Alldata Corporation *and* Karl Abbadessa. Case 29–CA–19772

September 30, 1997

DECISION AND ORDER REMANDING

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The principal issue presented in this case[1] is whether the judge correctly dismissed the complaint because the underlying charge did not include the oath or declaration of truth required by the National Labor Relations Board's Rules and Regulations.

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, and conclusions only to the extent consistent with this Decision and Order.

The Respondent discharged Charging Party Karl Abbadessa on June 23, 1995. On December 19, 1995, when government offices were closed for lack of funds during Congressional debate over the Federal budget, Abbadessa's attorney transmitted an unfair labor charge by facsimile machine to the Board's Regional Office in Brooklyn, New York, and to the Respondent. As the judge notes, both facsimiles were received before the expiration of the 10(b) period. The faxed charge, in a form prepared by the attorney, alleged that Abbadessa's discharge violated Section 8(a)(1) of the Act. The charge, signed by Abbadessa's attorney, did not contain an oath or declaration, under penalty of perjury, that the allegations made there were true. The Region received the charge but took no further action due to the suspension of all operations.

On January 18, 1996, after the Board's offices had fully reopened, the Regional Director for Region 29 wrote to the Charging Party's attorney and informed him that he would need to resubmit the charge on the Board's own charge form, which form contains a preprinted declaration that the statements there are true. The Charging Party resubmitted the charge on February 8, 1996, and the Region served it on the Respondent the next day. The General Counsel investigated the charge and issued a complaint on April 20, 1996.

In the judge's decision, he briefly reviewed the evidence relating to the substantive unfair labor practice issue of whether the Respondent had unlawfully discharged Abbadessa. The judge summarily stated that he ''would conclude'' that the Respondent's discharge of the Charging Party was discriminatorily motivated by certain protected concerted activity. He dismissed the complaint, however, because the initial charge—the only one filed within the 6-month limitations period—did not contain the jurat or declaration of truth required by Section 102.11 of the Board's Rules and Regulations. The General Counsel and the Charging Party excepted to the dismissal. For the reasons stated below, we find merit to the exceptions.

We deal here with two distinct procedural obligations of a charging party. The first obligation is imposed by statute. Section 10(b) of the Act specifically states:

> That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, ...

Charging Party Abbadessa, through his attorney, met this obligation by filing a charge with the Regional Office and by serving the Respondent with a copy on December 19, 1995, less than 6 months after Abbadessa's discharge. Consequently, there is no statutory bar to the litigation of the allegation that the discharge violated Section 8(a)(1) of the Act.

The second procedural obligation at issue is nonstatutory. While the Act itself does not require that a party file a charge in any particular form, Section 102.11 of the Board's Rules and Regulations states, in relevant part, that

> [s]uch charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct.

As noted by the judge, the purpose of the requirement of a jurat or declaration is to ''safeguard[] the Board's processes against the abuse which would inhere in an irresponsible exercise by members of the public of the charging power: to insure that [the] power be soberly exercised . . . .'' *Freightway Corp.*, 299 NLRB 531 (1990), quoting *Ladies Garment Workers (Saturn & Sedran)*, 136 NLRB 524, 527–528 (1962). Contrary to the judge, however, the failure of a charging party to comply with the jurat or declaration requirement does not affect the timeliness of the filing of an unfair labor practice charge. To be sure, a Regional Office can withhold investigation of a charge until the charging party has satisfied the protective purposes of Section 102.11. That is exactly what the Regional Director did here by requiring Abbadessa's attorney to resubmit the previously filed charge on a Board form containing the required statement of truth. He thereby ensured the seriousness of the Charging Party's intention in filing the charge by

[1] On December 27, 1996, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs. The Respondent filed cross-exceptions, a supporting brief, and an answering brief.

exposing him to criminal sanction in the event of a willfully false statement.

The time taken to comply with the jurat or declaration requirement of Section 102.11, however, does not tack onto the time already run prior to the filing of the original charge. A charge timely filed within the 10(b) period remains timely pending its revision to comply with this provision of the Board's Rules. To hold otherwise would unnecessarily limit the Board's fundamental authority to investigate and remedy unfair labor practices. Indeed, Section 102.121 of the Board's Rules states that ''[t]he rules and regulations in this part shall be liberally construed to effectuate the purposes and provisions of the Act.'' We, therefore, find no procedural bar to the litigation of the 8(a)(1) discharge allegation in this case.

We further find that a remand is necessary for a supplemental decision by the judge with respect to his conclusion that the Respondent has violated the Act. In this supplemental decision, the judge shall include specific credibility findings resolving relevant contradictions in testimony by Abbadessa and Arnold Pincus, the Respondent's field manager. The judge shall also make specific findings, with supporting rationale, about the nature of Abbadessa's protected concerted activities and the Respondent's knowledge of and animus toward such activity. Finally, the judge shall detail any credible evidence of disparate treatment he relied on to find unlawful discrimination and his specific reasons for rejecting all of the Respondent's alleged legitimate business justifications for Abbadessa's discharge.[2]

ORDER

It is ordered this case is remanded to the judge for further proceedings in accord with the foregoing discussion.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations to the Board. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

CHAIRMAN GOULD, dissenting in part.

I agree with my colleagues' reversal of the administrative law judge's finding that the complaint must be dismissed on procedural grounds. I disagree, however, with their decision to remand this case to the judge for supplemental findings and conclusions on the unfair practice issue presented. In my view, the record and the judge's decision, including his implicit credibility resolutions, are adequate for Board review and resolution of all substantive issues raised in exceptions. I would decide the case without further delay.

Marcia Adams Esq., for the General Counsel.
Robert L. Rediger Esq., for the Respondent.
Thomas J. Gagliardo Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Brooklyn, New York, on September 11 and October 18, 1996.

What purports to be the charge in this case was filed by fax on December 19, 1995 (during the course of the government shutdown), and was served on that same date by (1) a fax and (2) next day delivery by United Parcel Service. This was on a form prepared by the Charging Party's attorney, Thomas Gagliardo, and was signed by him. It was not sworn to and does not have the statement which is contained on the Board's preprinted charge form that; ''Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code Title 18, Section 1001).'' The allegations were later put on the standard charge form and reserved on February 8, 1996, by the National Labor Relations Board (the Board) in accordance with normal procedures after the government shutdown was over. The second document was filed and served well outside the Act's 10(b) statute of limitations period and the Respondent contends that the first document served within the 10(b) period, does not amount to a valid charge under the Board's Rules and Regulations.

The complaint was issued on April 20, 1996, and alleged:

1. That in mid-May 1995, Karl Abbadessa spoke to Respondent's president, Rod Georgiu, about his and other employees concerns regarding their salaries and other terms and conditions of employment.

2. That on or about May 23, 1995, Abbadessa sent a letter to the Respondent containing the employee concerns.

3. That on or about June 23, 1995, the Respondent, by its field manager, Arnold Pincus, discharged Abbadessa because of his protected concerted activities noted above.

FINDINGS OF FACT

I. JURISDICTION

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

II. ALLEGED UNFAIR LABOR PRACTICES

The employer sells a computer data base service to automobile service stations. That is, Alldata has taken the repair manuals for each type of vehicle and put them on a CD-ROM disk. The service station owner who subscribes to the service, can buy and use the disk by either having his own computer or by buying hardware provided by Alldata. The data base is updated on a regular basis.

[2] While we share our dissenting colleague's commitment to resolving this case as expeditiously as possible, we find that because the judge did not make critical credibility resolutions or resolve other issues fundamental to a *Wright Line* analysis, a remand to the judge is required. *Wright Line*, 252 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The Respondent is based in California and operates thoughout the United States. Arnold Pincus, is the field sales manager of the New York Metropolitan area. This district has about seven or eight salespersons, one of whom was Karl Abbadessa, whose territory was Queens, New York. Abbadessa was hired in May 1993.

Like the other salespersons, Abbadessa's earnings were based in large part on the commissions that he earned from sales. And over a period of time, the Company at various times, modified the commission formulas. These changes were considered by Abbadessa and other salesmen to be deleterious to their earnings. There also was another major point of conflict which was that Alldata contracted with Snap-On-Tools, a seller of automotive tools, to sell the data base to service shops. Whatever the merits of this arrangement, it set up a situation wherein the Company's salespeople were placed in the position of competing with an outside company for Alldata's sales within their designated territories. Nor was this arrangement likely to engender cooperation between the Company's own sales force and the salespeople from Snap-On-Tools. In any event, this situation engendered discussion among Alldata's sales employees.

Abbadessa's employment with Alldata had its ups and downs.

It is undisputed that in August 1994, Abbadessa narrowly escaped discharge when a customer complained about him regarding certain payments. Moreover, while his sales record was quite good vis-a-vis other salesmen, he tended to make sales in spurts, with long periods of time between sales. In this connection, the Company has a policy which requires all salespersons to have sold a certain number of units for each rolling quarter. (As I understand it, a rolling quarter means that you take the end of each month, look back 3 months to determine the number of sales made during that quarter and then do the same thing for the following month.) However, this policy was not always followed strictly in the sense that salespersons who did not meet the quota were not always disciplined or discharged.

On May 12, 1995, Pincus sent a message to Robert Weiffenbach regarding a possible promotion in the New York area. In response to Weiffenbach's opinion that Abbadessa was a better candidate than Michael Hill or Bob Kovach, Pincus stated:

> Karl Abbadessa is a better candidate than Michael Hill. However I did not choose him because he has a poor reputation with Snap-On. I feel this will negatively affect their cooperation with us helping us get prospects to attend. I have attempted and am continuing efforts to bring upon an improvement I their relationship. Karl has been resisting making peace.

Notwithstanding his tendency to obtain sales in spurts, Abbadessa learned on April 11, 1995, that he had achieved ''Winners' Circle,'' which meant that his yearly sales were in the top 10 percent of the sales force. This also meant that he was invited to attend a company sponsored trip to California from May 17 to 21, 1995.

Prior to attending the Winners' Circle meeting, Abbadessa spoke with some of the other sales representatives about their complaints. At the meeting, Abbadessa also spoke with some of the sales representatives from other regions and vented his complaints to them.

On one of the days at the meeting, Abbadessa spoke with Robert Weiffenbach, the employer's vice president for sales and told him that there was dissatisfaction among the sales employees. Abbadessa stated that he and some of the others would like to speak to the Company's president, Rod Georgiu. Such a meeting was held and Abbadessa complained about several issues including the Company's policies on bonus policy, on job-related expenses and reimbursements, and on telemarketing support. At the end of the meeting, Georgiu appeared to be sympathetic and suggested that the complaints be put in writing.

On May 22, 1995, Weiffenbach called Abbadessa and asked that he send his letter to Georgiu as soon as possible. Abbadessa thereupon proceeded to draft a letter and prior to mailing it, he discussed its contents with Pincus. In this respect, Pincus testified that after reviewing the letter, he advised Abbadessa to tone it down inasmuch as the first draft seemed to be a bit too harsh.

On May 23, 1995, Abbadessa sent the revised letter to Georgiu via e-mail. This letter clearly indicates that letter represents the concerns not merely of Abbadessa but of other sales employees as well. Moreover, the letter directly addresses complaints about income and other terms and conditions of employment. Appendix A has excerpts from this letter.

On June 20, 1995, Alldata sent a letter to Abbadessa congratulating him on his sales success during the 1994–1995 sales year and stating that as a result of being in the Winners' Circle, he had earned 600 stock option shares. At the close of this letter, which is signed (sincerely), by Bob Weiffenbach, it states; ''Congratulations, again, for your commitment to making the ALLDATA dream come true.''

On June 23, 1995, Alldata discharged Abbadessa. In the discharge letter, signed by Pincus, he essentially asserted that Abbadessa had not met the sales quota for the last rolling quarter. This letter was sent before the quarter had ended and therefore was premature. This letter was also sent just 3 days after Abbadessa had been congratulated for his sales efforts for the 1994–1995 year. Finally, this letter was sent despite the fact that other sales representatives in the New York area had also not met the quota for that quarter and were not discharged at that time.

In my opinion, the General Counsel has made out a substantial primae facie case for the proposition that Alldata discharged Abbadessa because of his activity in concert with other sales employees in presenting complaints and suggestions regarding their commissions, their incomes, and their other terms and conditions of employment. This is supported by the testimony of Pincus who asserted that ''he had it up to here'' because Abbadessa was ''locked in letter writing and complaining.'' As it is my opinion that the Employer has not shown that it would have discharged Abbadessa for reasons other than his protected concerted activity, I would conclude that his discharge was discriminatorily motivated under Section 8(a)(1) of the Act. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

III THE 10(B) ISSUE

Abbadessa was discharged on June 23, 1995, and this is the date that has to be used to start the 6-month statute of limitation period set out in Section 10(b) of the Act.

Some time during the summer of 1995, Abbadessa contacted Thomas Gagliardo, an attorney whose specialty is employment law. Abbadessa and Gagliardo were aware, no later than the summer of 1995, that an unfair labor practice charge could be filed with the Board. Although Gagliardo testified that he is a single practitioner who has a limited law library that does not contain the Board's Rules and Regulations, he did concede that he has represented parties before the Board and is generally familiar with its procedures.

Notwithstanding that Abbadessa and Gagliardo knew that a charge could be filed with the Board, they delayed doing so until the last minute. (This is similar to the problem that Pincus had with Abbadessa as a salesman.)

Gagliardo testified that in December he realized that the 6-month statute of limitations was running out and decided, with Abbadessa, to file a charge. But when he finally got around to it, much of the Government had been shut down as a consequence of the deadlock on the budget. Thus on December 18, 1995, the Board's Regional Offices were closed, except that Regional Directors remained at their posts.

Gagliardo testified that he tried, without success, to get some unfair labor practice forms and that as a consequence he drafted his own form which he faxed to Region 29 and Alldata. There is no question that these faxes were received by the Board's Regional Office and by the Respondent before the expiration of the 10(b) period. The only question is whether this form constituted a charge within the definition of the Board's Rules and Regulations. The problem is that the document describing the alleged violation was signed by Gagliardo and did not contain either an assertion that the statements were sworn to before a person authorized to administer oaths or a declaration by the person signing it that the contents are true and made under penalty of perjury.

On January 8, 1996, the Board's offices reopened and on January 18, 1996, (outside the 10(b) period), the Regional Office wrote to Gagliardo and informed him that ''it will be necessary for you to fill out the enclosed charge form NLRB-501 and resubmit the charge you have attempted to file.'' The Region also noted; ''With regard to your question as to whether the charge was timely filed in view of the government shutdown, that issue will be considered in processing your charge.'' As a consequence of this letter, a charge was filed on February 8, 1996, and given the present number Case 29–CA–19772. This was served on the Respondent on February 9, 1996. If it is concluded that the charge was first filed on February 8, 1996, then it would be clear that no charge was filed within the 10(b) limitation period and the complaint should be dismissed.[1] On the other hand, if the charge was filed on December 19, 1995, and served on that date, then it would be timely under the statute and the allegations of the complaint would, in my opinion, be sustained.

Section 10(b) states in pertinant part:

> *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

From almost the beginning of its operations the Board has required that a charge be signed and supported by an oath or a declaration, under penalty of perjury, that the charges are true. This is not required by the statute but has appeared in one form or another in the Board's Rules and Regulations. And indeed when the Board most recently amended its rules on November 2, 1995, to allow for the filing of charges by facsimile or by carriers other than the U.S. mail, the Board reaffirmed the requirement that a charge be supported by an oath or affirmation under penalty of perjury. Thus, as amended, the new Section 102.11 reads:

> *Forms; jurat; or declaration*.—Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28 U.S.C.§ 1746). An original and four copies of such charge shall be filed together with one copy for each additional charged party named. A party filling a charge by facsimile pursuant to section 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to section 102.114(f).

The rationale for these requirements were described in *Ladies Garment Workers (Saturn & Sedran)*, 136 NLRB 524 (1962). In that case, the charging party signed a blank form containing the declaration that the person signing it does so under penalty of the Criminal Code. The Respondent argued that as the charging party signed a blank form which was then filled out by his attorney and later filed with the Board, he could not have attested to the truth of the allegations and therefore the charge was fatally defective within the Board's Rules and Regulations. The trial examiner rejected this argument but stated:

> Respondent claims that this a materially false representation and as such is an abuse of the Board's process. Whether that is so, however, would seem to me to depend upon the purpose of the Board in requiring the oath or declaration. The Act prescribes neither, and in express terms, empowers the agency to issue a complaint ''Whenever it is charged that any person has engage in . . . any . . . unfair labor practice.''. . . The Board however, acting under the legislative or rule-making power vested in it under Section 6 of the Act, has from the beginning required that the charge be supported by an oath . . . and later it provided for the present alternative of a declaration of the truth of the

[1] A charge filed on February 8, 1996, would still be untimely even if the Board were to toll the period of the government shutdown from December 18, 1995, to January 8, 1996.

> charges under the penalties of the Criminal Code for any willfully false statements in it . . . . The Board, insofar as I have been able to discover, has not had occasion to articulate the purpose of this regulation. However, the purpose that spontaneously suggests itself is that of safeguarding the Board processes against the abuse which would inhere in an irresponsible exercise by members of the public of the charging power: to insure that the power be soberly exercised, a person filing a charge, is required to declare, under the sanctions of the Criminal Code for willfully false statements, that he has read the declaration and its contents are true. Where the manner of execution of the charge is such as to leave it bereft of that sanction, the presumed purpose of the Rule in question is defeated, and the charge is, by that token, subject to attack. On the other hand, where the charge as executed, despite a possible variance from the strict requirement of the Rules, retains the contemplated sanction against willful falsehood, then the purpose of the governing Rule has been met and the variance becomes a technical one not impairing the fundamental validity of the charge.
>
> . . . .
>
> [A] necessary presumption here is that the Employer's attorney filled in the charge pursuant to prior authority and with strict fidelity to the instructions given by the signer. On the latter assumption, it would seem the signer of a blank charge would be no more immune from false statements put in there pursuant to his own instruction than the officer of a bank who causes a false entry to be made without entering it himself. . . . [A]s I am satisfied, that the mere fact that the charge was signed in blank would not by that token relieve the signer of criminal responsibility for false statements filed in pursuant to his own prior authorization and advance knowledge. The criminal sanction for false statements, as contemplated by the governing section of the Board's Rules having been left intact, it would follow that the purpose of the Rule has not been defeated by the manner of the execution of the charge and that the charge was executed in substantial conformity with the Board's Rules.

In *Freightway Corp*., 299 NLRB 531 (1990), the charging party who had timely filed a signed charge, served an unsigned copy of the charge on the Respondent after the 10(b) period was over. The Board concluded that since the charge was signed when filed, service of an unsigned copy was sufficient. It noted that the purpose of Section 102.11 was:

> [T]hat of safeguarding the Board's processes against the abuse which would inhere in an irresponsible exercise by members of the public of the charging power; to insure that [the] power be soberly exercised, a person filing a charge, is required to declare, under the sanctions [of] the Criminal Code for willfully false statements, that he has read the declaration and its contents are true.

While one might take the position that the requirement that a charge be signed under oath or under penalty of perjury is a quaint anachronism, one cannot overlook the fact that this requirement was reaffirmed by the Board in November 1995 when it amended Section 102.11. Therefore, I must assume that the Board's members were cognizant of this requirement when that section was amended and that they felt that the requirement served an important function.

Gagliardo contends that the reason that his form did not contain the jurat was because he could not obtain the Board's standard form for unfair labor practice charges due to the closing of the Board's offices. Nevertheless, Gagliardo is an attorney who has in fact practiced before the Agency and was aware that the Board promulgated Rules and Regulations that were available to him at his local bar association library. The Board makes its charge forms available to the public as a matter of convenience and not as a matter of right. Clearly had Gagliardo and Abbadessa not waited until the last minute to file a charge, they would have obtained the proper forms. Alternatively, Gagliardo could have gone to his local library to look up the Board's Rules and made out a form that satisfied its requirements. In my opinion, the closing of the Board's offices is irrelevant to this case. Moreover, I an not convinced that Gagliardo's membership in the Maryland Bar, with its attendant code of professional responsibility, is the equivalent of the oath or jurat requirement set forth in Section 102.11.[2] When filing a charge, the Board requires the signer to be faced with the oath or jurat at the time of the signing in a direct and tangible sense.

In any event, I feel that I am bound by the Board's Rules and Regulations. If the Board wants to construe its Rules differently, that is its prerogative.

CONCLUSION OF LAW

Because no valid charge was filed in this case within the 10(b) statute of limitations period, the Respondent has not violated the Act in any manner as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The complaint is dismissed.

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[2] The Maryland Rules of Professional Conduct state, in pertinent part, that ''a lawyer shall not bring a proceeding . . . or assert an issue unless there is a basis for doing so that is not frivolous.'' Presumably a violation of this rule could bring some type of sanction by the Bar Association.

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

APPENDIX A

The May 23 letter from Karl Abbadessa to Company President Rod Georgiu.

> Thank you for taking the time after the awards dinner to hear our concerns. I think I can speak for everyone present when I say that we are all dedicated to the success of Alldata. It is with this in mind, as well as the obvious personal reasons, that we have brought these issues to your attention.

I'm going to try to give you a total picture from a reps perspective and ask that you try to change hats from president to field rep for awhile.

. . . .

In order to correct the main problem, INCOME, Alldata must first be willing to allow us to earn what we are worth, and not have a predetermined income for the sales force. . . . . We need to look at all the areas that have taken away from the reps pay, both directly and indirectly.

Given the job difficulty as evidence by our high turnover, wouldn't it be to Alldata's advantage to do whatever is reasonable to keep our producers and good people? People are leaving because of money.

. . . .

In addition to the single largest problem of lower commissions, here are some of the problems and lost income opportunities, from my perspective (not in any order of priority).

1. The longer a rep is here, the less he makes. This based on reduced commission percentage and opportunities.

2. The sales cycle is easily 18 to 20 hours for the sales THAT DO CLOSE. This does not take into account the time spent on customers that don't buy within a month.

. . . .

5. Teletraining. While it may be beneficial to Alldata, it takes away an opportunity for the reps to make some incremental dollars.

. . . .

7. In November of 1993, Tom Ward stood in front of my group and showed us our ''Career Path With Alldata. . . .'' WE NO LONGER GET PAID COMMISSION ON RENEWALS. Where is that career path now:

8. In April of 94, . . . a new comp plan was introduced. It substantially reduced our commissions, and introduced a NIS bonus, that was presented as the vehicle that was going to make up for what we lost in commission. I don't know for sure, but I'd bet that 80% of the sales force got no bonus so the net of that comp plan and the one's that followed was lost income.

9. Renewals. The November 93 deal has been broken. We no longer get paid on renewals, but we are responsible for them. A lost renewal affects our rolling quarter, therefore our income, and further affects the NIS bonus.

10. Rod, I must take issue with you when you said that it would be better to get 26 sales per year, consistently, as opposed to 38 sales per year, on an inconsistent basis. That's 12 sales we wouldn't get renewals on. . . . Speaking for myself and other reps I have talked to, the rolling quarter is a big de motivator.

. . . .

SOME IDEAS

. . . .

1. How about: Bigger territories, less reps. A rep has to cost at least $3k to $4k per month to keep in the field. This savings could be applied to increased telemarketing support and rep compensation.

2. Take some of the 1.2 million training expenses and put them back into comp plan.

3. Re-establish the senior rep program and utilize them to help those that need it. It is evident that field managers are going to spend ever increasing time with Snap on related activities. This keeps the field helping each other in an effective way.

4. Increase the salary of second and third . . . year reps . . . . Reward longevity instead of discouraging it.

5. 50/50 split on non discounted estimating sales.

6. Get the top 20% of the sales force, or the top guy from each FSM's group together at least once a year to participate and give some input. Consult us before making some decisions that have impact on our jobs.

7. How about increased commission on 250. No commission on hardware and lower hardware cost. If Snap on is involved, they get their share of the 250, nobody gets any on the box. Benefits—are our product works better, takes less time to install, and we get improved customer satisfaction. Everyone wins.

8. We are about to embark on a new program with Snap on. Since it seems this will result in Alldata reps passing a considerable amount of our business along to Snap on, this could be used as reason to re-negotiate our pricing to them. This will provide more money for our people.