with Arrospide outside the building, where Arrospide informed them:

. . . that most of the people had already signed . . . and that the person who would not sign would be dismissed, because he said that the union was coming in and most of the people had signed, and the people who did not sign would not be working in the buildings.

After some more discussion with these employees, Arrospide gave them union authorization cards. Barrios and the other two employees did not sign the cards at that time. Barrios took his card home, testifying he was confused because Arrospide was working for GMG yet told him he was with Local 87, the Union. Arrospide called Barrios at home three or four times asking if he had signed the card. Each time, Barrios said no.

About 4 days after receiving the card, Barrios "signed it because since [Arrospide] had said that the majority of the people had already signed, and whoever had not signed was going to be without a job because the union was going to

¹⁹ Diaz' credited testimony further indicates Arrospide was acting as a special agent of Respondent.

²⁰ Barrios could not recall the exact date Arrospide initially approached him with a union authorization card. I find this failure to recall the exact date does not impair his believability, he was candid in stating he could not recall the date. Barrios appeared to be trying to testify truthfully and fully, without device or deception. I have found him to be a credible witness.

²¹ The two other employees, Jose Apararico and Noe Patino, did not appear and testify. There was no showing these are current GMG employees available to appear and testify. There is no claim their absences warrant an adverse inference.

put its own people in there, in the job." Barrios then called Arrospide to come pick up the union authorization card, which he did. The card is dated April 7. Barrios only signed one card. This credited testimony clearly establishes Arrospide represented to GMG employees he was a representative of Respondent and the employees' failure to sign a card would result in their termination.

c. Donovan Demouchet

In late March, while Demouchet was at work he received a page from Arrospide. During the resulting conversation, "[Arrospide] told me that he wanted to introduce me to the president of local 87, Cesar Martinez. And that's all he told me then." Demouchet does not recall the remainder of the conversation. He testified in an open and convincing manner. Demouchet readily admitted when he could not recall. That he did not recall the rest of the conversation does not lessen his credibility, for the unusual nature of the conversation renders the portion recalled more likely than less probable. That Arrospide wanted to introduce Demouchet to Martinez supports my previous determination Arrospide was a special agent of the Union. This attempt to introduce Demouchet to Martinez gave the distinct impression Arrospide was working on behalf of and in the interest of Respondent. Consonant with the initial conversation, Arrospide was offering to bring employees to meet Martinez. That Arrospide did not introduce Demouchet to Martinez does not lessen the impact of the offer and further suggest Arrospide was Local 87's agent.

About a week later, on a Saturday morning, Arrospide telephoned Demouchet and stated, "that I [Demouchet] had to sign it because I'm the last one not to sign, and if I didn't sign I wouldn't have my job no more." Demouchet replied he had to discuss the matter with others who had knowledge about union authorization cards. Arrospide kept telling him he had to sign. Based on Demouchet's credited testimony, I find the first and second conversations he had with Arrospide occurred prior to Arrospide's discharge from GMG. I find Arrospide made these statements while he was still an employee of GMG. I further conclude these statements informed an employee of GMG [that] Arrospide was acting on behalf of Respondent, and the employees' failure to sign a union authorization card would result in his termination.

A few days after Arrospide was terminated, on or about April 17, he came to Demouchet's workplace. Demouchet knew Arrospide had been fired at the time of this conversation. Arrospide told him Gina Gregori makes "enough money on the building where she can pay me \$20 an hour and she'd still make a profit." Demouchet responded he would like to earn the suggested wage. Then Arrospide informed Demouchet he should not be in the building and they went out to Arrospide's car where Arrospide showed Demouchet some court papers with Gina Gregori's last name on them saying "the union was taking Gina to court . . . he showed me—I seen Gina's name on the paper in big letters. And it showed all the employees names on there."

Another piece of paper Arrospide showed Demouchet contained a list of all the employees and only two names were not checked off, Demouchet's and another employee whose last name Demouchet could not pronounce. Next, Arrospide told him "he was looking out for me. He said GMG was going to fire me, too. And he didn't give me no reason why they was going to fire me. . . . like in the future, soon." In

further encouragement to sign, Arrospide told Demouchet, "[I]f I didn't sign I—the way he put it was like if I didn't sign the card, and when GMG goes union I won't be able to go union then. I wouldn't have no job. I'd be just kicked out of the building. That's the way he was putting it." Demouchet never signed a card.²²

There is no evidence Arrospide informed Demouchet or any other employee that he was not representing Respondent or it was not Respondent's position the loss of jobs was inevitable if they did not sign a union authorization card. There is no evidence as indicated above the Union disavowed these statements by Arrospide while he was soliciting employees to sign union authorization cards.

d. James Kelly

According to Kelly, Arrospide approached him at work, at about 7 p.m., and said, "that if I didn't join the union and if the company decides to go union I'll be one of the persons who will not have a job." Kelly responded, "[I]t wasn't true." Arrospide gave Kelly a Local 87 union authorization card. Arrospide also showed Kelly "the union book scale on how much a janitor is supposed to make, between 9—between 0 to 1940 hours, and the rate showed at like \$9.33 [per hour]." After reviewing the information, Kelly commented, "[T]hat's not a bad starting scale." Kelly announced he would have to discuss the matter with his wife and returned the card to Arrospide. Arrospide did not reply to Kelly's refutation of his claim failure to sign the card would result in termination and left looking for Demouchet. When asked the date this conversation occurred, Kelly estimated in late March, about 2 weeks before Arrospide was discharged. Kelly reported the conversation to Elliot.

In April, about 1 week after the first conversation, while still lead supervisor and Kelly's supervisor,²³ Arrospide again approached Kelly concerning the Union. During this second union conversation Arrospide inquired if Kelly thought about joining the Union. Kelly informed Arrospide he would not join the Union because he discussed it with his wife: "I told him I talked over with my wife, she disagrees with the information that I've given to her, so I did, too." I told him I talked it over with my wife, she disagrees with

²² Demouchet admitted he did not take Arrospide's threat of termination if he did not sign a card very seriously; however, there is no evidence Demouchet considered Arrospide's statements to be a joke or incorrect. The test of a violation is not whether a particular employee took the threat seriously, the test is whether Arrospide's statements tended to coerce the GMG employees into signing the union authorization cards. *Steelworkers Local Union 5550 (Redfield Co.)*, 223 NLRB 854, 855 (1976). See also discussion below.

²³ While Kelly was confused about the exact dates of these two conversations, I find the evidence clearly supports the conclusion they occurred during the time Arrospide was still employed by GMG. The confusion was caused by Kelly's testimony [that] Arrospide mentioned he was on disability during the first conversation. However the building was closed at that time of day and Arrospide would have to have a security guard in the lobby let him in and unlock the elevator. Kelly also testified this conversation occurred about 2 weeks before the Saturday meeting called by GMG to announce Arrospide had been discharged. Arrospide was still employed by GMG 2 weeks before the Saturday meeting. He was discharged very shortly before this GMG meeting. Thus, I conclude the record requires a finding Arrospide was still a GMG employee at the time of the first two talks.

the information that I've given to her, so I did, too." Throughout this conversation, Arrospide "kept mentioning . . . if I don't sign the card I would not have a job." Then Arrospide asked him where Sandoval was working in the building, Kelly said the sixth floor, Arrospide said, "[O]kay," and left Kelly's work area.

Kelly was a credible witness. He appeared frank and readily admitted he could not recall dates. He testified in a straightforward manner. Kelly's testimony was corroborated by the other employee witnesses and his testimony also corroborates their testimony. All the employee witnesses' testimony was unrefuted.

e. Francisco Sandoval

I have previously specifically credited Sandoval's testimony. While he was working on April 6, Sandoval had a discussion with Arrospide and signed a union authorization card.²⁴ Arrospide gave him the card when "[h]e told me that he was collecting signatures so that the union could come into the company . . . he told me that if the union came into the work we would receive benefits, medical care, and our salary was going to go up." Upon hearing from Arrospide the benefits that would result from unionization, Sandoval signed the card.

f. Rosa Navarro

Also during work, at about 6:30 p.m.,²⁵ Arrospide approached Navarro while she was taking out the garbage. Navarro could not recall the date of this conversation but estimated it was mid-April. She was a few steps outside the building walking toward large garbage bins. Arrospide said she "should sign the union card . . . [h]e said that if I didn't sign that card that I should ask anywhere in the world that the union was going to win and I was going to be kicked out [from work]²⁶ for this fact that I hadn't signed."²⁷ Navarro testified she became very nervous after

²⁴ Sandoval's credited testimony buttresses my conclusion Arrospide's solicitations of Kelly occurred before he was terminated by GMG.

²⁵ This solicitation also occurred prior to the time Martinez claimed he and Cardenas solicited employees, in further refutation of his testimony.

²⁶ When asked for clarification, Navarro said Arrospide told her the Union would kick her out "from my work."

²⁷ This testimony varied significantly from the English version of Navarro's affidavit. The court-certified interpreter compared the Spanish version, which is the language Navarro used in giving her statement, with the English version. The Spanish version read: "He [Arrospide] told me that I was going to lose my job. He told me to sign the card, which I did not sign because I'm scared of losing my job. He told me if I didn't sign the card that I was going to lose my job." The confusion in the affidavit does not render Navarro's testimony less credible. Her demeanor was open and forthright. Navarro appeared to be trying to answer the questions fully and frankly. She testified consistently and there was no indication of device or calumny. I find her to be credible.

I also note, even if the affidavit is not considered as evidence, Navarro testified on cross-examination she told the Board agent taking her statement:

Mr. Jorge Arrospide came to me and he said to sign the card, and if I did not sign that I could ask anywhere in the world that the union was going to win because they had enough signatures.

this statement and said she did not want to sign immediately, she wanted to think about it.

There is no evidence Navarro had any information Arrospide had been fired by GMG and was no longer her supervisor at the time of this conversation. Since the announcement of Arrospide's discharge was made by GMG at a meeting held April 15, there is every indication Navarro understood Arrospide was still her supervisor at the time he made these statements to her. Inasmuch as Arrospide has been found a special agent of local 87, his statements to Navarro, as with all the other employee witnesses, were made under circumstances that were coercive and/or threatening and calculated to induce these employees to sign a Local 87 card as a condition of their continued employment. The next morning Navarro tried to telephone Gina Gregori. Larry Gregori answered and indicated his sister was not available. Navarro reported to Larry Gregori that Arrospide "told me that if I did not sign the card I was going to lose my job."

GMG held an employee meeting on April 15 where it announced Arrospide had been discharged. Navarro saw Arrospide standing near the door to GMG's office. Arrospide told Navarro, "[Y]ou see we're all here because the union is going to win; and then he pointed out where the vice president was located." In her affidavit, which was given about 3 weeks after this incident, she said Arrospide "told me to speak with the vice president of the union. Jorge did not speak." Navarro further stated in her affidavit:

The vice president told me that if I wanted to work I had to go with him to the union. I told him that he was a liar. I told him that "so you will give me job for one week and then you're going to throw me out."

I went into the meeting. I never signed a card. When I left the meeting the vice president approached me again. He told me that he was going to take me to the office to give me work. I told him "what a pity that between us Latins we are deceiving each other."

Jorge was about to get into his car and it was about 30 feet away, and the vice president said, "Look, Arrospide, take her to the union." Then I turned around and I said to him, "What do you think, that we're some kind of cattle for the slaughter that they're going to take us like animals?"²⁸

Navarro identified Martinez, who was at Respondent counsel's table for most of the hearing, as the individual Arrospide indicated was the Union's vice president. Martinez then came up to Navarro and identified himself. While

And I was going to lose my job because the union was going to fire me.

She did not disavow this testimony which I find credible.

²⁸ Immediately after Navarro's affidavit was read into the record, another representative of the Charging Party, David Byrnes, identified himself and objected to the reading of the affidavit into the record. Inasmuch as the Respondent's attorney relied on errors in the English version of the affidavit which had been translated from the Spanish transcription in his questioning of Navarro and there was another inaccuracy noted in the translation by the interpreter, I find the interpreter's rendition of the affidavit, which was given shortly after the events in question, to be the more accurate. At the time of the reading of the affidavit into the record, there was no objection. Accordingly, I find the affidavit properly clarifies and explains Respondent's cross-examination of Navarro's testimony.

Navarro was not absolutely positive of her identification, she indicated she was quite sure of her representation. I do not credit Navarro's affidavit over her testimony; it was referenced to explain what appeared to be inconsistencies between her testimony and the English translation of her affidavit.

Resort to the original version of her affidavit, which was in Spanish, by the Spanish language interpreter, explained some of the inconsistencies between her testimony and the English language version of her affidavit.²⁹ The Spanish language affidavit also clarified Navarro's testimony. Resort to this affidavit to explain her testimony "is well within settled Board precedent." *Yaohan U.S.A. Corp.*, 319 NLRB 424 (1995); *St. John Trucking*, 303 NLRB 723 (1991); and *Alvin J. Bart & Co.*, 236 NLRB 242 (1978).

Even though he was present during much of the hearing and gave testimony after Navarro, Martinez did not directly and clearly refute her account. The individual had identified himself as Cesar Martinez. Respondent did not claim there was another individual picketing with them outside the GMG offices that day, or there was a union representative or affiliate who had a name similar to their vice president. Although these events may have occurred after Arrospide was fired by GMG, it is another indication of Arrospide's alliance with and his role as an agent for the Union. It is also a clear expression Arrospide was working for and on behalf of the Union using tactics linking membership with employment as did Respondent's vice president.

Based on these factors, I conclude Martinez made these representations to Navarro and participated in Arrospide's comments to her directing her to speak to Martinez. Martinez immediately approached as soon as Arrospide identified him and solicited her support and like Arrospide equated union membership with employment.

g. Julio Quintanilla

At the end of March, Quintanilla was approached by Arrospide during work between 5 and 6 p.m., a time Martinez admitted neither he nor Cardenas solicited GMG employees since it was before midnight. The conversation occurred in the lobby. Arrospide was his supervisor. Arrospide said, "[T]he company was entering the union and what did I think about that. And I said, well, that I wasn't, that I wasn't very sure." Next Arrospide said, "[T]hat almost everyone was signing a card."

Approximately 1 week later, at about the same time, Arrospide again approached Quintanilla and "told me that just about everyone had been signing and what did I think of it, whether I was going to sign or not." Quintanilla in that case took and signed the union authorization card Arrospide proffered. The card is dated April 4. After signing, he returned the card to Arrospide. Quintanilla testified he signed

²⁹ The English language version was translated from Navarro's original affidavit, which was given in Spanish. She forthrightly admitted that any inconsistencies she noted before executing the affidavits were ignored because she felt the statements were close enough. She clearly was no wordsmith and showed no aptitude for making fine distinctions between the translation of her Spanish original and the English version. Based principally on her demeanor and considering the other factors mentioned herein, I conclude this failing to be as facile in English as she is in Spanish does not impair or diminish her credibility.

only one union authorization card and Larry Gregori identified some of the writing on the card as Arrospide's.

The testimony of Quintanilla is credited. His appearance gave the strong impression he was trying to testify fully and accurately. He did not appear to engage in hyperbole or other device to improperly color his testimony.

D. Analysis and Conclusions

Respondent only argues Arrospide is not its agent, and there is no cognizable meritorious claim Arrospide's comments were coercive and restrained these employees in the exercise of their statutory rights. Concerning Arrospide's comments to the employees, previously detailed, there is little dispute he made the statements attributed to him. I have found above Arrospide was the Union's special agent for the solicitation of union authorization cards. I also find Respondent's agent Arrospide coercively and with unlawful restraint solicited union authorization cards from GMG employees on behalf of the Union in violation of Section 8(b)(1)(A) of the Act.³⁰

As previously determined in detail, Arrospide, GMG's lead supervisor, made statements to almost all the employee witnesses during and in the course of their work,³¹ containing explicit threats of job loss unless they signed Local 87's cards and the statements to all the employee witnesses including Quintanilla, held veiled threats of employee and/or employer retribution if they did not sign Local 87's union authorization cards.

The statement made to Quintanilla and others that all or almost all the other employees had signed cards, was implicitly intimidating and restrained the employees in the exercise of their rights under Section 7 of the Act. I find the threats of job loss and intimidation by telling employees they would be discharged and/or were the only ones who had not signed cards tends to coerce and intimidate employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act. *Clement Bros. Co.*, 165 NLRB 698, 707 (1967).

Where, as here, the Employer had "no known stance," contrary to Arrospide's representations, by his encouragement of employees to sign Local 87 cards, "the employees might be led to believe that the employer favors the union." Another understandable result of a supervisor's solicitation of employees is conduct [such as Arrospide's] could coerce an employee into supporting the union out of fear of future retaliation by a union-oriented supervisor. *Sheraton Motor Inn*, 194 NLRB 733, 734 (1971), citing *Stevenson Equipment Co.*, 174 NLRB 865 (1969), and *Turner's Express*, 189 NLRB

³⁰ Sec. 8(b)(1)(A) of the Act provides, as here pertinent:

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guarantee in Section 7

Sec. 7 of the Act declares, as here applicable:

Employees shall have the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities

³¹ The exception is Quintanilla.

106 (1971).³² The Board concluded in *Sheraton Motor Inn*, supra at 734: "[T]here is a reasonable basis for concluding that possible fear of supervisory retaliation destroyed the employees' freedom of choice" The employees testified they were nervous and confused by Arrospide's actions as Respondent's agent, whose statements were clearly coercive and violative of Section 8(b)(1)(A) of the Act.

Assuming arguendo Arrospide was unartfully informing the workers he solicited for cards that Local 87 would shortly have a majority of employee signed union authorization cards and would impose a closed-shop system at GMG; in lieu thereof such an assumption is not supported by any union witness or other evidence. Respondent failed to demonstrate, or even intimate, there was a lawful basis for Arrospide to refer to the employees' termination and hint at reprisals if they did not sign a Local 87 card. Arrospide's statements to the above-named employees were falsehoods designed to convince them to execute the Local 87 cards. Arrospide's pronouncements to the employees were not weasel worded, they were so patently designed to induce the employees to sign the Local 87 cards. These comments according to the employees including Quintanilla, unsettled and confused them. Quintanilla signed immediately after being told all or almost all of the other GMG employees signed cards.

Under any version of Arrospide's statements credited herein, which attempts to justify or mitigate the impact of Arrospide's statements, whether the coercion was clearly obvious and powerful, or subtle, or if he succeeded, the test is whether his statements had a reasonable tendency to restrain or coerce one or more employees in the exercise of their rights under Section 7 of the Act. As was the case in *Paperworkers Local 710 (Stone Container)*, 308 NLRB 95, 98 (1992), Arrospide was their supervisor and a person they regarded as having expertise and knowledge upon which they could rely. Accordingly, I conclude there is no basis to find Arrospide's threats mere predictions of what would likely occur if the union-secured majority support. *Holiday Inn*, 188 NLRB 68 (1971); *Sav-On-Drugs*, 227 NLRB 1638, 1645 (1977).

Arrospide assigned the employees their duties, disciplined them verbally, and by writing step-one warnings in compliance with GMG's progressive discipline system, including warnings that further violations of policy would lead to the employees discharge. In certain circumstances, Arrospide could discharge employees on the spot, without the approval of a superior.³³ He failed to indicate in any manner he was

not representing GMG or Respondent in his solicitations. By tying the employees' continued employment to their signing a Local 87 card and in his solicitations of some of the employees, linking their further assertion to some of the employees that almost all the GMG had signed, intimidating they were standing alone or with very few coworkers if they failed to sign a card, Arrospide was clearly using his position as their supervisor to actively mislead them to create apprehension and induce their executing Local 87 cards. It is this inducement of apprehension among employees being solicited by union agents which Congress intended to eliminate in enacting Sections 14(b) and 7 of the Act. *Clothing Workers Local 990 (Troy Textiles)*, 174 NLRB 1148 (1969); *Hotel Restaurant Employees Local 2 (Zim's Restaurants)*, 240 NLRB 757, 761 (1979).

Local 87 acquiesced in and ratified Arrospide's actions by its use of the improperly solicited union authorization cards and not repudiating Arrospide's actions in his solicitations of the employees whether or not they signed the cards. See prior discussion of Arrospide's status as a special agent of Respondent citing *Davlan Engineering*, supra, 283 NLRB 803, 804 (1987); *Salem Village I*, supra, 288 NLRB 563, 564 (1988); *Service Employees Local 87 (West Bay Maintenance)*, supra, 291 NLRB 82 (1988); *Sav-On-Drugs*, id.; and *Restatement, Agency*.

That some employees resisted the intimidation and did not sign a card does not diminish the misconduct. As noted in *Steelworkers Local Union 5550 (Redfield Co.)*, supra, 223 NLRB 854 at 855 (1976):

The Board has long held that the test of misconduct is not whether it succeeds or fails but, rather, whether the alleged offender engaged in conduct which tends to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in the Act. Thus, in *Local 542, International Union of Operating Engineers AFL-CIO v. NLRB*, 328 F.2d 850 (3d Cir. 1964, cert. denied 379 U.S. 826, the court stated at 852, that the circumstances "that no one was in fact coerced or intimidated" is of no relevance. The test of coercion and intimidation is not whether the misconduct proves effective. The test is whether the misconduct is such, that under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act.

It is also highly likely these threats and intimidating statements "were rapidly disseminated to other employees." *Sav-On-Drugs*, supra at 1646.

Counsel for General Counsel requests the showing of interest in Case 20-RC-17101 be dismissed. I find this claim is meritorious. It is not necessary to show more than a mathematical uncoerced majority and unrestrained majority signed Local 87 cards to defeat its current showing of interest. *Amalgamated Local Union 355 v. NLRB*, 481 F.2d 996, 1002 fn. 8 (2d Cir. 1973); *Clement Bros. Co.*, 165 NLRB 698, 699 (1967), enfd. 407 F.2d 1027, 1028-1030 (5th Cir. 1969). Cf. *Puerto Rico Products Corp.*, 111 NLRB 293, 294-295 (1955). The record clearly supports this request. The evidence convincingly demonstrated the circumstances of the

Arrospide's remarks tended to confuse the employees he solicited. *Paperworkers Local 710*, supra, 308 NLRB 95, 98.

³² While these cases involved objections to union conduct, the test for the coercive and restraining conduct of the union and/or its agents is the same. The Sec. 7 right of employees to freely determine if they want union representation is also identical in both objection and unfair labor practice cases.

³³ While Arrospide could only discharge employees without the approval of his superiors at GMG in the event of serious infractions of its policies, such as stealing, there is no showing the employees knew the limits of his authority to discipline. Even if the record demonstrated he did not have any authority to fire, which it does not, there was nothing done by Respondent or GMG prior to the execution of the Local 87 cards that informed the employees Arrospide could not invent a reason to have them fired or disciplined in another manner or prevent Arrospide from assigning them to less desirous work hours, and/or duties, and/or locations. At the least,

coercion and restraint were "sufficiently pervasive to taint Respondent Union's entire majority." *Sav-On-Drugs*, supra at 1647, warranting dismissal of Case 20-RC-17101.

In sum, the record clearly demonstrates that at all times here pertinent, Arrospide was a supervisor as defined in the Act; he was also an agent of GMG and Respondent as defined in the Act. I also find Respondent had knowledge of Arrospide's solicitations of GMG Local 87 union authorization cards and relied on some of these cards in its showing of interest portion of the representation petition it filed with the Board. Arrospide's remarks to all the previously mentioned employees had a reasonable tendency to restrain and coerce employees to refrain from exercising their protected right to refuse to sign a Local 87 card.

Four of the 9 to 10 or 11 cards proffered by the Respondent in its showing of interest filing with the Board were solicited by a supervisor from employees who were directly subjected to unlawful coercion and restraint. At least four others were also directly threatened and coerced by Arrospide. GMG employs between 23 and 27 employees; therefore, a substantial number of this complement has been directly subjected to Respondent's coercion and restraint through its agent Arrospide. When a union, by the actions of a special agent, interferes, as here, with the right of employees to join or refrain from joining a labor organization free from coercion on the part of the employer or union, it violates Section 8(b)(1)(A) of the Act. *Acme Tile & Terrazzo Co.*, 306 NLRB 479, 487 (1992).

CONCLUSIONS OF LAW

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

2. Respondent, Service Employees International Union, AFL-CIO; Building Service Employees Union Local 87, is a labor organization within the meaning of Section 2(5) of the Act.

3. Jorge Arrospide was a supervisor and/or agent of GMG as defined in Section 2(11) and (13) of the Act.

4. At all material times Arrospide was a special agent for Respondent in soliciting union authorization cards for Local 87, which is responsible for Arrospide's actions and statements while he was soliciting GMG employees to sign these cards.

5. By the conduct of Arrospide as a GMG supervisor and/or agent and special agent for Local 87, including directly and/or inferentially threatening employees with job loss and other reprisals if they did not sign the Local 87 cards, Respondent has restrained and coerced the employees in the exercise of their Section 7 rights and thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

6. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel requested as part of the remedy Respondent cease and desist in its efforts to organize the employees of GMG for a period of 2 months after the decision and final order have been rendered in this proceeding. Further, General Counsel requests the showing of interest presented to Region 20 in Case 20-RC-17101 be dismissed and any new showing of interest occur after the 2-month moratorium on Respondent's organizing activities at GMG is completed. The Charging Party requests Respondent be barred from organizing activity at GMG for 1 year after issuance of a final decision and order because the pervasive coercive actions by Respondent's agent were widespread, and it may take several years for the effects of the violative conduct to dissipate. I find these requests for a moratorium on organizing activities do not have merit in this case since it appears likely it will be almost 1 year before a final decision and order will be issued. Accordingly, an order barring Respondent from engaging in organizing activity at GMG is not warranted.

I also recommend Case 20-RC-17101 be dismissed, and Respondent be required to make a new showing of interest.

On the foregoing findings of fact and conclusions of law and the entire record, I issue the following recommended³⁴

ORDER

The Respondent, Service Employees International Union, AFL-CIO; Building Service Employees Union Local 87, San Francisco, California, its officers, agents, and representatives shall

1. Cease and desist from

(a) Threatening the employees of GMG Janitorial, Inc. with loss of employment if they do not sign union authorization cards and directly and/or inferentially threatening employees with other reprisals if they do not sign a Local 87 card.

(b) 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) Within 14 days after service by the Region, post at its business office and other places where notices to its members are customarily posted copies of the attached notice marked "Appendix."³⁵ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent Local 87'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 members 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. In the event that, during the pendency

³⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³⁵If 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."

of these proceedings, the Respondent has ceased operations or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 17, 1995.

(b) Forward to the Regional Director for Region 20 signed copies of the Appendix for posting by GMG Janitorial, Inc.,

for 60 consecutive days at the places GMG customarily posts notices to employees.

(c) 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 Respondent has taken to comply.