LCF, Inc., d/b/a La Conexion Familiar and Sprint Corporation *and* Communications Workers of America, District Nine and Local 9410, AFL–CIO. Case 20–CA–26203

December 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On August 30, 1995, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Charging Party filed exceptions, a supporting brief, and a reply to the Respondent's brief, and the Respondent filed a brief in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.

The principal issue presented in this case is whether the Respondent violated Section 8(a)(3) and (1) of the Act by closing its San Francisco facility and terminating its employees. For the reasons set forth below, and contrary to the judge's recommendation, we find that the Respondent's closure violated the Act as alleged.

I. THE RESPONDENT'S INITIAL INVOLVEMENT WITH LCF

In December 1992, the Respondent entered into an agreement to purchase the operations of La Conexion Familiar (LCF), a long-distance carrier which targeted its service to the Latino community. Under the terms of the agreement, the purchase price was contingent upon LCF's future profitability. The agreement also provided that the former LCF owners would continue to serve as managers of LCF and would receive periodic purchase payments from the Respondent in amounts dependent on the performance of the business.

In May 1993, the Respondent first expressed concern about the possibility of a union at LCF. Specifically, Respondent Vice President Tim Jones told LCF Human Resources Manager Anita Roman of his concern that recent employee terminations would engender union activity and added that the Respondent would close the facility if the Union was voted in at LCF.

By June 1993, problems had arisen in the relationship between the Respondent and the former LCF principals, and the Respondent instituted a recission lawsuit whereby it tendered the business back to the former LCF principals. The parties resolved their dispute in January 1994,[3] and the Respondent agreed to complete its purchase of LCF because it believed that LCF would be highly profitable in the future.

II. LCF'S FINANCIAL DIFFICULTIES

In February, the Respondent's Consumer Services Group (CSG) was given responsibility for oversight and control of LCF's operations.[4] Thereafter, CSG Vice President Wallace Meyer, together with his financial team headed by Jeff Balagna, began reviewing the financial performance of LCF.

By March, Meyer's review indicated that LCF was not performing in accordance with the Respondent's original budget projections. Whereas the Respondent had originally projected that LCF would earn a $7.9 million profit for 1994, Meyer and Balagna projected a $4 million loss for the year. The projected loss was premised on the significant decline in the number of new customers signed up from January through March, and on the fact that the churn rate—the percentage of customer base lost each month—was so high that LCF could not keep its customer base stable. Indeed, LCF's churn rate was 20.5, 18.5, and 22.5 percent for the first 3 months of the year.[5] In response to this new forecast, LCF instituted a new calling plan, called "Aqui Contigo," designed to assist telemarketers in selling the LCF product, and Meyer brought in a number of specialists from the Respondent's headquarters to assist in the turnaround efforts.

III. THE RESPONDENT'S REACTION TO UNION ACTIVITY

In February, the Union began an organizing campaign of the Respondent's employees at LCF. By February 14, managers and supervisors at LCF became

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

[2] We shall amend the judge's conclusions of law to reflect the judge's findings, as set forth in fn. 27 of his decision and in his recommended Order, that the Respondent violated Sec. 8(a)(1) of the Act by soliciting employee grievances, by requesting employees to distribute antiunion buttons, by creating the impression of surveillance of employees' union activities, and by instituting changes in employees' working conditions. We further find that the Respondent's changes in working conditions were violative of Sec. 8(a)(3) of the Act as well, and we shall amend the conclusions of law to reflect this finding.

[3] All dates hereafter are in 1994 unless stated otherwise.

[4] Prior to that time, another division of the Respondent, the Diversified Brands Group (DBG), was responsible for LCF's operations.

[5] For the last 3 months of 1993, LCF's churn rate was 17.2, 23.7, and 21.2 percent, respectively.

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aware of the organizing campaign and began interrogating employees about the union activity and telling them that LCF would close if the Union came in. Throughout the Union's organizing campaign, management officials at LCF kept CSG officials apprised of the union activity at LCF.

In March, LCF Telemarketing Manager Laura Cerritos alerted the telemarketing supervisors that the union issue could affect their jobs. In April, Cerritos told the supervisors that LCF would close if the Union came in and asked the supervisors to write down the names of employees involved with the Union.

By April, the Respondent's headquarters officials had begun openly expressing their concerns about the Union. Dave Sapenoff, the Respondent's group manager, corporate labor relations, visited the LCF facility in April. Sapenoff, who worked in the Respondent's headquarters in Kansas City, met with the LCF supervisors and, like Cerritos, asked them to write down the names of employees who supported the Union. Sapenoff collected the names of the prounion employees and instructed the supervisors to try to dissuade those employees from supporting the Union. Sapenoff later met with unit employees and told them that bringing in the Union would not guarantee that things would get better at LCF.[6]

After Sapenoff returned to the Respondent's headquarters, he reported the union activity to CSG President Dave Schmieg and to Carl Doerr, vice president for labor relations and fair employment practices. Upon receiving the report, Doerr told Schmieg that there was a real possibility that the Union would file a representation petition. Schmieg responded by reiterating a remark he had previously made to Doerr. Specifically, Schmieg told Doerr that it was his (Schmieg's) intent to close LCF because he did not believe that the Respondent ''had any business being in that business.'' Doerr responded that, in light of the likelihood of a petition being filed, Schmieg should ''create a paper trail'' if he intended to close LCF.

Throughout April and May, the LCF managers and supervisors continued interrogating employees about their union activity and continued telling employees that LCF would close if the Union came in. Consistent with this conduct, the supervisors were instructed by Cerritos on May 1, and on several occasions thereafter, to inform employees that the Respondent had a nonunion policy and that LCF would close if the employees brought in the Union.

IV. THE MAY 6 BOARD OF DIRECTORS' MEETING

Meanwhile, Meyer's concerns about the severity of LCF's finances continued throughout April. These concerns led him to convene a meeting of LCF's board of directors on May 6. At this meeting, Meyer and Balagna presented a financial analysis of LCF that, among other things, revised the 1994 financial projections from one—based on the original 1994 budget—which had anticipated a profit of nearly $8 million, to one projecting a loss of approximately $4 million for the year.

Their report further outlined two managerial options in light of LCF's financial difficulties. The first, which Meyer advocated, recommended that LCF cease operations immediately because of the negative financial outlook for the remainder of the year. The other option was to continue operations through December. The report listed three justifications for the second option: (a) LCF was an extremely strong business concept worth pursuing; (b) the prior 3 weeks' sales had shown very positive trends; and (c) the turnaround plan had been formulated and almost fully implemented.

After a discussion of these options, the board declined to adopt the recommendation to cease operations. The board voted instead to continue LCF's operations and reconvene in 60 days, at which time they would review the Company's financial performance against the new projected forecast and discuss a variety of options for LCF's future. This decision was set forth as follows in the minutes of the board meeting:

> The Board was universal in its concern regarding the company's revenue shortfall from the 1994 budget and accompanying operating loss. As a result, the Board will again review the company's financial performance against the revenue forecast in July at the next meeting. Also at the next meeting, six strategic options governing disposition and longevity of the LCF, Inc. business will be presented. These options are: (a) immediate discontinuance of current business, (b) sell LCF business and assets, (c) continue business as planned but review progress against revised financial objections every 60 days, (d) employ an agent as business manager . . . . (e) relocate business to establish greater alignment/proximity to Sprint resources, and (f) continue business through at least December 1994 utilizing 1994 performance and 1995/96 financial projections as evaluation criteria.

In addition, the board decided on May 6 to hire Maury Rosas as president of LCF. Thereafter, on May 13, Rosas entered into an employment contract with the Respondent, effective June 1. Rosas was never told prior to his hiring that the Respondent might close LCF in light of its financial situation. In taking the job with the Respondent, Rosas and his wife relocated from Los Angeles to the San Francisco area. Further, Rosas' wife sold her business and retired in order to relocate with her husband.

[6] In both of these meetings, Sapenoff denied that LCF would close if the Union came in.

Upon assuming his position on June 1, Rosas operated LCF as a viable business entity with a future. Thus, in June, LCF continued its regular practice of hiring and training employees, and proceeded with its plans for extensive office renovations that included a new floor of administrative offices and a large employee cafeteria.

V. THE PETITION FILING AND THE RESPONDENT'S REACTION

On June 3, the Union filed its petition to represent the LCF employees. In conjunction with this filing, over 100 of the approximately 177 bargaining unit employees wore, or displayed at their desks, prounion T-shirts. LCF's management was well aware of the T-shirt demonstration, and supervisors were instructed to report to management the number of employees wearing the shirts. Rosas and other LCF officials conferred with the Respondent's headquarters officials about the matter.

On June 14, Telemarketing Manager Cerritos informed her supervisors that the Union had enough employee support to win the election. She added that the employees would be the only ones to lose if the Union won the election, because the Respondent would close the facility and take care of its supervisors and managers.

After learning that the petition had been filed, Labor Relations Vice President Doerr received a copy of the minutes of the May 6 board of directors' meeting. Doerr became concerned that the minutes did not reflect, and were indeed inconsistent with, an intent to close LCF. Thus, Doerr, as he had discussed with CSG President Schmieg back in April, sought to create a paper trail showing that the Respondent's intent to close LCF existed prior to the filing of the petition. Doerr accomplished this by soliciting an official from an outplacement service to send him a backdated letter, dated April 7, referencing a prior request by Doerr for outplacement services for the LCF employees. Doerr admittedly sought the backdated letter to counter any contention that the decision to close LCF was in response to the union activity.[7]

The Union and the Respondent entered into a Stipulated Election Agreement on June 22, and an election was scheduled for July 22.

VI. THE DECISION TO CLOSE LCF

The next meeting of the board of directors was scheduled for July 6 at the Respondent's headquarters in Kansas City. Sometime prior to July 6, Meyer, anticipating that the board would decide to close LCF, instructed Balagna to assemble a transition team to implement the closure of LCF. In the past, the Respondent assembled a transition team only after the decision to close one of its entities had been formally made. Meyer did not inform Rosas of these plans contemporaneous with his instruction to Balagna.

Rosas arrived in Kansas City on July 5 and met with Meyer that afternoon. During this conversation, Meyer shocked Rosas by informing him—for the first time—of the possibility of LCF's closure and of the board of directors' intent to review several options for LCF's future, including closing.

The July 6 board meeting began with CSG President Schmieg stating that the decisions about to be made are "based solely on the economic justification that is set forth in the financial documents." There was no discussion of the union activity or the upcoming election.

The financial documents, prepared and presented to the board by Balagna, demonstrated that, consistent with the May 6 projections, LCF continued to be unprofitable. For instance, the documents stated that LCF continued to experience a decline in its customer base,[8] that the average monthly sales had continued to decline in May and June, and that LCF was projected to sustain a loss of about $4.5 million for 1994.

On the other hand, the documents indicated that LCF had made slight improvements in important areas. Specifically, they showed that the revenues for 2 of the last 3 months were slightly better than had been projected at the May meeting, and that the churn level for the last 3 months was slightly lower than it had been in prior months.

The board then turned to a discussion of the various proposals for the future of the business. The financial documents before the board contained recommendations that all proposals for continuing LCF's operations be dismissed[9] and that LCF's operations be discontinued immediately. In support of this proposal, the documents noted that the business continued to be unprofitable, customer churn remained at unacceptably high levels, and the financial and human resources necessary to achieve a turnaround could be better utilized elsewhere within the Respondent's corporate entity.

[7] The Respondent submitted the letter to the Regional Office in response to the instant charge filed by the Union. The Respondent later revealed that an internal investigation had determined that the letter had been fabricated.

[8] The documents presented to the board indicated that LCF's customer base had declined by 16,000 customers. Just prior to the meeting, Balagna learned that the customer base had actually been lower during this period. These new figures, however, were not included in the July 6 financial documents and were not made known to, or considered by, the board at their July 6 meeting.

[9] In dismissing the option to sell LCF, it was noted that, since the last meeting, formal levels of interest were solicited from three companies, none of whom expressed any interest in purchasing LCF. Further, the idea of pursuing a public sale of LCF was not recommended for fear it would cause a severe disruption in LCF's daily business functions.

The board voted 5–0 (with Rosas abstaining) to close LCF effective July 14. Shortly after the board meeting ended, the Respondent's transition team met to begin implementing the closure. The transition team members were instructed as to the confidentiality of the closure decision and were given confidentiality agreements to sign.

On July 14, 8 days before the election, Rosas announced to LCF's employees that LCF was closing immediately due to financial difficulties. That day, the Respondent routed all of LCF's incoming customer service calls to the Respondent's customer service center in Dallas. In a departure from its prior practice when closing its other facilities, the Respondent did not give its employees 60 days' advance notice of closing as required under the WARN Act,[10] but instead terminated the LCF employees immediately and gave them 60 days' wages and benefits.

VII. THE JUDGE'S DECISION

Analyzing the foregoing facts under the guidelines set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the judge found that the Respondent's closure was not violative of Section 8(a)(3) and (1) of the Act. The judge began his analysis by finding that the General Counsel presented a compelling prima facie case that the Respondent's closure of LCF was motivated by antiunion considerations insofar as (a) the LCF managers and supervisors bombarded employees with unlawful conduct including interrogations and repeated statements that LCF would close if the Union came in; (b) the facility was closed just 8 days prior to a scheduled Board election which apparently would have resulted in a union victory; and (c) a high ranking official of the Respondent manufactured evidence designed to exculpate the Respondent from a finding that it had unlawfully closed LCF.[11]

The judge next found, however, that the Respondent rebutted the General Counsel's prima facie case by affirmatively establishing that lawful business considerations controlled the decision to close LCF. Specifically, the judge found that the union activity at LCF was of little significance to the Respondent compared to the financial difficulties confronting LCF, including the continually declining customer base and the $12 million variance between the projected loss of approximately $4 million in 1994[12] and the approximately $8 million profit originally budgeted for the year.

In finding that the Respondent based its decision on legitimate financial concerns, the judge rejected the General Counsel's contention that the Respondent's July 6 decision to close was inconsistent with its May 6 decision to continue LCF's operations in the face of significant financial difficulties.[13] Rather, the judge relied on Meyer's characterization of the May 6 meeting as one which modified the closure recommendation "only slightly" to also consider for 60 days "two or three other options for disposition of LCF."[14]

The judge also found that the Respondent's decision to hire Rosas was not inconsistent with an intent to close LCF because the Respondent viewed Rosas as having value to the Respondent regardless of the short-term future of LCF. In addition, the judge found that the continual hiring and training of the LCF employees in June, and the physical renovations undertaken at the LCF facility, were not inconsistent with an earlier intent to close because he found that the declining customer base—not the internal expense control—controlled the decision concerning LCF's future.

In view of the Respondent's financial problems, the judge found relatively insignificant the fact that Doerr, a high ranking labor relations official of the Respondent, manufactured evidence designed to exculpate the Respondent. The judge found that Doerr acted pursuant to a personal agenda in this regard, based solely on Doerr's erroneous belief that the existence of the fabricated letter would serve the Respondent's interests.

[10] Worker Adjustment and Retraining Act of 1988, 29 U.S.C. §2101 et seq.

[11] The judge also suggested that certain employee testimony concerning an alleged admission by Rosas that the closure was union related, although discredited, constituted prima facie evidence of unlawful conduct. As noted below at fn. 17, we do not agree with this suggestion.

[12] As noted above, the financial documents at the July 6 meeting projected LCF to lose $4.5 million for 1994. The documents did not, however, suggest that the change in projections from $4 million in May to $4.5 million in July was the critical factor warranting closure of LCF, and, indeed, the Respondent does not contend that the change in the projected loss from $4 million to $4.5 million was a controlling factor in its decision to close.

We correct the judge's incorrect statements in the second paragraph in sec. C of his decision. Thus, the judge stated that LCF initially projected that it would earn a profit of about $4 million in 1994; the record reveals that LCF initially projected that it would earn a $7.9 million profit for 1994. Further, the judge stated that by early May LCF had lost some $4 million and was projected to lose some $7 million for the entire year; the record reveals that it was projected that LCF would lose $4 million for the entire year.

[13] The judge noted that the General Counsel did not posit this theory of the case during the hearing, and thus refused to draw an adverse inference from the Respondent's failure to call LCF's board members as witnesses to explain why they voted on May 6 to give LCF a reprieve in the face of overwhelming financial problems.

[14] The judge refused to consider certain of the Respondent's financial documents, placed into the record by the Respondent, which, the General Counsel contends, indicate that the May 6 meeting approved a revised 1994 budget for LCF and thus by implication showed an intent to continue LCF's operations. The judge's refusal to consider such documents was based on a rule he set during the hearing, that is, that the parties must elicit testimony explaining any documents in the record that they intended to reference in their briefs to the judge. The General Counsel failed to elicit testimony explaining these documents which he later referenced in the brief.

The judge also found that, although the letter was fabricated, Doerr did in fact have the conversation with the outplacement official that was referenced in the fabricated letter, and that this fact supported the Respondent's contention that it had intended to close LCF prior to the union activity.

Accordingly, the judge found that the July 6 decision to close LCF was consistent with the concerns and intentions of the board of directors at their May 6 meeting and thus constituted the mere formal enactment of an earlier intent to dispose of the business for economic reasons. Therefore, the judge concluded that the closure of LCF was a legitimate business decision that would have occurred even in the absence of any union activity at LCF, and as such was not violative of the Act.

VIII. DISCUSSION

We agree with the judge that the General Counsel has presented a compelling case that the closure of LCF was motivated by antiunion considerations. As noted by the judge, the Respondent's employees were subjected to an extensive antiunion campaign that included numerous interrogations and threats of closure by LCF's supervisors and managers.[15] Indeed, LCF's management also told its supervisors that LCF would close if the Union came in, and accordingly instructed supervisors to discourage employees from supporting the Union. Further, the Respondent acted consistently with the threats to employees by closing LCF 8 days prior to an election the Respondent believed the Union would win. Additionally, a high ranking official of the Respondent manufactured evidence specifically designed to show that the closure was not related to the union activity.

In addition to the foregoing reasons given by the judge, we find other compelling evidence in the record that supports a finding that the closure of LCF was motivated by antiunion considerations. Indeed, we find that Vice President Tim Jones' remarks to Human Resources Manager Roman, in May 1993—that the Respondent would close LCF if the Union came in—evidences a long held intent by the Respondent to close LCF should the Union ever become the bargaining representative of the LCF employees.

We also find it significant that the CSG officials were regularly kept apprised of the union activity at LCF, and that in April, CSG President Schmieg, in a conversation with Labor Relations Official Doerr, linked the possibility of closing LCF to the likelihood of the Union's filing a petition to represent the LCF employees. Moreover, we find that Labor Relations Manager Sapenoff's visit to LCF in April during which he asked supervisors to write down the names of employees who supported the Union, instructed supervisors to try to dissuade employees from supporting the Union, and told the unit employees that bringing in the Union would not guarantee that things would get better at LCF, constitutes further evidence that high ranking officials at the Respondent's corporate headquarters harbored antiunion animus and were deeply concerned about the possibility of the Union becoming the bargaining representative of the employees at LCF.

Thus, we find, in agreement with the judge, that the record contains an abundance of compelling evidence demonstrating that antiunion considerations were a motivating factor in the Respondent's decision to close LCF on July 14.[16] Accordingly, we find that the General Counsel has presented a very strong prima facie case, under *Wright Line*,[17] that the closing of LCF was unlawful.

Under *Wright Line*, supra, once the General Counsel establishes a prima facie case, the burden shifts to the Respondent to show that it would have taken the same action even in the absence of union considerations. In light of the General Counsel's strong prima facie case, the Respondent's burden here is substantial. See *Federal Screw Works*, 310 NLRB 1131, 1140 (1993).

We find, contrary to the judge, that the Respondent has failed to meet its substantial burden. Specifically, we find that although there is ample evidence that LCF was experiencing financial troubles at the time of its closing, the Respondent has not shown, by a preponderance of the record evidence, that those concerns would have caused the board to close LCF on July 14 in the absence of union considerations.[18] In doing so, we accept the judge's credibility resolutions; we do not agree, however, with the judge's inferences drawn from the facts set forth in the credited testimony and documentary evidence.

We find error in the judge's cornerstone finding, i.e., that on May 6, before the Respondent learned that a petition had been filed or that the Union had obtained the support of a majority of employees, the Respondent's board of directors effectively formed an intent to close, or dispose of, LCF. The judge based this finding on Meyer's characterization of the decision of the board on May 6 as only slightly modifying Meyer's

[15] The antiunion campaign also involved solicitation of grievances, creation of the impression of surveillance, and changes in employees' working conditions.

[16] We therefore disagree with the judge that the union matter at LCF was of "little significance" to the Respondent.

[17] As noted above, we do not agree, as the judge suggested, that certain uncredited testimony concerning alleged admissions by Rosas constitutes evidence supporting the General Counsel's prima facie case.

[18] Indeed, the judge correctly notes that "the NLRB is certainly in no position to substitute its business judgment for the expertise of the Respondent." Thus, the critical issue on rebuttal is not whether it was *reasonable* for the Respondent to close LCF in view of the financial circumstances, but rather whether the Respondent has affirmatively shown that it *would* have closed under these circumstances on July 14 even absent the union activity.

recommendation to close. This characterization, however, is contradicted by the Respondent's minutes of the May 6 meeting, which the Respondent does not contend are inaccurate. Indeed, the minutes do not express an intent to close LCF in response to the financial circumstances, but rather state that closure of LCF was just one of many options scheduled for discussion at the next meeting, *after* reviewing the latest financial performance in light of the new revenue forecast.[19]

In addition, we find that the Respondent's hiring of Rosas, effective June 1, its not informing him of an impending decision to close even though acceptance of this position required him to relocate from Los Angeles, and its allowing him to operate LCF as a business with a future, constitutes further evidence contradicting the contention that the Respondent's board had concluded, on May 6, that LCF should be closed. The judge's explanation for hiring Rosas, i.e., that the Respondent viewed Rosas as having value to the Respondent beyond his tenure at LCF, is undermined by the fact that this view was never expressed to Rosas. It is further contradicted by the fact that, after closing LCF in July, the Respondent failed to place Rosas in another job until October, when he was assigned to oversee an office of six employees, whereas, at LCF, he oversaw an operation consisting of approximately 177 unit employees in addition to supervisory and support personnel.

It is clear, therefore, that the record fails to establish that on May 6 the Respondent's board of directors had abandoned the Respondent's earlier belief in LCF's potential for future profitability.[20] Rather, the action of the board on May 6—most notably the failure to adopt the recommendation for immediate closure while at the same time authorizing the hiring of Rosas[21]—indicates that the board was inclined toward the option of keeping the business going for at least long enough to allow the turnaround initiatives to take hold. While an abrupt and dramatic change in the financial picture might likely have caused the board to vote, on July 6, for the immediate closure option rather than for any of the five strategic options identified at the May 6 meeting, no such change from the May forecasts appeared in the report presented in July.[22] Instead, the financial outlook presented to the board at the July 6 meeting was a mixed picture that was not dramatically different from the circumstances considered at the May 6 meeting.[23] Although, as noted above, the report now projected that LCF would lose about $4.5 million in 1994 instead of the approximately $4 million projected in May, the revenues reported for 2 of the 3 months were slightly better than the May forecasts, and the churn level for April through May was somewhat lower than it had been in recent months.

In sum, there was no compelling financial development that explains the July 6 vote for immediate closure. The lack of such evidence, together with the compelling evidence of antiunion motivation established in the General Counsel's prima facie case, leads logically to the inference that another, unspoken concern ultimately persuaded the board of directors to vote for LCF's immediate closure, i.e., the upcoming representation election with the likelihood of a union victory.

Although there was no open discussion of the Union at the July 6 meeting, it is significant that Schmieg, who had discussed with Doerr back in April the idea of closing LCF in response to the union activity, began the meeting by stating that the decisions about to be made are "based solely on the economic justification set forth in the financial documents." In these circumstances, we find this remark to indicate an unexpressed agenda relating to the upcoming union election, and that Schmieg knew it was of considerable significance to the other board members as well.[24]

The Respondent has also failed to show any plausible reason for failing to give its newly hired president, Maury Rosas, a reasonable opportunity to turn LCF towards profitability. As noted above, the Respondent hired Rosas effective June 1 with full knowledge of LCF's financial troubles, but did not indicate

[19] We further note that one of the Respondent's officials, Doerr, testified that he did not interpret the minutes of the May 6 meeting as being consistent with an intent to close LCF. Moreover, we note that Balagna, who was in attendance at the meeting but was not a member of the board, testified that, rather than accepting the recommendation to close, the board decided to take 60 days to review the latest performance "and see if there's anything else we could do with the business."

[20] In light of our finding that Meyer's characterization of the meeting, as relied on by the judge, is inconsistent with the Respondent's minutes of the meeting and with its decision vis-a-vis Rosas, we find it unnecessary to pass on the judge's refusal to draw an adverse inference from the Respondent's failure to call other members of the board to corroborate Meyer's characterization of the May 6 meeting.

[21] We note that there is no contention that the board authorized the hiring of Rosas for the purpose of overseeing the disposition of LCF. To the contrary, Rosas was hired with a mandate to attempt to achieve a turnaround of LCF's financial performance, as reflected by the fact that Rosas was given a 1-year contract signed May 13 which included incentive compensation dependent on the financial performance of LCF.

[22] We note that the judge did not find, and indeed the Respondent does not contend, that the board decided in May that it would change its view and vote to close LCF in July if the financial forecasts were similar to those presented in May.

[23] We find no merit to the judge's rule, explained supra at fn. 14, prohibiting the General Counsel from arguing, absent explanatory testimony, that the financial materials indicate the board of directors' approval of a revised budget on May 6. These documents were offered by the Respondent and received into evidence, and as such comprised part of the record to which the parties were free to refer in their arguments to the judge. More importantly, the judge's rule, if adopted, would effectively prohibit the Board from considering record documentary evidence and, accordingly, must be rejected.

[24] We therefore reject the judge's interpretation that Schmieg's remark reflected more general and insignificant intentions.

to him the possibility of an impending closure. Further, the Respondent allowed Rosas to make considerable expenditures in human and financial resources in June, consistent with a plan to continue LCF's operations into the future.[25] In the absence of any reasonable explanation, this conduct further suggests that the Respondent's decision to close was not driven by the financial circumstances.

We also find revealing the Respondent's disregard of its usual closing procedures insofar as it assembled the transition team *before* the decision to close was formally made and insofar as it failed to give its employees the 60 days' advance notice of closing as required under the WARN Act. Although Balagna, who was not a member of the Respondent's board of directors, testified that the Respondent would have a better chance to keep its LCF customers if they were transferred to the Respondent's main long-distance service without prior notice, there is no evidence that the board of directors considered this factor in its decision to close LCF immediately. It is undisputed, moreover, that the members of the board of directors were aware that the union election was scheduled for July 22. Thus, they also understood that closing LCF on July 14, rather than 60 days after giving notice to employees, would eliminate the possibility of a union victory in the July 22 election.

Finally, we reject the judge's finding that Doerr's testimony indicates that the Respondent had planned to close LCF even before the occurrence of union activity. The judge found that Doerr's testimony about the fabricated letter established that the conversation about outplacement referenced in the letter actually occurred. The judge's basis for this finding, i.e., that no record evidence contradicted Doerr's testimony that the conversation actually occurred, is erroneous. Although Doerr testified that such a conversation occurred, his testimony also revealed evidence to the contrary. Indeed, Doerr acknowledged that the Respondent's internal investigators reported that the outplacement official Doerr claims to have spoken with could not recall such a conversation. Thus, in view of the fact that Doerr's testimony is not uncontradicted, we do not adopt the judge's finding concerning the actual occurrence of a conversation concerning outplacement, and therefore conclude that Doerr's testimony does not support the Respondent's contention that it planned to close LCF prior to any significant union activity.[26]

In sum, the General Counsel presented a strong prima facie case by presenting an abundance of evidence showing that the union activity at LCF was a motivating factor in the Respondent's decision to close LCF on July 14. Further, although LCF was experiencing financial problems at the time of its closure, the Respondent has failed to carry its substantial burden of showing by a preponderance of the evidence that—in the absence of the foregoing union activity—the Respondent would have closed LCF on July 14 because of its financial problems. Accordingly, we find that by closing LCF and terminating its employees on July 14, the Respondent violated Section 8(a)(3) and (1) of the Act as alleged.

CONCLUSIONS OF LAW

1. By threatening employees that LCF would close if the Union came in, by interrogating employees about their union activities, by requesting that employees distribute antiunion buttons, by soliciting grievances from employees, and by creating the impression of surveillance of employees' union activities, the Respondent has violated Section 8(a)(1) of the Act.
2. By implementing changes in employees' working conditions because of the employees' union activity, including providing employees free food, paid time off, and raffles of items of monetary value, the Respondent violated Section 8(a)(3) and (1) of the Act.
3. By closing its facility, transferring its operations, and terminating its employees on July 14, 1994, the Respondent violated Section 8(a)(3) and (1) of the Act.

THE REMEDY

In cases involving the discriminatory closure and transfer of operations, the Board's usual remedy is to require the respondent employer to restore the operation in question and to reinstate all discriminatorily terminated employees, unless the respondent can demonstrate that restoration of the status quo ante would be unduly burdensome. See *Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989), and cases cited therein. We find that, in the circumstances of this case, an order requiring the Respondent to reopen its LCF facility would be unduly burdensome and thus not appropriate. Indeed, in these circumstances it would be extremely difficult to reconstruct LCF's customer base. In addition, in view of LCF's financial condition at the time of its closure, requiring the reopening of that facility, more than 2 years later, while not threatening the economic survival of the Respondent, might require the

[25] The judge found that the Respondent's "business as usual" approach in June was warranted because the Respondent was trying to sell LCF as a viable business entity, and thus did not want its competitors to become aware of LCF's precarious position. We find no merit to this explanation. The Respondent did not conduct a public sale of LCF, but merely sent out letters to three of its vendor companies, in mid-June, soliciting their interest level in purchasing LCF. Accordingly, as there had been no real effort to sell LCF, there is no basis for finding that the "business as usual approach" was consistent with an intent to dispose of LCF because of its unprofitability.

[26] Assuming arguendo, however, that the fabricated letter reflected an actual conversation, we find that such a fact, when considered within the context of the entire record, would not establish that the Respondent intended to close LCF for financial reasons.

Respondent to endure an indefinite period of offsetting LCF's losses with profits from its other facilities.[27]

Accordingly, we conclude that, instead of requiring the Respondent to reopen its financially unprofitable operation, the Respondent's unfair labor practice will be sufficiently remedied by a full make-whole order covering the employees of the closed operation. See generally *Purolator Armored, Inc.*, 268 NLRB 1268 (1984), enfd. 764 F.2d 1423 (11th Cir. 1985); and *Great Chinese American Sewing Co.*, 227 NLRB 1670 (1977), enfd. 578 F.2d 251, 255 (9th Cir. 1978). Therefore, we shall order the Respondent to make whole all employees employed by LCF who were terminated as a result of the discriminatory decision to close that operation. We shall require the Respondent to offer each of the discriminatorily terminated employees reinstatement to a position in its existing operations that is substantially equivalent to the employee's former position, with appropriate moving expenses, giving the employees preference in order of seniority. In the event of the unavailability of jobs sufficient to permit immediate reinstatement of all such employees, the Respondent shall place those for whom jobs are not now available on a preferential hiring list for any future vacancies which may occur in substantially equivalent positions within the Respondent's operations. We shall order the Respondent to make the employees whole by paying each of them a sum of money equal to the amount that would have been earned from the date of termination to the date the Respondent makes an offer of reinstatement, computed in accordance with the Board's usual formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Additionally, because of the Respondent's widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, we find it necessary to issue a broad order, requiring the Respondent to cease and desist from infringing in any other manner the rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).[28]

ORDER

The National Labor Relations Board orders that the Respondent, LCF, Inc. d/b/a La Conexion Familiar and Sprint Corporation, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the closure of any of its facilities if the Union comes in.

(b) Interrogating employees about their union activities.

(c) Requesting that employees distribute antiunion buttons.

(d) Soliciting grievances from employees.

(e) Creating the impression of surveillance of employees' union activities.

(f) Implementing changes in employees' working conditions, including providing employees free food, paid time off, and raffles of items of monetary value, because of the employees' union activity.

(g) Closing any facility, transferring its operations, and terminating its employees because of their union activities.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, offer each of its former LCF employees reinstatement to any position within the Respondent's operations that is substantially equivalent to the employee's former position, with appropriate moving expenses, giving the employees preference in order of seniority. In the event of the unavailability of jobs sufficient to permit immediate reinstatement of all such employees, place those for whom jobs are not available on a preferential hiring list for future vacancies which may occur within the Respondent's operations.

(b) Make its former LCF employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Mail to the last known address of each of its former LCF employees a copy of the attached notice marked "Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's representative, shall be duplicated and mailed, at its own expense, immediately upon receipt thereof.

(d) 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.

[27] We note that the Charging Party has not requested a reopening remedy, but rather seeks a remedy requiring the Respondent to make whole its employees with backpay and offers of reinstatement to positions at the Respondent's existing facilities.

[28] We note that although the judge, in the remedy section of his decision, recommended the narrower cease-and-desist language, his recommended Order includes the broad language we have included in our Order. No exceptions were filed to the judge's broad order.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the closure of any facilities if the Union comes in.

WE WILL NOT request that employees distribute antiunion buttons.

WE WILL NOT solicit grievances from employees.

WE WILL NOT create the impression of surveillance of employees' union activities.

WE WILL NOT implement changes in employees' working conditions, including providing employees free food, paid time off, and raffles of items of monetary value, because of the employees' union activity.

WE WILL NOT close any of our facilities, transfer our operations, and terminate our employees because of their union activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer each of the former LCF employees reinstatement to any position within the our operations that is substantially equivalent to the employee's former position, with appropriate moving expenses, giving employees preference in order of seniority. In the event of the unavailability of jobs sufficient to permit immediate reinstatement of all such employees, WE WILL place those for whom jobs are not available on a preferential hiring list for future vacancies which may occur within our operations.

WE WILL make whole the former LCF employees for any loss of earnings and other benefits suffered as a result of the discrimination against them.

LCF, INC. D/B/A LA CONEXION FAMILIAR AND SPRINT CORPORATION

Paula Katz, Esq., Jonathan Seagle, Esq., and *Leticia Pena, Esq.*, for the General Counsel.
Stanley E. Craven, Esq. (Spencer Fane Britt & Browne), of Kansas City, Missouri, for the Respondent.
Antonio Salazar-Hobson, Esq., of Burlingame, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in San Francisco, California, on November 8–10 and 15–17 and December 6–9 and 12–15, 1994. The charge was filed on July 18, 1994, by Communications Workers of America, AFL–CIO, District Nine (the Union). On September 12, 1994, the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations by LCF, Inc. d/b/a La Conexion Familiar and Sprint Corporation (jointly called the Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The complaint was amended on October 25, 1994. The Respondent's answer to the complaint, duly filed, denies that it has committed the unfair labor practices alleged in the complaint.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel, counsel for the Union, and counsel for the Respondent. On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

Sprint Corporation (the Respondent or Sprint) is a Kansas corporation with its principal office and place of business located in Kansas City, Missouri, and with an office located in San Mateo, California, is engaged in the business of providing interstate and international telecommunications services. In the course and conduct of its business operations, Sprint annually receives revenues in excess of $1 million.

LCF, Inc. (the Respondent or LCF) is a California corporation with its principal place of business formerly located in San Francisco, California, where it was engaged in the business of providing interstate and international telecommunications services. In the course and conduct of such business operations, LCF had annual gross revenue in excess of $1 million.

At all times material, Sprint and LCF have been affiliated business enterprises with common directors, ownership, and management; they have formulated and administered a common labor policy; and they have provided services for and made sales to each other. From about January 1, 1992, to July 14, 1994, when the business operations of LCF were discontinued, the two entities constituted a single integrated

[1] The General Counsel's motions to correct the transcript are granted.

enterprise and single employer within the meaning of the Act.

It is admitted and I find that at all times material Sprint and LCF have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issue presented by the complaint is whether the Respondent has violated Section 8(a)(3) and (1) of the Act by discontinuing the business operations of LCF on July 15, 1994, because of the union activity of its employees.

B. *The Facts*

1. Background

On December 10, 1992, Sprint entered into an asset purchase agreement with a telecommunications reseller called La Conexion Familiar, Inc., a company based in San Rafael, California, whereby Sprint established a wholly owned subsidiary, which it named LCF, and this entity purchased all the operations of La Conexion Familiar. The purchase price for La Conexion Familiar was contingent on the future profitability of LCF in accordance with a matrix or schedule contained in the purchase agreement. Further, it was agreed that the principal owners of La Conexion Familiar would continue to manage and operate LCF pursuant to employment agreements; thus, these managers would be receiving periodic payments for the purchase of La Conexion Familiar in amounts that were dependent on their successful management of the business.

In June or July 1993, Sprint moved LCF's telemarketing operations from San Rafael to downtown San Francisco. It was preparing for a greatly expanded work force, and wanted to be near an employee market from which it could select qualified Spanish-speaking individuals who could be readily trained as telemarketers. At about this time certain problems immediately developed in the relationship between Sprint and the principals of La Conexion Familiar, including the fact that Sprint had not been advised that the great majority of the 50 or so telemarketing employees of La Conexion Familiar were undocumented aliens and were ineligible to continue in the employ of LCF. Thus, in June 1993, as result of this and other matters, Sprint decided that it no longer wanted to complete the purchase of La Conexion Familiar, and instituted a recission lawsuit whereby Sprint tendered the business back to its principals. The principals, who were also the current managers of LCF, would not agree to the recission of the purchase agreement and responded with various counterclaims. As a result, Sprint was placed in the position of having to continue the operations of LCF during the pendency of the lawsuit. Thereupon, it replaced the principals with its own Sprint managers, but was obligated to continue to pay the principals' salaries in accordance with their employment contracts even though they were no longer involved in the day-to-day management of the business. During the period of the pendency of the recission lawsuit, Sprint operated the business in a "holding pattern" as the future of the transaction was indefinite. Ultimately, in January 1994, the lawsuit was resolved: Sprint agreed to continue with the purchase of the business but with a substantial reduction in the potential amount to be paid to the principals; and the employment contracts with the principals were canceled.

The Respondent admits that it proceeded with and completed the purchase of La Conexion Familiar because it anticipated that LCF would be a highly profitable business venture. LCF was a "full function stand-alone long distance carrier." Thus, it did not merely serve a telemarketing or sales function for Sprint as did several independent Sprint subcontractors that telemarketed Sprint products. Rather, it was an independent entity that not only sold long-distance service to new customers, but also dealt with the involved process of activating new accounts after the selling function was completed. Further, it had its own customer service department, human resource department, and financial department. It was to be evaluated as a separate and distinct entity, and its management was responsible for the full range of its business operations.

Premised on the recent influx and the expected continuation of a very pronounced increase in the migration of Spanish-speaking immigrants into the United States, Sprint management predicted remarkable growth in LCF's operations. Essentially, LCF was a "niche" telemarketing business which targeted the Latino community and attempted to sell long-distance service to, in particular, recent immigrants who spoke only or primarily Spanish and who frequently made long-distance calls to family or friends in Mexico. LCF was advertised and marketed as a business "by Latinos for Latinos," and was designed to appeal to customers who felt more comfortable communicating by telephone in their native language. Thus, its telemarketing and customer service representatives were entirely Spanish speaking, and when a customer dialed "O" for the long-distance operator or had a problem with service, the customer would not have to request a Spanish-speaking operator or service representative; rather, a Spanish-speaking operator or representative would automatically provide assistance. Finally, the customers' bills were in Spanish. The charges for LCF's services, however, were higher than the corresponding charges for Sprint's other customers, but it was believed that the Latino customers would be willing to pay a premium for the customized services they were receiving.

The operations of La Conexion Familiar during its approximately 8- or 9-year existence prior to its acquisition by Sprint appeared to validate this belief, as the business seemed to be profitable and growing. As noted above, Sprint, with the ability to provide managerial assistance and an infusion of operating capital for expansion, anticipated even greater profitability and continued growth from the very outset. Thus, this was not a startup or experimental operation that was expected to incur an initial operating loss during the early stages of its existence.

The "business case" projections for the profitability of LCF which culminated in the ultimate business decision to purchase La Conexion Familiar were made by a division of Sprint called the Diversified Brands Group or DBG. At the end of 1992, prior to the initial purchase agreement, the research conducted by DBG resulted in very favorable projections for each of the five succeeding calendar years. In February 1994, after the settlement of the recission lawsuit, the operation of LCF was transferred from DBG to a different business division of Sprint, namely, the Consumer Services Group or CSG, headed by Wallace Meyer, vice president of sales and International, Consumer Services Group. This division of Sprint focuses on the residential consumer. The 1994 budget for LCF, which was transferred from DBG to CSG, required that CSG produce the following results for 1994: customer revenues of $70,009,000 and an operating margin or profit of $7,914,000.

From about July 1993 through March 1994 the Respondent increased its force of telemarketers and service representatives from about 25 or so to about 177, and up until the closing of the facility on July 14, 1994, it was continuing to hire telemarketers.

2. LCF's financial problems

By March 1994,[2] it was realized by Wallace Meyer, vice president of sales and international for CSG, and his financial team, headed by Jeffrey Balagna, that LCF was not at all performing in accordance with the predictions of DBG, and that if the business continued to deteriorate throughout 1994 as it had during the first 3 months of 1994, revenues would be less than half of what had been budgeted. Thus, rather than earning a profit of nearly $8 million, LCF was on its way to suffering a loss of nearly $4 million, resulting in a negative variance of nearly $12 million from the budget that it had inherited from DBG. This ominous forecast was predicated on the fact that the customer base, or the number of current customers who had signed up for LCF's long-distance services, had declined from 130,000 in January to 120,000 in March. Moreover, another interrelated economic indicator, the churn rate, or the percentage of customer base lost each month, was 20.5 percent, 18.5 percent, and 22.5 percent for the months of January, February, and March 1994, respectively. Thus, it was clear that because the churn rate was so great, the telemarketers were unable to replenish the customer base with enough new customers to even keep the customer base stable. In addition, the telemarketers were finding it more difficult to sell the product to potential customers, as indicated by the fact that during the same 3-month period sales per hour for each telemarketer declined from 1.62 to .84, or a reduction of about 50 percent.

This surprising and unexpected business decline compelled Meyer and his group to undertake a number of steps to identify and rectify the problems and to turn the operation around. As a result, LCF's general manager, Steve Kirkeby, and LCF's director of Consumer Services, Ed Racine, both "resigned" in March. These individuals had replaced the principals of La Conexion Familiar during the period of the recission lawsuit. Meyer, who was based at the Respondent's headquarters in Kansas City, began to spend at least 1 day a week at LCF which, as noted above, had moved its offices from San Rafael to downtown San Francisco in order to take advantage of the Hispanic labor force that was readily available. Further, Meyer assigned a number of Sprint specialists from Kansas City to assist in the turnaround efforts, and a new calling plan called "Aqui Contigo" ("Here With You"), which included a $25 rebate after 3 months with LCF, was developed to assist the telemarketers in selling the product. Finally, Meyer contacted employment agencies in order to find a replacement for the former general manager.

[2] All dates or time periods hereinafter are within 1994 unless otherwise specified.

3. Union activity; threats and interrogation

The union activity commenced in early February. Certain employees contacted the Union and maintained that they were being treated unfairly and were not being paid the sales commissions which they had been promised. The union began an organizational campaign which began shortly thereafter and which continued to gain momentum, and it was not long before the Respondent's managers learned that its telemarketing employees were attending union meetings and otherwise engaging in union activities. In this regard, the parties stipulated to a number of instances of interrogation and threats of plant closure, and further stipulated that during the course of a number of supervisors' meetings the supervisors were specifically told by Telemarketing Manager Laura Cerritos to relate to the employees that LCF would be closed if the Union came in.

Thus, on February 14, then Director of Consumer Services Ed Racine interrogated an employee about her union activity and about what had occurred at a union meeting. During this conversation, Racine also advised the employee that LCF's employees had a right to go to the Union if they wanted to, and that there was nothing LCF could do about it.

Angelia Ardon, a telemarketer, was apparently the first LCF employee to contact the Union. Ardon testified that in March she entered the office of Wallace Meyer and had the following conversation with him:

> I went to see Mr. Meyer because I was upset because they didn't pay me commissions, and I told him that I was waiting for my commissions, plus I told him that it was time to receive an increased salary. And he told me he was not—if I was unhappy, why don't—why don't I leave the place. And I say no, I don't going to leave, why don't you fire me. And I told him I was very upset. He yelling at me, and I was upset too. And I say is one of the reason that we really need the union in this place. And I say also I am going to go to the TV, to the newspaper, also to the radio, and I am going to expose you.
>
> And he told me that the union would never come in, just in my dreams.

Meyer gave the following account of the conversation: Ardon barged into the conference room which Meyer was using as a make-shift office during one of his visits to LCF and said she was upset about some commissions that she thought she was owed. Meyer told her that he didn't have any knowledge of such matters and that there were people more knowledgeable whom she should talk to. Ardon, according to Meyer, went on explaining her problems for some period of time. Ardon then said that she was upset about this, and requested that "I want you to fire me." Meyer said that was not how Sprint operated and he didn't understand why she would want to be fired. Meyer then summoned Human Resources Manager Anita Roman, who occupied an office in an adjoining room, and for the next 5 minutes Roman and

Ardon had a conversation about the commission problem; from the nature of their conversation it appeared to Meyer that they had spoken before. Meyer testified that neither he nor Ardon said anything about the Union during the course of their conversation.[3]

On about March 1, simultaneously with Racine's departure, Laura Cerritos became telemarketing manager. It appears that Cerritos was in charge of approximately 12 or 13 telemarketing group supervisors, each of whom supervised a team of about 8 to 10 telemarketers. In March, Cerritos alerted the LCF group supervisors that there was a union organizing drive underway, and that the ''Union issue was going to affect their jobs as telemarketing managers.''

In mid-March Group Supervisor Arturo Joya interrogated an employee about her union activity and told her that Sprint was a nonunion company that did not deal with unions, and that those employees who were for the Union would not be there long and would be fired, and that LCF would close and all the employees would lose their jobs. Sometime prior to April 19, Group Supervisor Dina Amaya told employees that LCF would terminate any employees found with union information pamphlets in their possession. In April, Group Supervisor David Diaz told his group of telemarketers that if the Union came in it was possible that LCF would close.

On an unknown date after April 11, Telemarketing Manager Cerritos met with the group supervisors in the telemarketing and customer service departments. She asked them to write down on a piece of paper the names of those employees under their supervision who were involved with the Union, and to keep their eyes and ears open and pass along to her the names of other employees who were engaging in union activities. At this meeting one group supervisor asked whether LCF would close its operations if the Union came in, and Cerritos answered yes.

During each of about six meetings in April and May, Group Supervisor Norma Cejas told her group that Sprint would not allow unions at their companies, and that if the Union came in, LCF would close its doors. At one of these meetings Cejas said that she had knowledge that the LCF employees were organizing a union and that a petition was being circulated for that purpose.

On about April 27, Dave Sapenoff, Sprint's group manager, corporate labor relations, who was headquartered in Kansas City, met with the telemarketing and customer service group supervisors and discussed the Union's organizational campaign. During the course of the meeting one of the group supervisors asked whether LCF would close if the Union came in, and Sapenoff said that LCF was not planning on closing. Sapenoff distributed blank cards to the supervisors and asked them to write down the names of the employees in their respective groups who were prounion; he collected the cards prior to the end of the meeting. He told the supervisors to attempt to get the employees to change their minds about their support for the Union.

Also on April 27, Sapenoff spoke to the LCF employees during a series of group meetings. He told them, in effect, that bringing the Union in was not a guarantee that things would get better. He showed the employees a large chart of the Sprint organization and pointed out which of the facilities were unionized and which were not. The employees asked him whether Sprint would close if they voted for the Union, and Sapenoff replied that it would not close because that would be illegal. He was asked why supervisors were telling employees just the opposite, that is, that Sprint would close LCF if the Union was voted in. Sapenoff replied that he did not know why the supervisors were making such comments and that he would look into it. He was also asked whether LCF would close down its current facility and reopen at another location under another name if the Union came in, and Sapenoff said no, because that, too, would be illegal.

Shortly after his return to Kansas City from the April 27 visit to the LCF facility, Sapenoff reported to his superior, Carl Doerr, a Sprint vice president, that there was a real possibility that the Union would be filing a representation petition.

Employee Angelia Ardon testified that in early May she had a conversation with Jennifer McLaughlin, a Sprint employee who had been brought in by Meyer as acting director for sales and customer service in place of Ed Racine who had departed earlier. Ardon testified that during a discussion with McLaughlin regarding Ardon's continuing insistence that she was not receiving the telemarketing commissions that had been promised her, McLaughlin told her that she could leave the place if she was unhappy. Ardon said that she was trying to bring the Union in and, according to Ardon, McLaughlin replied that the Union would never come in, and that the Employer would close if the Union came in.

McLaughlin testified that she did have a discussion with Ardon about her commissions. Ardon said that she had been promised commissions for a period of time that she worked during the tenure of Kirkeby and Racine. McLaughlin replied that it appeared to be a verbal agreement and she would ''research it'' and make her decision regarding the matter. McLaughlin testified that there was no mention of the Union or that LCF would be closed if the Union came in, and added that, ''At that time [Ardon] expressed her frustration working and not receiving commissions, and she stated that Sprint was simply a company out to exploit the Latino market, and indicated that I too, being a part of Sprint, was racist.''[4]

On an unknown date in May, Telemarketing Manager Cerritos told the telemarketing and customer service supervisors that the Union was gathering signatures in order to be certified as the representative of the employees, and she again instructed them to keep their eyes open and report to her anything out of the ordinary. Further, sometime after May 1, Cerritos met with supervisors and managers and told

[3] I credit the testimony of Meyer as he appeared to be a credible witness and the testimony of Ardon is, in my estimation, the least probable. It appears that Ardon may be getting her actual conversations confused with her personal beliefs. Thus, Ardon, perhaps the most active union adherent, testified that, in addition to conversations with Meyer and Jennifer McLaughlin, infra, she had several conversations with Telemarketing Manager Cerritos regarding the Union, and that Cerritos told her ''the union just coming in like in my dreams.'' This is virtually identical to what she claims Meyer said to her. It is unlikely that both Meyer and Cerritos would have uttered the same rather uncommon and sarcastic retort.

[4] I credit the testimony of McLaughlin who appeared to have a vivid recollection of the conversation. Moreover, McLaughlin testified at length and credibly regarding other matters. Conversely, Ardon did not impress me as a witness who was attempting to present an unbiased, factual recitation of her various conversations. See fn. 3, supra.

them that it was important that the supervisors understand that Sprint was a nonunion company and would never have a union. She asked them to tell her who was strong for the Union, and wrote down the names that the supervisors gave her. She directed the supervisors to explain to the employees what would happen if the Union came in, namely, that there would be layoffs, there would be no more work, and that Sprint would close LCF and never reopen it. She told the supervisors to ask the employees what they thought about the Union, and to report back to her the results of their inquiries.

Thereafter, on several other occasions, Cerritos met with supervisors and managers and reiterated that it was the policy of Sprint to remain nonunion, and that when the subject of the Union came up they should tell their people that if the Union came in there would be layoffs, there would be no more work, and that LCF would close and would never reopen.

4. Meyer's involvement with LCF

Wallace Meyer began working for Sprint as vice president of Sales and International in April 1993. Prior to that time he was not associated with Sprint and had nothing to do with the acquisition of LCF. He is responsible for generating the sales and revenue for CSG, which is a division of the long-distance group of Sprint, as well as running the marketing functions for the international calling consumer group. He has sales responsibility for $2.5 billion in sales annually, and marketing responsibility for about $730 million in revenue. Meyer testified that he first learned that he would have management responsibility for LCF "a few days prior to February 1st" of 1994. He conducted a meeting at the LCF facility on February 1 and 2 in order to review the current activities of LCF and the health of its business operations. Meyer assigned Jeffrey Balagna to serve as his ongoing prime conduit for gathering and analyzing LCF financial information. Serious deficiencies were brought to light, and Meyer made an immediate decision to refrain from expanding the telemarketing operations into other states as had been previously proposed by LCF management. Thus, Meyer testified:

> The decision was not to expand geographically. We debated the issue about expanding from the base of operations, which was largely California, some surrounding states and Texas, into New York and Florida, and a couple of other more minor areas. And my feeling was that that was not at all an appropriate or prudent business decision, that is to expand, until we had fixed the problems at home so to speak, until we had proven the viability of the business in its primary working states. It also would have tremendously strapped the meager resources, for example from an advertising standpoint, that LCF had as it allocation.

Thereafter, Meyer received monthly accounting reports of the operations and, as he spent a day or so almost every week at the facility, he also received verbal reports from the managers regarding current sales productivity and churn rates. The trend for the months of January, February, and March were, according to Meyer, "increasingly disappointing." Meyer explained as follows:

> Disappointing from a couple of factors. Number one is what we had was a declining sales productivity rate in a market that was increasingly competitive, increasingly dynamic, increasingly difficult for a smaller company like LCF, because at that point in time the Big Three, particularly Big Three in long distance, particularly AT&T and MCI, were offering very significant discounts to international callers. And so with competitive pressure that was upon LCF, it became increasingly difficult to generate the level of sales and increasingly difficult to keep the customers in the LCF franchise.

The financial reports, noted above, substantiated Meyer's concerns.

Throughout the month of April, Meyer had ongoing discussions with individuals in Kansas City regarding the severity of the problem. Sometime after April 20 he also held a meeting with first level LCF supervisors and apparently all of the employees under their supervision, and projected a copy of the profit-and-loss statement on the wall. Meyer went through each item on the profit-and-loss statement and pointed out to them that the Company had been expected to make a profit of over $4 million for 1994, but the current projections showed that it would in fact lose over $7 million, and that there was approximately a $12 million variance between what had been budgeted as compared to the current outlook based on the most up to date financial information. Meyer testified that this outlook was "catastrophic."

5. The May 6 board of directors' meeting

On May 6, Meyer convened a meeting of the LCF board of directors in Kansas City. The information and issues presented to those in attendance were included in a lengthy written report which was projected, page by page, on a screen in the meeting room, and a detailed financial analysis of the business was presented by Meyer and Balagna. To those who participated in the meeting the material presented was simply a formalization and reiteration of what had been previously discussed since CSG took over the responsibility for LCF in February, namely, the aforementioned very negative outlook for the remainder of 1994. The report contains a section entitled "Key Issues, LCF Business Management Options." Option 1 proposes that the Board "Cease operations immediately." Option 2 proposes that the Board "continue operations through December 1994." The third key issue is as follows: "Absence of key LCF management personnel (VP/GM, Sales Mgr.) has caused CSG personnel to devote disproportionate amount of time, effort (relative to revenue importance) to fixing LCF problems. . . . When can LCF be expected to become self governing?"

Meyer, who advocated the shutting down of LCF immediately, testified that after discussion, the Board, in effect, tabled any final decision by requesting Meyer and Balagna to "thoroughly research and then report back at the earliest possible date, i.e. the next board meeting, to determine what the ultimate disposition of LCF should be." In the interim, Meyer was to look at several options for the disposition of the business, namely, attempting to sell the business to subcontractors of Sprint that engaged in telemarketing sales; relocating the business to "a less costly environment," and the possibility of employing a manager or professional managerial company to run the business. As a result of this interim decision by the board, Meyer requested and was given permission to hire a replacement for LCF's prior general manager who had been terminated in February or early March. The board minute of the meeting is, in material part, as follows:

> The Board was universal in its concern regarding the company's revenue shortfall from the 1994 budget and accompanying operating income loss. As a result, the Board will again review the company's financial performance against the revenue forecast in July at the next meeting. Also at the next meeting, six strategic options governing the disposition and longevity of the LCF, Inc. business will be presented. Those options are: (a) immediate discontinuance of current business, (b) sell LCF business and assets, (c) continue business as planned but review progress against revised financial objectives every 60 days, (d) employ an agent as business manager (i.e. Zacson), (e) relocate business to establish greater alignment/proximity to Sprint resources, and (f) continue business through at least December 1994 utilizing 1994 performance and 1995/96 financial projections as evaluation criteria.
>
> The Board also agreed to explore hiring of Mr. Maury Rosas as President of LCF, Inc. . . . in order to provide essential on-premises leadership at the earliest possible opportunity.

6. Maurice Rosas' tenure as LCF president; renovation of office space

Regarding the hiring of Rosas, Meyer testified that soon after the termination of LCF's prior general manager he had undertaken a search for a replacement utilizing an outside employment service and was provided with likely candidates for the position, one of whom was Rosas. The interview process had commenced prior to the May 6 board meeting, and Rosas had interviewed with all of the board members as well as the individuals at LCF who would become his direct reports. Thus, prior to May 6, it was determined that Rosas was the best candidate for the position. According to Meyer, "we had all, universally, been very impressed with his capabilities and were sure that, regardless of what ultimately happened with LCF, that we wanted to acquire this terrific talent and put him to work for Sprint." Meyer explained that it was very important to have a full-time manager in place at LCF as Meyer was there on the average of merely one day a week; further; LCF represented, on a projected revenue basis, less than 5 percent of his total revenue responsibility for CSG, but was then occupying up to 35 percent of his time.[5]

Meyer testified that at the time he made the formal job offer to Rosas he "described the economic fragility that LCF represented." Rosas, according to Meyer, said that he had done some homework and research regarding LCF and was well aware of the risks. Meyer testified that he might have told Rosas about the Board's decision with respect to LCF, "but I more likely would have described for him that it was not at all clear that in a more general sense that LCF would survive as an economically viable entity."

[5] Even with the losses attributable to LCF in 1994, Sprint's CSG unit was profitable.

Rosas and Sprint negotiated an employment contract which is dated May 13. The contract provides that Rosas' title will be "President" of LCF, and that he will be elected an officer of Sprint. His employment was to commence on June 1, and extends until May 31, 1995. A reading of the agreement indicates that Rosas' could receive some $225,000 for the term of his agreement, including salary, commencement bonus, potential incentive compensation of as much as $70,000 "which will be dependent solely upon LCF's achievement of its financial objectives," and automobile and miscellaneous allowances. Not included in the foregoing emoluments are a specified number of stock options.

Meyer introduced Rosas to the LCF employees in a general meeting. He related that Rosas had a lot of experience working with the Latino community, and would "bring the business up," and they would accomplish a lot of things together. Rosas then addressed the employees in Spanish and said that he had a lot of experience working with Pacific Bell and the Latino-Hispanic community, and he would do his best working for LCF.

Maurice Rosas is currently Sprint's general manager in charge of New Business Development for the Latino community, a position he was given on October 1, and is a corporate officer of Sprint.[6] Prior to his employment with Sprint he had recently retired from a 27-year career with Pacific Bell, and his last position with Pacific Bell was that of vice president and general manager of their Latino and Asian market group; further, he was loaned by Pacific Bell to the Rebuild Los Angeles program, and became an executive of that program, which was designed to help attract and reestablish a business environment in the South Central Los Angeles area after the riots and fires. In February, he was contacted by a search firm for Sprint. He interviewed with LCF board members in April, and his employment with Sprint began on June 1. Rosas testified that on being interviewed by Meyer he was told that there were "some challenges" that he would have to confront: that there was a lack of leadership, and lack of "teaming" at LCF; and that there was a very competitive market for the product. According to Rosas he was not apprised of the true nature of the situation which then existed: he neither knew of the May 6 board meeting, the troubled financial condition of LCF, or the seriousness of the problems that existed between the managers and employees at LCF.

On assuming the position on June 1, Rosas encountered what he described as a "chaotic" situation as evidenced by a lack of competent managers who had little managerial training and did not understand what teamwork was all about, and by a tremendous feeling throughout the organization of disrespect for people and people's capabilities; further, the foregoing was exacerbated, and perhaps exemplified, by the fact that the LCF facility was located on two different nonadjoining floors of the building, so that the managers were remote from the employees. From a financial standpoint Rosas encountered a real lack of knowledge by

[6] Meyer testified that Rosas is currently general manager of Latino new business development. Rosas' areas of responsibility are as follows: generating new business development for all of Sprint's Latino efforts; overseeing all of the community affairs and relations efforts "that CSG puts into the marketplace"; and acting as primary liaison between Sprint and the governmental affairs group of the Sprint Corporation.

LCF personnel as to what was happening in terms of the budget and expenditures; and Rosas characterized the business or marketing plan as "merely words" with no cohesive concentrated effort to, in effect, formulate or implement a workable plan directed primarily toward the most significant and immediate problem, namely, the retention of customers.

Thereupon Rosas set out to fix these problems and commenced to perform his duties and responsibilities on the assumption that the problems could be resolved and the business would be successful. Initially, Rosas engaged in extensive cost-cutting and disallowed expenditures that had previously been authorized. He also held numerous get-acquainted and informational and motivational meetings with the employees and supervisors in order to give them an opportunity to voice their concerns. He explained to the employees his belief that as the first Latino president of LCF, a company focused toward the Latino market, the employees could anticipate a significant and positive change in their relationship with management. Rosas conducted the business of LCF as if LCF were a viable business entity with a future, and had no idea that its very existence was exceedingly precarious. After June 1 employees continued to be hired, trained, and given monetary and other incentives for their good work; further, extensive office renovation continued, and on June 10, Rosas and other LCF staff moved from the eighth floor into new and very nicely appointed administrative offices on the seventh floor with a professional type office environment and a large employee cafeteria.

Regarding the expenditures for the leasing and renovation of LCF's new seventh floor space, which housed a new employee cafeteria and administrative offices, Balagna testified that the commitments for the "build-out," renovation, and move to the seventh floor had been finalized early in 1994. LCF had to vacate the eighth floor as the landlord had previously leased it to another tenant. Moreover, the landlord was funding the renovation of the seventh floor by expending some $400,000 of its own money. While LCF had to purchase approximately some $300,000 worth of capital assets such as computers, furniture, and fixtures in order to furnish the new office space, these assets are usable at other Sprint facilities and/or may be left for purposes of enhancing the attractiveness of the space for potential sublessees. Balagna testified that subsequent to the closure, infra, the computers and much of the office and conference room furniture were "redeployed" at other Sprint locations. At the time of the hearing, according to Balagna, he had been informed by the Sprint real estate group that there was a 95-percent chance that the space would be sublet to a prospective sublessee, and that LCF/Sprint would recoup about 90 percent of its lease obligation from the sublessee.

Rosas testified that as the new president and operating officer of LCF he was not preoccupied with the fact that there was an ongoing organizational campaign or that Union had filed a representation petition. He was comfortable with the CWA, having been in charge of some 900 CWA-represented employees at Pacific Bell, and believed that the union matter at LCF was being taken care of by Sprint personnel. Further, he was too busy with the other matters, noted above, to become involved with this issue.

7. Continuing union activity; continuing unlawful conduct by LCF supervisors

Meanwhile, the union organizational activity was continuing apace. On June 2, Telemarketing Manager Cerritos met with the LCF supervisors and told them that employees were going to wear prounion T-shirts to work the following day, and that there was a possibility of a strike or walkout. Rosas was made aware of the situation and spoke to corporate headquarters advising that he would handle the matter.

On June 3 the Union filed a representation petition with the Board. Thereafter, on June 22, the parties entered into a Stipulated Election Agreement, and an election was scheduled for July 22. The unit described in the election agreement is as follows:

> All full time and regular part-time telemarketers, activation employees and customer service representatives employed by the Employer at its San Francisco, California place of business, excluding office clerical employees, confidential employees, all other employees, guards and supervisors as defined in the Act.

On the same day, June 3, in conjunction with the filing of the petition, the Union promoted a T-shirt day, and over 100 of the approximately 177 bargaining unit employees wore or placed prounion T-shirts in plain view on their desks in the telemarketing, customer service, and quality assurance departments; over 50 percent of these employees actually wore their T-shirts on that day. Project Manager Jennifer McLaughlin asked various group supervisors to report the number of employees who were wearing T-shirts, and Cerritos gave similar instructions to other supervisors. After June 3 many of the 120 to 130 telemarketers wore prounion buttons on their clothing or displayed them on their desks.

Arturo Hoya worked for LCF from July 12, 1993, until its closing. He was a telemarketing supervisor. On about June 14, Hoya attended a meeting in the office of Telemarketing Manager Cerritos. During the meeting Cerritos said that the Company had reports that if the election were to be held within the next few days, the Union would win. She said that the employees would be the only ones who would lose as a result of the election because the facility would be closed, and added that the supervisors had nothing to worry about because they were management and Sprint would take care of them.

8. Efforts to sell LCF

Back in Kansas City, Meyer was exploring the various options proposed by the board. Apparently sometime in June he contacted three prospective buyers of the LCF business. These entities were telemarketing subcontractors of Sprint, and had an existing and ongoing financial relationship with Sprint. Meyer held telephone conferences, exchanged written communications including a packet of financial information and, in two instances, held meetings in Kansas City for the express purpose of describing and possibly negotiating the sale of LCF to one of these entities. Each of the three entities declined the offer and expressed their opinion that LCF was not a viable business opportunity. One of them, according to Meyer, after the exchange of information and a lengthy meeting in Kansas City, phoned Meyer and, in declining the offer, expressed his opinion that "it seemed to him that the business was very sick, heading south, in his words, and that if we couldn't turn it around he had no feeling that they would be able to either."[7]

Another company Meyer contacted, apparently sometime in June, performed telemarketing for Sprint's "Acercate" Latino-based product. The president of this entity wrote Meyer on June 21 as follows:

> Thank you for considering TelAc as a possible purchaser of La Conexion Familiar, Inc. After our initial discussion in Lenexa last Thursday, I was interested and intrigued by the opportunity of a LCF acquisition expanding and diversifying TelAc. I have revised the '94/'95 projections and financials you provided by mail and greatly diminished interest based on concerns identified in these materials.
>
> . . . .
>
> Last, I do not agree that LCF has a tremendous sales advantage over MCI, AT&T, or Sprint simply based on the implicit strength of their "Latino Network for Latinos by Latinos" statement. Our experience at TelAc since '92 in the Latino market is testament to the fact that Sprint's name has grown in recognition and respect by Latinos. Further, with the adoption of "Acercate" as a new product name and bills provided in Spanish, Sprint is a competitor for Latino market share to be reckoned with by LCF or any other specialty re-seller.

Meyer testified as follows regarding Sprint's rationale for not offering to sell LCF to AT&T or MCI:

> Had we entered into any conversations with either of our two largest competitors for the sale of LCF, it immediately would have lost all the value of the entity that we were trying to sell, because they immediately would have entered into a combative acquisition strategy of LCF users, thereby voiding anything that would be for sale.

9. The July 6 board of directors' meeting

Meyer testified that the overall business outlook for LCF continued to decline, and on July 6 another LCF board of directors' meeting was scheduled in Kansas City. Rosas, who had been made a member of the board, arrived in Kansas City on July 5, and met with Meyer that afternoon. Rosas testified that Meyer asked him how he thought LCF was going after some 5 weeks as president, and Rosas replied that he had "some grave concerns about the loss of customer base, the heavy impact of competition that I think was eroding our customer base." Also he said that he was very disappointed that there was no established marketing plan or a plan to control the churn, and was "very concerned" about the budget. Meyer said that he appreciated Rosas' views, and advised him that in addition to the progress report that Rosas would be presenting during the first part of the board meeting, there would be a discussion of some options regarding what was going to happen with LCF that had been under review for the past few months. Then Meyer "shocked" Rosas by adding that one of these options was to close LCF. During this meeting, according to Rosas, there was no mention of the Union's organizing drive or the pending election at LCF.

At the board melting the following day Rosas spoke "for an hour or two," but his recollection of what he said or what questions were asked of him by the other board members is "foggy" due to the fact that he was preoccupied with Meyer's statement about the possibility of the closure of LCF. Meyer then turned the meeting over to Balagna who presented the financial analysis. After Balagna's presentation, according to Rosas, "there were very few pros for keeping the company open, in fact, if there were any . . . from a business sense perspective it had to close because of the financials." The vote was unanimous for closure. Rosas abstained from voting, and did not argue in favor of keeping the company open as, "I couldn't do that, not with the financials." During the board meeting there was no discussion the union activity or the pending NLRB election.

Rosas testified that LCF was losing 1-1/2 customers for every customer that was being activated, and "at that rate, eventually we would have run out of customers . . . so without having customers in your customer base, you're going to run out of revenues." Regarding the possibility of reducing its rates in order to retain customers, Rosas testified as follows:

> This company was on a course of disaster, and the vector was—was failure, if in fact we kept reducing the amount of money that we charged. The small companies cannot do that. And this company could not compete with the giants in the industry on low cost. So what it had to do was move into an environment of how do we keep the customers that we have, and that's what this whole retention plan was aimed at, is how do we keep the customers from leaving. It isn't so much going out there and bringing them in; its keeping them once you have them. But you cannot compete on price with the larger players in this . . . industry.

Regarding plans to expand its customer base by telemarketing its product from its LCF facility into States other than California and Texas, thereby utilizing fresh and unrecycled lists of prospective customers in areas that have not previously been canvassed by LCF, Rosas testified as follows:

> There was this need and desire by . . . people on my staff to go into other areas of this country, where the real opportunity is in California. When you take a look at the demographics in California, if it can't work here, if you can't make it work here in California, it can't work anywhere else. The largest concentration of

[7] It should be noted that none of the officials from these three companies were called as witnesses in this proceeding. However, the record indicates that the General Counsel has contacted and/or taken affidavits from these individuals and there is no record evidence that contradicts Meyer's testimony in this regard. Moreover, according to the testimony of Balagna who prepared the financial package for these entities, the business of LCF was somewhat enhanced for purposes of this "prospectus" and was portrayed in as favorable and optimistic a light as was ethically possible ("perfuming the pig" was Balagna's terminology); the record evidence substantiates Balagna's assertions in this regard. There is no claim that the financial condition of LCF was negatively misrepresented to the prospective purchasers in an effort to make LCF less attractive than the financial and other information warranted.

> Latinos is in this state. If you just did some deductions as to the numbers, and we were in a niche market, we were not looking at the entire Latino community. We were in fact looking at what our niche was, and our niche . . . was those newly arrived immigrants who came in, who had been here for a year or two, who spoke very, very little English, and that's who we targeted.
>
> . . . .
>
> My thought was, in taking over this job, that we needed to focus in the California area, particularly in the Los Angeles area, and in the Central California area where there was large pockets of our niche market. I didn't see us going outside the state, initially, and not for a year or two at least, until we could see if we could penetrate a ten percent [sic] into the existing marketplace. I figured if we had ten percent of two million customers . . . that's quite a number of customers, I think.
>
> So my focus to this market plan was lets do it here in California, and let's do it well here. Then, as it works, let's learn and let's move across the state. But let's just not go and throw pockets, because that was the plan, was to go and throw pockets over here and throw pockets over here, and catch what you could.

Meyer testified that at the July 6 board meeting the key "parameters" or measures of the health of the business for the performance of LCF during the months of May and June were compared with the same parameters for the first quarter of the year, January through April. It was clear that these parameters, namely, new activations, the end of the month customer base, gross revenues, and billable call minutes, each reflected declines. A key indicator utilized by LCF called the "T-Ratio" (or trouble-ratio) was 1.41 for the month of May, meaning that LCF was losing 1.41 customers for every customer that it was acquiring. Meyer, having explored and dismissed the various alternative proposals put forth by the board at the May 6 meeting,[8] recommended that the LCF operations be discontinued immediately. Meyer testified as follows:

> Number one is, notwithstanding our best efforts to try to turn the business around, none of that had had the pronounced positive effect, so there was no reason to hold that there would be any magical turnaround at a point in time down the road.
>
> And, number two, is the only reason that one would delay a closing of the business at that point in time is if one felt that one didn't have sufficient information to make the decision, and that clearly was not the case. We not only had the information that identified the fact that La Conexion was missing its budget significantly, to the tune of 12 million dollars, we had the fact that the business was experiencing unreasonable levels of churn, unacceptably low levels of sales productivity, and was competing in an environment that was so dynamic, so competitive that it was improbable, if not impossible, to launch a product that would be viewed as competitive by the LCF customers.

Thus, according to Meyer, it was believed that even if given more time the relatively new "Aqui Contigo" product which the telemarketers had been selling for some 2 months would not be sufficiently successful to bring about a turnaround in the business.[9] In the first 6 months of 1994 the "long distance wars," according to Meyer, had shifted from the domestic long-distance arena to the international long-distance arena, and as mentioned above, LCF was geared toward customers' who primarily made long-distance calls to Mexico. Meyer testified that during this period of time, Sprint, MCI, and AT&T "stood up to the challenge of that war and offered extraordinary discounts for international long distance callers," and that, accordingly, "The ability for a smaller company to compete in a category on price . . . was, I think, far and away the biggest reason for LCF's demise."

Finally, regarding the original concept of LCF as catering to the ethnic Latino customer who, it was believed, would pay a premium for customized service, Meyer testified that this marketing concept proved to be flawed, and that the continued erosion of the customer base clearly proved that LCF's customers and potential customer were motivated more by price rather than convenience or ethnicity. According to Meyer, this explains why LCF was not permitted to remain in business for a longer period of time in order to assess the effectiveness of its Aqui Contigo product. Meyer testified as follows regarding this business determination:

> Aqui Contigo might have worked only if competition, specifically AT&T and MCI, had not offered superior discounts in the marketplace during the same time that Aqui Contigo was launched in the subsequent two or three months. To have given it additional time wouldn't have proved anything. The problem related totally to being a disadvantaged product in the price discounts that LCF, as a smaller company, was able to provide vis-a-vis the large discounts that AT&T and MCI were able to provide.

Further, according to Meyer, Balagna had presented to the board a "return on investment" analysis which showed that the moneys that would have otherwise been invested in LCF would be better spent in other directions, thereby protecting shareholder value. Thus, Sprint, in addition to LCF, marketed

[8] It was determined that relocating the business to a less costly environment would simply add the burden of relocation costs to a business that was losing money; that the hiring of an outside manager to run the business was not a viable alternative as Sprint believed there was no one who could run the business any better than Sprint; and, as noted above, that there were no prospective purchasers for LCF. Further, none of the efforts to turn the business around, namely, the new promotional telemarketing solicitation program, Aqui Contigo, or other incentives, had a pronounced positive effect.

[9] During the course of the testimony of Edward Racine, who was employed as director of consumer services for LCF until about the end of March, Racine testified that Aqui Contigo was an "absolute disaster and should have never been implemented" because that product made LCF similar to the "Big Three," namely, AT&T, MCI, and Sprint, in terms of consumer appeal, yet LCF "did not have the ability to compete with everybody else." Jennifer McLaughlin, Racine's successor, took a somewhat less negative view of Aqui Contigo, but nevertheless testified that Aqui Contigo did not "really set itself apart from any competitor's products," and that LCF "as a whole [was] not doing very well, the customer base [was] declining by 20,000 plus customers a month."

its own "Latino brand," which was designed to appeal to the entire Hispanic market including the LCF niche or submarket of Spanish-speaking Latinos,[10] and it was demonstrated that a dollar spent by Sprint on its own Latino brand would result in an immediate and positive return on investment, whereas continued expenditures to attempt to resuscitate LCF would result in even greater losses.

After the vote the board members turned to the issue of the closure of the facility. The board directed that the closure be conducted with the utmost dispatch and confidentiality in order to minimize the amount of LCF's losses and the further erosion of its customer base, which would be automatically transferred from LCF to Sprint. Meyer explained as follows:

> The decision would have to be confidential for a variety of reasons, the most salient of which is that should the competition learn of our decision, then we could expect that the customers would be barraged by competitive offers to switch long distance companies . . . and it would deteriorate the customer base significantly.

Jeffrey Balagna testified regarding his involvement with the July 6 meeting: He obtained the necessary financial documents and prepared related charts, graphs, schedules, assumption analyses, strategy alternatives, recommendations, and other information necessary for a comprehensive study and evaluation of the future of LCF, and assembled these documents into a 57-page information packet or report which he distributed to each of the board members and projected on a screen in the board room during the course of his July 6 presentation. Balagna testified, and the record indicates, that on July 5 he received from the LCF accounting finance department a document showing that a June 30 audit of LCF's customer base disclosed that the customer base had declined to about 85,000 customers, and that the true customer base was some 21,000 customers less that the stated customer base of 106,000 which figure had been utilized by Balagna for purposes of the foregoing financial analysis.[11]

Balagna testified that at the July 6 meeting Dave Schmieg, who was president of CSG, a member of LCF's board of directors, and Meyer's superior, opened the meeting by stating "that the decisions we were about to make were based solely on the economic justification that is set forth" in the financial documents.[12] Neither Schmieg nor anyone at the meeting made any comment about the union activity or the scheduled NLRB election.[13] Balagna made a 30-minute presentation. The documents presented to the Board demonstrated that LCF had in fact incurred an actual net loss of well over $2 million during the first 6 months (January through June) of 1994 whereas the 1994 budget had anticipated nearly a $3 million profit for the first 6 months. Further, for the entire year, which was reflected by 6 months of "actuals" and 6 months of "outlook" or "forecast," LCF would lose about $4-1/2 million in contrast to the 1994 budget which anticipated nearly an $8 million profit. Thus, the variance between the foregoing amounts, namely, between the 1994 budgeted amount (a substantial profit) and the 1994 outlook amount (a substantial loss), was a difference of well over $12 million.

Further, the documents demonstrated that average monthly sales during the last 2 months (May and June) were down from the corresponding average figures for the first 4 months of the year, and that during this same 2-month period the customer base had declined by about 16,000 customers.[14]

The "strategy alternative" of continuing the business through 1994 was not recommended because, as stated in the report:

> • Sufficient data exists now to formulate a specific decision/course of action regarding the future of the LCF business.
>
> • Immediate curtailment of the LCF business would have approximately a $4 M positive impact on total CSG Market Margin.[15]
>
> • The underlying business trends do not suggest that the outcome of a December 1994 decision would be different from a decision made now.

Further, Balagna prepared a comparative analysis of the investment of moneys in LCF as compared with the investment of the same amount in Sprint's Latin "Acercate" program for telemarketing and acquiring Latin Market customers. This analysis shows that further investment in LCF would result in a sizable loss whereas the same amount invested in Acercate would result in a significant profit.

The final page of Balagna's report contains the recommendation "That the Board adopt a resolution requiring

[10] In this regard, LCF and Sprint were "competitors." Jennifer McLaughllin, acting director for sales and customer service, testified that Sprint and LCF "were competitors in terms of the products that they offered, and the fact that we could both be caught talking to the same person and trying to sell them Sprint versus LCF, but the bottom line is that the customer is, in the end, a Sprint customer."

[11] The true customer base was not easily ascertainable at any given point in time because various local exchange carriers or LEC's, such as, for example, Pacific Bell, billed LCF's customers and the LEC's records, rather than the records of LCF, reflected the accurate customer base.

[12] It was stipulated that both Dave Schmieg, president of CSG, and Wallace Meyer, vice president sales and international, consulted with Jill Ferrel, counsel for Sprint, for legal advice prior to the conducting of the July 6 LCF board meeting and that Ferrel provided legal advice.

[13] Schmieg did not testify in this proceeding and the Respondent presented no evidence explaining the significance of Schmieg's somewhat vague and ambiguous introductory remarks. The General Counsel maintains that this language is indicative of an understood but unexpressed agenda relating to the forthcoming union election, and shows that the election was on Schmieg's mind at the time. That is certainly a valid interpretation. Another not-inconsistent interpretation is that Schmieg meant that he did not want the board members to be influenced by anything extraneous to the financial condition of LCF, for example, the Union, or personal feelings for the LCF concept or for the employees who would be dismissed, or, in Rosas' case, his understandable pique at being hired without full disclosure of the precarious nature of his tenure with LCF.

[14] This figure, as noted above, was inaccurate, and the customer base had actually declined by more than twice as much.

[15] The figures, as set forth in Balagna's underlying analysis, show that the discontinuation of LCF on July 14, and the simultaneous transferring of the customer base to Sprint, would yield a 1994 profit to Sprint which, together with the absence of further projected LCF losses, would result in a "positive impact" of $4 million. In other words, shutting down LCF immediately would minimize CSG's projected 1994 losses by $4 million.

the dissolution of the LCF business.'' Further, should this recommendation be adopted, it was recommended that:

> • Implementation of the decision *must* be undertaken immediately to insure accurate delivery of the decision and its rationale to LCF employees as well as begin employment opportunity exploratories and transfers for LCF employees. [Emphasis in original.]
>
> • Further, rapid implementation of decision is required to insure customer base is maintained with highest service possible.

10. The transition team; closure of LCF

Anticipating that the Board would agree with his recommendation to close LCF, Meyer made Balagna chairman of the ''transition team'' and instructed Balagna to prepare for this contingency prior to the meeting. Balagna had previously contacted a number of individuals who would comprise his transition team, with expertise in handing a variety of matters that would be necessary to implement the closure, and had informed them that they were on call. All of the individuals were Kansas City personnel; the San Francisco managers were not advised that the closure of LCF was imminent. This transition team was called to a meeting by Balagna within about 45 minutes after the end of the board meeting. Respondent's vice president, Attorney Jill Ferrel, was present at the meeting[16] and, according to Balagna, she started the meeting off by indicating the seriousness of the situation and the confidentiality of the information that was about to be discussed. Balagna had all of the individuals sign confidentiality agreements,[17] told them of the decision that had just been made, gave them their respective assignments, and instructed them to proceed with the utmost dispatch as LCF would be closed on July 14, just 8 days later.

Balagna testified that the reason for the immediacy of the closure was as follows:

> The reason for the short period of time was that given the losses that we were incurring, there was no need to keep this opened any longer than possible, and it was determined that a week, approximately a week's time would be sufficient to get the task completed that needed to be done.
>
> . . . .
>
> Well, we were already losing [customers] at a very significant rate. And in order for us to preserve the single asset that we had that was revenue producing, that it was very important to us not to let anything get out in regards to the closing, because our competitors would sure love to know that we were closing this entity, and all of our customers would become additional prey [by] our competitors there.

In this regard, Balagna explained that the competitors would not specifically know the identity of LCF's customers, but it was feared that AT&T and MCI or other long-distance competitors could run promotions to acquire LCF customers prior to the time that LCF/Sprint was able to communicate with its customers, advise them that their long-distance service was being transferred to Sprint, and encourage them to remain with Sprint despite the demise of LCF.

The closure of LCF took place on July 14, and on that date the Respondent transferred the existing LCF customer base, which had by then declined to 76,532 customers,[18] to Sprint. Also on July 14, Sprint routed all customer service calls coming into LCF's facility to the Sprint Customer Services Center in Dallas. To handle this additional influx of customer service calls, Sprint hired additional Spanish-speaking customer service representatives.

On the afternoon of July 14 Rosas met with the LCF employees and announced the immediate closing of the LCF facility. He told the employees that he appreciated their efforts, and that they were being terminated immediately. The parties stipulated that during this meeting Rosas stated as follows:

> Rosas told employees that anyone who owns or has owned a business will understand the decision that the Company had made and he was going to announce to the employees. Rosas said that anyone who has had a business will understand that if a company is not doing well financially, the owner has no alternative but to close the company. Rosas said he regretted the decision that had been made by the Company. Rosas said the employees had done a hell of a good job, and that he knew that there were employees who were single mothers and heads of families, but that as of July 14, LCF will no longer open its doors. Rosas said that LCF was closing its doors due to financial difficulties. Rosas said that as the employees all knew, LCF had not been doing well in terms of sales, and that is why the decision to close had been made. He said that if he had been working as President of LCF the previous year, things might have been different. Rosas said that the Company would be giving the employees assistance in locating other work, and that the employees would receive job counseling. Rosas was very emotional when he spoke. Rosas spoke in Spanish and used a microphone.

11. Alleged admissions by Rosas and Doleman

On the evening of July 14 several people had decided to go to a restaurant for drinks and dinner and commiserate regarding the shocking events of the day. Rosas was invited, and sat near Rosie Orozco, an LCF employee, during dinner. Orozco testified, infra, that during the course of the dinner conversation Rosas confirmed that one of the reasons for the closure of LCF was because of the Union. Rosas denied that he made such a statement to Orozco, and further testified that, ''[The Union] was never an issue with me. It was never

[16] Attorney Ferell, who, the record shows, has had extensive NLRB experience as a Regional Office field attorney, was also present at the May 6 and July 6 board meetings. In addition, Ferrel had drawn up the employment agreement for Rosas, had given Meyer and apparently others advice regarding the Respondent's obligations vis-a-vis the Union, and had been involved in the internal investigation of Carl Doerr, infra, regarding the falsifying of a document.

[17] Balagna testified that it was customary to have personnel sign confidentiality agreements in situations where leakage of information may result in adverse consequences to Sprint.

[18] Balagna testified and the records reflect that this former LCF customer base declined to 44,733 as of November 2.

brought up in any discussion that I had with anyone at Sprint . . . . It [the decision to close] was strictly based—based on financials, and that's all it was."

Rosie Orozco had worked for La Conexion Familiar since April 1990, well before it was purchased by Sprint. She began as a telemarketer, and at the time of the closure she was an accounts payable specialist in the accounting department, a nonbargaining unit position. Orozco testified that about a month prior to the closure she had a conversation with Bob Glenn, director of finance and accounting, and asked him about the rumors that the Company would close if the Union got in. Glen told her that "nothing will happen to us, that the union will come as a schedule [sic]. If something will happen, it maybe will happen, you know, like next year or something like that." At about the same period of time Orozco had a conversation with Activations Department Manager Gloria Doleman. Orozco asked Doleman what he thought would happen if the Union prevailed in the election and Doleman replied, "Rosie, the union is never going to get into LA Conexion Familiar. We're going to lose our jobs."

Orozco also had a conversation with Rosas on July 11, just 3 days prior to the closure. Orozco introduced herself and said that as a finance department employee she had some concerns about "the very unnecessary expenses that were going on" at LCF, and that there was no need for "all that fancy stuff" on the seventh floor. She believed that no one was concerned with the expenses, and she wanted to let Rosas know that they were excessive. She also told him that LCF was top heavy with managers. They talked about finances, and Rosas told her that he had recently been "in Kansas City in a meeting with the Board of Directors, and the thing for La Conexion Familiar, they didn't look so good." He also told her that when he had accepted position of president of LCF "he wasn't aware of the financial situation . . . or audit difficulty or the problems" confronting LCF. Orozco expressed her opinion that things had lever looked so bad and that the new "higher-up" people Sprint had brought in "were not too good to bring the business up and I didn't see any result. . . . I didn't know what would happen with the whole business." Rosas asked her what she thought would happen with LCF, and Orozco replied that, "Well, it might close . . . because, first thing, the election, first thing probably, financial problems." Rosas told her not to be surprised if her "co-workers" were laid off, because some of the director positions were in danger. He also asked her if she believed she was capable of performing her boss' job.

The following day Orozco had a conversation with Marketing Director Bea Molina. Orozco asked her what she thought would happen after the election, and Molina replied that LCF would not be closed, and that Molina had been working hard on the 1996 marketing plan.

After the announcement of the closure, Orozco attended a dinner at a local restaurant along with Rosas and a group of apparently 8 or 10 individuals, most of whom were LCF managers or directors; Orozco was one of about four nonmanagerial attendees. Prior to dinner, the group was in the bar area, and Orozco gave this account of a conversation with Activations Manager Gloria Doleman:

> We blamed the union for losing our jobs, and she told me—she was crying, I was crying, too. We were so sad.
>
> And she told me, "Rosie, I've been working with Sprint for 10 years, the same thing happened to me like four times. . . . I knew they were going to do this thing. I had many experiences of this thing happening before."
>
> And she told me she had experience in Chicago where one day before the union election was going to happen, they closed the whole facility because of the union. That's what we talked about. . . . She told me [that] Sprint did not like union [sic], that in their long distance division Sprint did not have union [sic].

Gloria Doleman is currently working in Kansas City as an assistant manager of products quality. She has been employed by Sprint since April 1984, and until moving to Kansas City she was employed at five or six different Sprint facilities in California. She went to LCF, apparently, in about July 1993, as activations manager. She has never worked for Sprint in the Chicago area, and testified that she does not know of any facility ever closed by Sprint because of union activity. Regarding the aforementioned conversation with Orozco at the restaurant on the evening of July 14, Doleman testified that Orozco was relating that the closure affected her very much as she was about to be married and no longer had a job. This prompted Doleman to relate that some four places she had worked for Sprint had been closed down and Doleman had been relocated, but now there were no other places for her to relocate. In this regard, Doleman testified that the Burlingame, California facility where she had worked had been shut down and some 300 employees lost their jobs; also, a different facility in Burlingame had previously shut down and this resulted in the loss of over a thousand employees. Doleman denied that she ever said anything to Orozco or anyone else to the effect that the closure of LCF or any other Sprint facility was union related. She testified as follows:

> And certainly not the [facility] at LCF, because I was in charge of the Activations Department which handled all of the incoming sales orders that came through the Marketing Department, and I saw first-hand that the amount of customers we were losing versus the customers that we were selling, there was no way that . . . if it kept going at that rate that we would be in business. We were turning more customers than we were gaining.
>
> . . . .
>
> [The customer base] was definitely declining. We saw that on a daily basis we got reports as to how many customers we activated and how many customers we lost. And there was, for the time period in January to the time period that the company closed down, we had more customers that were leaving the company than were coming to the company.

Finally, Doleman denied that she ever told Orozco or anyone else that the Union would never get into LCF, and that "we're going to lose our jobs."

Orozco testified that after her conversation with Doleman in the bar area, the group went into the restaurant for dinner.

Orozco happened to be seated next to Rosas. Her conversation with Rosas was partly in English and partly in Spanish. Orozco asked why Rosas had been hired just for 1 month if the financial problems were so serious that LCF would have to be closed. Rosas replied that Sprint believed he "could bring the business up." Rosas also mentioned that it didn't make sense to her that Sprint had moved to the seventh floor of the building just a month before, and had expended some $800,000 for this move. Regarding the decision to close LCF, Rosas stated, according to Orozco:

> Rosie, that was the . . . decision that was taking place at the . . . Sprint director meeting. And that decision took place . . . because of one thing: We're doing bad financially.
>
> Second thing, Sprint didn't want to deal with all these problems, all of these people unhappy. And the second [sic] thing, the union. They didn't want to deal with that. They don't like the union.
>
> Even, he told me, Sprint never going to admit that, because that's an [sic] illegal to admit something like that.

According to Orozco, another employee, Elvira Echavarria, who was listening to Orozco's foregoing conversation with Rosas, apparently asked something about the financial situation, and Rosas replied:

> Yes, that's true, because Sprint was expecting to lose money. Sprint . . . [was] expecting to lose $12 million in the first year, $5 million the second year. But the third year, 1966, we're goin to start making some profit in the company.
>
> He also told me he was very stuck, because he didn't know what we were going to do. He was living in Southern California, he sold his house in LA. His wife sold her business over there. They just closed a week before—they closed the deal for his house and now he was losing his job, too. So he didn't know what he was going to do, too.

Finally, according to Orozco, Rosas told her that he "begged the Board of Directors of Sprint, [but] they did not want to give him more time" to "bring the business up."

On cross-examination, Orozco testified that Rosas did not mention that the financial condition of the Company was the "main reason" for the closure; rather, "there was no one thing. There was bunches of things together. They didn't make that decision because of one thing. They had to just bunch the things together." Further, Orozco acknowledged that to her the words and concepts of "plan," "budget," and "projection" were synonymous, and that Rosas said that the "projections" for 1994 indicated that LCF would lose $12 million in 1994, and $5 million in 1995.

Orozco testified that she did not tell anyone about this dinner conversation with Rosas until she related it to an NLRB agent who took a statement from Orozco on September 1. Rosas' affidavit with regard to the dinner conversation states as follows:

> Rosas said that when he met with the Board of Directors of Sprint in July, 1994 he had begged them to give him six months to bring the Employer around but they had refused to allow him. I asked Rosas if the closure of the Employer had to do with the Union and he said that the Union was the reason that the Employer had closed the Employer but that it would never admit this fact. Then he said that when the Employer had purchased La Conexion Familiar, the Employer had planned on losing $12,000,000 in 1994. He said that in 1995 the Employer knew it was going to lose $5,000,000 and that not until 1996, the Employer was going to make a profit. We discussed how it was very sad that the Employer had closed the facility with such little notice to the employees. This is all I recall about the conversation at this time.

Eleanor Melara testified in this proceeding on December 6. Melara, who is bilingual but was more comfortable testifying through an interpreter, worked for LCF from about July 1990 until the date of the closure. She began as a telemarketer, and was promoted to a succession of positions culminating with her position of telemarketing trainer at the time of the closure. She reported to Anita Roman, human resources manager. Melara testified that she attended the dinner at the restaurant on July 14, and sat just across the table from Rosas, and that without any prompting Rosas, who had had four or five drinks, began to talk about the negative attitudes of the board members in Kansas City and the unanimous vote that LCF be closed. Melara testified at great length regarding Rosas' dinner conversation, and maintains that she heard Rosas state as follows:

> And no one asked him, but he said that the status of the union, the fact that the union was coming in, had an influence in the closure of the company. He also said that he had asked them for more time, he talked about two months, to see what he could do with the company, but he didn't get it.

According to Melara, several individuals overheard Rosas make the foregoing statement about the Union, namely, Paula Silva, Rosas' assistant, Rosie Orozco, and Melara's husband, who was also present. However, only Melara and Orozco testified regarding this conversation.

Melara gave a statement to the NLRB on August 1, 2 weeks after the closure. There is nothing in the affidavit regarding the events at the restaurant because, as Melara explained, "I wasn't asked about anything."

On cross-examination, Melara testified that "everything that we talked about in that last conversation with Mr. Maury Rosas, there was nothing that was that specific or important to me. . . . I'm talking specifically about the conversation with Mr. Rosas concerning why the facility was closed." She had a meeting with the Union's attorney in September, with a translator present. While she initially testified that she didn't recall whether she told the Union's attorney anything about this conversation, she thereafter affirmed that prior to giving her second affidavit to the NLRB on December 4, just 2 days prior to her appearance as a witness here, she had probably had a discussion with Orozco about the restaurant conversation at that time.

Melara further testified that immediately prior to giving her first affidavit, she was sitting in a room with the Union's attorney and a group of employees who were talking about "how all of this had occurred"; thereupon she was summoned by the NLRB agent to give a statement. She only realized the importance of Rosas' alleged admission that the closure was union related when the Board agent contacted her on December 1, just 5 days prior to her appearance as a witness in this proceeding.

Rosas acknowledged that he had had several drinks both prior to and during dinner. Rosas testified that he could not recall ''anything of significance'' that he might have said to Orozco or others during the dinner conversation, but specifically denied that he said the union organizing was a factor in the closing of LCF or that he begged for more time to turn LCF around. He did mention something to the effect, however, that ''I would have wished the I would've come six[s] month sooner, and if I'd come in January or February there are some things I think I could have done differently.'' Rosas testified that the Union ''was never an issue with me. It was never brought up in any discussion that I had with anyone at Sprint about . . . the union. It [the decision to close LCF] was strictly based . . . on financials, and that's all it was.''

12. Involvement of Sprint's labor relations department

Carl Doerr had been employed by Sprint for some 31 years and immediately prior to his retirement he was vice president for labor relations and fair employment practices. He accepted retirement in November as a result of his involvement in this proceeding, as described below. He headed a staff of 12 people, and his job, as he described it, was ''to keep the pulse on the employee and labor relations within the corporation.'' Winning NLRB elections was ''his job,'' although this did not always happen and he had previously negotiated contracts with the CWA and another union.[19] He became aware of the union organizational campaign at LCF during a time when there was union activity by the same union occurring all over the country.[20] At about the end of April, he received a report from Dave Sapenoff, whom he had sent to the LCF facility to learn about the ''unrest'' and concerns of the employees as well as the union activity. In a meeting with Sapenoff, Doerr, and Dave Schmieg, the president of CSG and Meyer's superior, Sapenoff reported the following:

> . . . there was a lot of unrest among the employees here and he was concerned that there were [sic] a lot of organizing activity, a lot of pressure being put on the employees to sign cards . . . in essence, he reported that there was some unrest about some compensation plans. There was unrest about some attendance plans, as I recall, or attendance policies or the way they were being administered, but he also reported . . . that there was activity, card signing or attempts to get cards signed.

Doerr told Schmieg ''that there was a very real possibility [of a representation petition being filed by the CWA] in light of what I had learned from [Sapenoff] that apparently there was a lot of activity going on.'' Schmieg, according to Doerr, reiterated what he had told Doerr previously, shortly after CSG was given the responsibility for LCF, namely, that LCF was a ''burden that was dumped on my back'' and ''his intent was to close that business because he didn't think we had any business being in that business.'' Doerr told Schmieg that he ''better create a paper trail if that's what he's going to do because of the fact there could be a petition filed.'' Thereafter, Doerr received periodic updates from Ted Schwartz concerning the organizational campaign, and in early June he was advised about T-shirt day and the simultaneous filing of the representation petition by the Union.

Doerr, having been previously advised by Schmieg that LCF would be closed, testified that in March he had had a conversation with the president of an out-placement firm concerning the providing of extensive career transition services for employees who would be effected by the closure of LCF. However, neither Doerr nor the out-placement firm had confirmed this conversation in writing.

Doerr testified that he was not apprised of the decision made by the LCF board of directors at the May 6 meeting until, apparently, sometime in June. On reading ''a copy of the presentation that had been made at the May 6th board meeting,'' Doerr became concerned that it ''included some comments about options'' and did not sufficiently portray what Schmieg had told him well before the May 6 meeting, as far back as February or March, namely, that Sprint was going to close LCF; Doerr did not know that one of the options, as contained in the minutes of the May 6 meeting, was ''to continue business as planned but review progress against revised financial objectives every sixty days.'' Realizing that an NLRB election had been scheduled for July 22, and believing that the Union would maintain that the closure of LCF, which Doerr expected to take place prior to the election, was unlawful, Doerr sought to create a ''paper trail'' showing both the Union and the NLRB that he had previously discussed the closure of LCF with the outplacement service. Thereupon, in mid-June, after the representation petition had been filed, he solicited the president of the outplacement service to send a backdated letter, dated April 7, confirming the March conversation. Doerr testified that he did not believe that the request for the confirmation letter was ''really wrong'' as he was only requesting written con-

[19] Sprint had some 35 collective-bargaining agreements with either the CWA or another union.

[20] In this regard, the following stipulation was entered into by the parties:

> The Communications Workers of America has attempted to organize Sprint workers assigned to long distance operations as a major focus for its national organizing efforts since at least 1990. Since at least 1990, CWA has had various levels of public organizing activity, led by unit employees, at various Sprint long distance locations, including Dallas, Texas, Denver, Colorado, Nashville, Tennessee. Purchase, New York, Winona, Minnesota, Burlingame, California, San Mateo, California, Sacramento, California, Phoenix, Arizona, Atlanta, Georgia, Jacksonville, Florida, Reston, Virginia, Chicago, Illinois, Indianapolis, Indiana, Richmond Virginia, and several locations in the Kansas City area. CWA buttons and T-shirts have been worn from time to time by Sprint employees at the foregoing locations. Also, employees and CWA organizers have, from time to time, publicly handed out organizational materials at all of such locations. There has, as yet, been no petition for a representation election filed on behalf of employees at any Sprint long distance locations.

firmation of a verbal conversation that had in fact occurred;[21] however, he understood that the letter would be used by Sprint to defend itself against charges which he knew the Union would file with the NLRB. Doerr testified that he expected the shutdown of LCF to create a "volcanic eruption" by the Union, and he believed that he needed a "paper trail" to substantiate the fact that the plans to close LCF had been conceived prior to the union activity and that "the closing decision wasn't something that was just dreamed up overnight in May or June."

On July 14, the date of the closing, Doerr traveled to San Francisco for the purpose of having a courtesy meeting with the Union's attorney and other union representatives, in order to advise the Union that the facility had been or would be closed that day. Doerr testified that he did not refer to the aforementioned letter during his meeting with the CWA representatives, but did relate that the closing of LCF had been in the planning stages prior to the union activity.

In response to the NLRB charge filed by the Union, Sprint's attorneys submitted a lengthy statement of position in which it was stated that Sprint had begun planning for the closing of LCF in early 1994; the aforementioned April 7 letter was quoted and attached as "documentation for this fact." Thereupon it was discovered by Sprint that the letter was in fact not authentic, and on August 16, Sprint's attorneys wrote to the NLRB, inter alia, as follows:

> Also, for reasons related to an internal Sprint investigation now underway, for which we hope to have a full report for the Region this Thursday (or sooner, if possible) Sprint is withdrawing the document previously included as Exhibit 2 to its initial position statement. Sprint absolutely stands by its position that the closing was being discussed prior to any substantial activity by the CWA and that the closing was motivated solely by financial consideration, but, an internal investigation has cast doubt on the authenticity of the purported letter of April 7, 1994 . . . .

Doerr testified that it would have been unprecedented to have a union facility in the long distance side of Sprint, which numbers some 16,000 to 18,000 employees. He personally visited the LCF facility sometime in June. Regarding the purpose of this visit, Doerr testified as follows:

> The [LCF] local management was complaining that we were not doing anything as far as a campaign to counteract the union campaign. And, we became worried that maybe we would be showing our hand to the local management people of our plans to close that and we were trying to keep it a secret from them at the time. So, myself and Ted Schwartz . . . traveled here, held a meeting with the management people, gave them some instructions of the do's and dont's during a union organizing campaign, and that was it.

C. *Analysis and Conclusions*

It is undenied that LCF employees had been bombarded with statements by local LCF managers and supervisors that LCF, a business then recently purchased by Sprint, would be closed if the Union got in. Further, following such threats and other unlawful conduct, the facility was closed just 8 days prior to a scheduled Board election which, the evidence strongly indicates, would have resulted for the first time in the certification of the Union as the employees' collective-bargaining representative in a Sprint long-distance facility. Then, immediately on the closure of the facility, the president of LCF is alleged to have admitted that the closure was union related. And finally, after the closure, the Board was provided with evidence that a high ranking Sprint official had "manufactured" a document specifically designed to exculpate Sprint, which document was presented to the Board during the course of its investigation. Thereupon, of course, the Board issued a complaint in this matter alleging, inter alia, that Sprint closed LCF in violation of Section 8(a)(3) of the Act.

Given the foregoing compelling prima facie evidence that the closure of LCF was motivated by unlawful considerations, it is understandable that the General Counsel and the Union disbelieved anything that Sprint had to present in its defense. This is particularly true of the financial information which was largely presented by Jefferey Balagna, manager of CSG finance group. After the detailed and laborious presentation of such evidence by Balagna, and thorough cross-examination by the General Counsel and counsel for the Union with, it should be added, the assistance of the Union's accounting expert,[22] the General Counsel and the Union appear to accept what the Respondent has maintained from the very beginning, namely, (1) that LCF was expected to be a profitable business from the outset and it was not initially projected or anticipated that it would operate at a loss; (2) rather than a loss, it was projected that LCF would earn a profit of about $4 million in 1994; (3) that from the time in early 1994 when CSG took over the management of LCF, the business continued to exhibit a significant downward trend and by early May 1994 it had lost some $4 million and was projected to lose some $7 million for the entire year; (4) this downward trend continued through June 1994; and (5) from January 1994 until the closure of LCF on July 14, LCF's customer base was continually declining, that is, LCF was losing more customers than it was acquiring, so that in July it had some 40,000 fewer customers than it started with in January.

The General Counsel and the Union no longer appear to contest the foregoing facts which, on the basis of extensive record and testimonial evidence, I credit and find to be accurate. However, they continue to dispute the Respondent's motives for the closure. The thrust of their argument is that the board of directors on May 6, even when confronted with the very adverse business decline that LCF was experiencing and would continue to experience throughout 1994, did not accept Meyer's assessment that LCF had no future and should be closed immediately. Indeed, in making this argu-

[21] There is no record evidence that in fact such a conversation between Doerr and the outplacement service did not occur in March, as Doerr testified.

[22] Balagna testified on some 6 or 7 separate occasions in this proceeding, and his testimony comprises approximately 700 pages of the transcript. I found him to be an excellent witness with a masterful understanding of the financial material and the ability to articulate its significance. Contrary to the various contentions of the General Counsel and the Union that Balagna's testimony should not be believed, I have no reservations regarding the accuracy and truthfulness of his testimony.

ment, the General Counsel appears to subscribe to the very facts that the Respondent, at great length and in extraordinary detail, presented. Thus, the General Counsel's brief is quoted at some length, as follows:

> In concluding that LCF had long term viability, Schmieg and the other Board members also recognized that they would be forced to accept, however reluctantly, substantial short term losses. They knew from Meyer's prior briefings, from the Board packet, and from the discussion at the May 6th meeting that LCF was barely forecast to meet half its original revenue goals, that sales were down and churn was up, that the customer base was decreasing by a greater amount each month, and that LCF was facing an operating loss of $3,949,000 for the year. They also knew that CSG still was obligated to Sprint to come up with $7,914,000, which was the operating income in the original CSG official budget for LCF because once the official budget is locked in, it cannot be changed and CSG is held accountable for it. They knew this created a variance of $11,863,000 between what they expected to earn from LCF and what LCF was expected to lose for the year. They also knew that Meyer, as discussed above, no longer expected LCF to meet the original CSG official budget, and that he already had lowered his financial expectations for LCF and developed acceptable goals under which LCF would provide long term viability to Sprint.[23] They knew that the April 26 forecast, which contained a significant downward revision in nearly all categories in what LCF could expect to achieve by the end of the year, was the best that LCF believed it could produce, as discussed above. If the revised forecast for revenues, gross margin, operating loss, sales per hour, new activations, churn, and customer base had been unacceptable to Schmieg and the other Board members because LCF did not have long term viability, they would have voted to close LCF immediately. Although they were very concerned about the projected losses and the nearly $12 million variance, by voting to keep LCF open, they acknowledged they were willing to sustain those losses for 1994 because LCF still had long-term viability, the third prong of Meyer's test for keeping LCF open. It was because LCF still had long term viability that CSG voted not to close LCF but to give the turnaround plan 60 days to work.
>
> . . . .
>
> By voting on May 6 to keep LCF open, Schmieg and the other Board members accepted that LCF's long term value to Sprint outweighed the losses LCF would suffer in 1994.
>
> . . . .
>
> In accepting the short term loss because of a belief in LCF's long term viability, Schmieg and the other members of the Board of directors also rejected Meyer's conclusion that a churn rate as high as 17% or 18% made a company completely unviable, which was one reason Sprint considered closing LCF as early as it did. According to Meyer, it would be "an absolutely untenable financial marketing or business proposition" to have that large a churn rate because it meant the entire customer base would leave in less than six months. At the time of the May 6 Board meeting, however, Schmieg and the other Board members knew that this critical churn rate was extremely high at 20.5% in January, 18.5% in February, and 22.4% in March, with projections for churn to remain over 12% throughout the rest of the year. They also knew that the net decline in the customer base in March of 7,900 customers was nearly double the January net decline of 4,300, and that the shrinkage of the customer base was an important issue. Nevertheless, by voting to keep LCF open an additional 60 days to see if the turnaround plan could work, Schmieg and the rest of the Board members in effect rejected Meyer's view that LCF was completely unviable because of its large churn rate. As discussed above, Schmieg and the other Board members must have believed that LCF still offered long term viability to Sprint, that the problems were internal and therefore could be corrected, that with Rosas at the helm the turnaround plan would work, and that the churn rate could be lowered. Otherwise, they would have adopted Meyer's recommendation and closed LCF immediately.

Having accepted the fact that LCF was performing dismally and that there was no short-term fix for the problem, the General Counsel speculates that the May 6 decision by the board was, in effect, an optimistic affirmation of the potential for LCF in the future. Had the General Counsel posited this theory of the case to the Respondent during the hearing, I would have been given an opportunity to evaluate the answers of Respondent's witnesses, and perhaps the Respondent would have elected to proffer members of the Board, other than Meyer (who wanted to close LCF immediately), to state why, in the face of overwhelming financial problems, they voted to give LCF a 60-day reprieve. Accordingly, given the foregoing circumstances, no adverse inference may be drawn from the Respondent's failure to call board members for the purpose of explaining their thought processes on May 6.

In any event, the board of director's May 6 determination appears to have been succinctly and correctly characterized by Meyer during the course of his testimony, as follows:

[23] The General Counsel argues that the Board approved a revised budget which it found acceptable and thereby confirmed that it had "approved a downward revision by half as to what it expected LCF to produce by the end of the year in terms of gross and net revenue and operating income/loss, as reflected in the April 26 budget." In making this argument the General Counsel appears to be extrapolating from two separate documents, without the benefit of any response by Balogna regarding such assertions. As I explicitly stated on the record approximately five times during the course of the hearing, the financial material was very complex and convoluted, and it was consistently demonstrated by Balagna that the documents could not be accurately analyzed by a layperson, or even necessarily by a individual with accounting expertise who lacked a thorough knowledge of the telecommunications business and the financial interrelationship between CSG and LCF. I therefore established the rule that the parties' briefs should contain no arguments premised on such materials unless explicit questions regarding such matters had been asked of Balagna, or other witnesses, who would be given the opportunity to confirm or deny that the documents meant what counsel believed they meant. It appears that the General Counsel has disregarded this admonition, and the foregoing argument is rejected for lack of a sufficient foundation.

"The decision was made that rather than cease operations immediately, that we would modify that only slightly, and that is to look at two or three other options for disposition of LCF business, and then report back within a short 60 day period of time." The General Counsel would disagree with this characterization of the board's decision, and maintains that it is inconsistent with what transpired thereafter.

The General Counsel maintains that the Respondent's substantial expenditures subsequent to the May 6 meeting is evidence of the Respondent's intention to operate LCF, despite its many problems, into the indefinite future. Thus, Rosas was hired as the president of LCF immediately after the May 6 meeting, new computers and furniture were purchased for the move to the seventh floor, new employees, supervisors, and managers were hired and/or promoted and transferred, staff training was continuing, employees were given raises, awards, and rewards for their efforts, and Aqui Contigo, LCF's new and improved marketing product, was being fine tuned; essentially, LCF was being operated as if it were a viable business.

Meyer was asked whether he or the Board ever considered downsizing LCF rather than closing it. His response is relevant to the question of why expenses were not immediately curtailed. Thus he answered that downsizing was never considered "because expense control was not the issue with LCF. Our budget of about $14 or 15 million in expenses was not out of line. The issue was the ability to attract and maintain the customer base, which would have been ineffective with a downsizing." Further, as Meyer testified, the hiring of someone of Rosas' caliber was considered a long-term bonus for Sprint regardless of the short-term future of LCF; and, perhaps equally as important, LCF was consuming a very disproportionate amount of Meyer's time relative to his other responsibilities, and Meyer needed someone to manage LCF so that he would not have to commute to San Francisco each week. Finally, as Balagna testified, the expenditures relative to the move to the seventh floor, including new capital assets such as computers, fixtures, and furniture, were expenditures to which LCF had been committed since early 1994, and the newly purchased capital assets retained their value and continued to be utilized elsewhere after the closure.

There are two additional reasons for the Respondent's "business as usual" operation of LCF subsequent to May 6, namely, the fact that Sprint was attempting to sell LCF as a viable business, and the further fact that that Sprint did not want its competitors to become aware of LCF's precarious position.

The General Counsel takes the position that "Sprint's purported attempts to sell LCF were not realistic." I disagree. The record evidence shows, and I find, that Meyer made a determined effort to sell LCF to three vendors with whom Sprint had contractual telemarketing arrangements; there is no evidence that any of the vendors would have been unqualified or incapable of purchasing and thereafter operating LCF after obtaining the appropriate licenses. It is argued that Meyer's lack of immediacy in attempting to sell LCF is indicative of the fact that he was not actively pursuing this option; however, in addition to the fact that Meyer had other areas of responsibility, he did, in timely fashion, furnish prospective buyers with financial and other information and thereafter meet with them so that he could report the results of his efforts to the board at the previously scheduled July 6 meeting. The Union takes the further position that Sprint's failure to attempt to sell LCF to its competitors, AT&T or MCI, demonstrates a lack of real effort to dispose of LCF. This contention, for obvious reasons, is without merit: In addition to the fact that Sprint did not want its competitors to know about LCF's financial circumstances for fear of a more intensive campaign to acquire its customers, Sprint wanted to retain LCF's customer base, its most valuable asset, and could have done so only in the event it sold LCF to a "reseller" that, like LCF, would utilize Sprint's long distance lines and thereby generate income for Sprint.

It is argued that LCF was not acquiring sufficient new customers because its California customer lists were stale and had been repeatedly recycled, and that it could have remedied this situation by expanding into other States such as New York and Florida where new and fresh customer lists could be utilized. I find that Rosas and Meyer gave reasonable rationales for LCF's business decision to refrain from expanding into new markets, namely, the advertising expense involved in acquainting potential customers with LCF and, primarily, the prognosis that if LCF could not be successful in retaining customers in California, its most populous Latino market, its expansion into new markets was simply premature and not feasible.

It is contended that the July 6 board meeting was, in effect, a sham, and that it had been decided to shut down LCF prior to the board meeting as evidenced by the fact that the "transition team" was already in place prior to the meeting and was convened shortly thereafter. It is clear that results of the July 6 meeting were not unexpected. Thus, according to Meyer and Balagna, the various options had been explored and the current financials had been gathered and analyzed, and it seemed that the closure of LCF was the only remaining viable option. Thus, there is nothing remarkable about the fact that the transition team was ready to be mobilized. However, the General Counsel argues that this constitutes evidence of the Board's intentional disregard of a subtle changes during the last part of June and the first part of July showing some improvement in key financial indicators. In a lengthy analysis the General Counsel attempts to show that this constitutes the beginning of a trend indicating that, although LCF was continuing to lose more customers than it was gaining, nevertheless "LCF was improving, and as Rosas' efforts had not really had time to make a difference, further improvements could be anticipated." The Respondent maintains, essentially, that although key indicators may tend to fluctuate up and down from month to month or week to week, the bottom line is that LCF's losses for 1994 would be in the range that had been projected, that its customer base was continuing to decline, and that getting rid of LCF and expending money on Sprint's other Latino-based products would result in minimizing LCF's losses and maximizing Sprint's profits. Further, it was believed that LCF managers and employees were not engaging in such unproductive practices that, even if improved, would have much of an effect on decreasing LCF's loses; rather, it was the very premise upon which LCF was based, coupled with intense competition in the long-distance market that convinced the decision-makers that the best option for the greatest profitability of CSG and Sprint was the closure of LCF. This reasonable belief is the Respondent's prerogative and, under the circumstances, the NLRB is certainly in no position to substitute its business judgment for the expertise of the Respondent.

It is argued that the manufacturing of evidence by Doerr for purposes of deceiving the Union and the NLRB strongly supports the conclusion that the closure of LCF was unlawfully motivated. There is no evidence to indicate that Doerr was requested or directed by higher Sprint officials to create a "paper trail" to be used for improper purposes. I find that Doerr committed this act pursuant to his own agenda which, he erroneously believed, would serve his employer's interests. His plan backfired, both personally and professionally, and he retired shortly thereafter. Given the foregoing overwhelming evidence that Sprint had valid and compelling economic reasons for closing LCF, Doerr's misconduct appears to be no more than an interesting but relatively insignificant event without much probative value. Moreover, it is noteworthy that only the confirmation letter was fabricated, and that Doerr did in fact have a conversation with an official of the outplacement firm relative to the possible closure of LCF well prior to any union activity.

It is argued that on the evening of July 14, Activations Manager Gloria Doleman told an employee that Sprint had shut down other facilities, including one in Chicago, because of the Union. Doleman denied that she made such comments. While there have been several prior closures of Sprint facilities, there is no evidence that the closures were union related. I credit Doleman's version of the conversation, and find that she did not make such statements.

It is maintained that on the evening of July 14, Maurice Rosas, president of LCF, told employees that the Union was a factor that contributed to Sprint's decision to shut down. It turns out that this testimony, even if credited, is not very significant. Thus, this is not a borderline situation where an alleged admission against interest by an employer tips the scales in the ultimate disposition of the matter. Rather, it appears that the financial rationale for the closure advanced by the Respondent was of such overriding significance that even if union-related matters were included within a list of contributing factors the Respondent would have sustained its burden of demonstrating that LCF would have been closed regardless of such considerations.

However, I need not reach this issue as I find that the testimony of Orozco and Melara is not credible. Thus, Orozco's affidavit to the NLRB states unequivocally that Rosas told her that LCF was closed because of the Union. Next, during the hearing, Orozco did not reaffirm what she had previously attested to in her affidavit; rather, she claimed that Rosas attributed the closure, firstly, to financial circumstances, then to the unhappy employees at LCF, and then to the fact that Sprint didn't want to deal with the Union. While Orozco gave inconsistent versions of Rosas' comments, Melara, who testified regarding the same conversation, did not corroborate either version. Thus Melara, who went on at length regarding Rosas' dinner table comments, related only that Rosas made the statement that the Union was a contributing factor without recalling anything about the financial or other reasons for the closure. Further, it would appear that the fact that she did not recall this alleged statement of Rosas' in September, immediately after talking with the Union's attorney and just prior to giving a statement to the Board agent investigating the matter, strongly indicates that Melara's recollection is, at the least, unreliable. Rosas appeared to be a credible witness. I credit his testimony and find that he did not make the statements attributed to him by Orozco or Melara regarding either the closure of LCF or regarding their additional contention that he asked or "begged" the LCF board for more time to turn LCF around.

Finally, it is argued that the presumption should be made that Meyer, Balagna, and Rosas were being untruthful regarding their respective accounts of the board meetings. Each of these individuals testified that not only was the Union not a factor in the board's May 6 and/or July 6 deliberations in Kansas City, but moreover that there was not even a single reference to the Union during the course of these meetings; in contrast, however, extensive uncontroverted record evidence shows that LCF personnel were regularly reporting the extent of union activity to Sprint personnel in Kansas City, and that LCF supervisors and managers were simultaneously committing serious unfair labor practices by threatening employees that LCF would close if the Union got in. Thus, it is argued, LCF management obviously considered the Union to be a very significant impediment to LCF's future, and it is highly unlikely that members of the LCF board of directors would not have so much as mentioned the Union during their Kansas City deliberations regarding LCF's future. I find that placed in its appropriate context the Union situation at LCF was a matter of such incidental significance, when compared to the more pressing financial matters then confronting the board, that it is not implausible that the board members would be preoccupied with more immediate concerns such as, for example, reviewing the 57-page report and tutorial by Balagna in which there was no reference to the Union.[24] While there is no record evidence purporting to explain what motivated LCF managers and supervisors to make the threats that they admittedly made, neither is there any record evidence that such threats emanated from or were encouraged or ratified by Rosas or Sprint personnel who, during their meetings with LCF employees, disavowed that LCF would be closed becasue of the Union.

From the foregoing it is clear that the Respondent has violated Section 8(a)(1) of the Act by its various and abundant unlawful and threatening statements to employees. It is also clear that as a result of the foregoing threats, alleged admissions, and other related conduct the General Counsel has presented a prima facie case that the closure of LCF on July 14 was motivated by antiunion considerations. However, I further find that the Respondent has sustained its burden of proof under *Wright Line*[25] and has affirmatively established that the closure of LCF was undertaken for lawful business considerations; accordingly, I find that the closure of LCF was not violative of Section 8(a)(3) of the Act, as alleged.

[24] I am mindful of Rosas' testimony to the effect that he was unable to recall what he said during the course of his report to the board because he was preoccupied with the realization that the board would be voting on LCF's closure. Nevertheless, Rosas did specifically deny that there was any mention of the Union at the meeting or that he asked for more time to resolve the many problems confronting LCF. I credit Rosas' testimony.

[25] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1) of the Act by threatening employees with plant closure, by interrogating employees regarding their union activities, and by other similar conduct.
4. The Respondent has not violated Section 8(a)(3) of the Act by closing the LCF facility on July 14, 1994.
5. The unfair practices set forth in paragraph 3, above, constitute unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act. Moreover, the Respondent shall be required to mail to the last known addresses of its LCF unit employees a copy of the appropriate notice, attached hereto as ''Appendix.''

[Recommended Order omitted from publication.]