

Grouse Mountain Associates II, a Limited Partnership, d/b/a Grouse Mountain Lodge and Hotel Employees and Restaurant Employees Union, Local 427. Cases 19-CA-24764 and 19-CA-24765

May 7, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
HURTGEN AND WALSH

On July 16, 1998, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. The Respondent filed a brief in answer to the General Counsel's cross-exceptions.

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 conclusions² as modified herein and to adopt the recommended Order as modified.

We adopt, with one exception, the judge's decision finding violations of Section 8(a)(1) and (2) of the Act. For the reasons stated below we disagree with the judge

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

² In the absence of exceptions, we adopt, pro forma, the judge's recommendation to dismiss the complaint allegation that the Respondent violated Sec. 8(a)(1) of the Act when, on or about July 15 and 18, (1996), it announced new holiday pay and paid sick leave benefits for employees in unsigned memoranda from the quality assurance (QA) committee.

In fn. 3 of his decision, the judge inadvertently stated that the Respondent both admitted and denied that Patrick Tobin was its agent within the meaning of Sec. 2(13) of the Act. We clarify that the record reflects that the Respondent denied that Tobin is its agent within the meaning of Sec. 2(13).

In adopting the judge's finding that William (Bill) Caron's statement to Terry Widdifield that the Union movement was not succeeding and that he could "get these things for [her]" constituted an unlawful promise of unspecified benefits to dissuade employees from supporting the Union, we disavow the judge's speculation, in fn. 13 of his decision, that Caron was presuming on his friendship with Widdifield and aware that she would repeat his remark to other employees.

In adopting the judge's finding that Kayla Elkins' statement that "if [the Respondent] could get rid of Terry and a few others [the union movement] would pass" constituted a veiled threat to terminate employees who were known or suspected supporters of the Union, Chairman Truesdale finds it unnecessary to pass on the judge's statement, in fn. 21 of his decision, that Elkins deliberately meant to be overheard.

that the Respondent created the impression that it was engaging in surveillance of its employees' union activities.

On August 15, 1996, Kayla Elkins, the Respondent's controller, issued a memorandum which stated, inter alia:

I just read a bulletin in which the Union arrogantly and falsely claims to have "helped" Grouse Mountain Lodge employees get the increased benefits (time and one half for holidays and personal leave time) recently announced by the Executive Committee. I know for a fact that since first being mentioned by the QA Committee several years ago, those added benefits have been on the owners' agenda but Lodge finances would not permit them. When the owners recognized 1995 would be our first profitable year ever, they put things in motion. Unfortunately, legal counsel to Grouse Mountain Lodge said they could not implement any new benefits while union organizing efforts were active. *When the Executive Committee recently concluded those organizing activities had failed from lack of employee interest and support* our attorney gave us the go ahead. The QA Committee deserves our thanks and credit, but the Union had no impact on the Owners' and Executive Committee's decisions. [Emphasis added.]

The judge found that the statement in the above-quoted paragraph that the Respondent "recently concluded those organizing activities had failed from lack of employee interest" created the impression among employees that the Respondent was engaging in surveillance of their activities in support of the Union. In excepting to the judge's finding, the Respondent essentially argues that Elkins' above-quoted statement was a lawful observation of the fact that the union campaign had not succeeded. We find merit in the Respondent's exception. Without more, the above-quoted language does not demonstrate that the Respondent unlawfully placed its employees' organizing activities under surveillance or that employees reasonably believed their activities were the object of unlawful surveillance.

"The Board's test for determining whether an employer has created an impression of surveillance is whether the employee[s] would reasonably assume from the statement in question that [their] union activities had been placed under surveillance." *Tres Estrellas de Oro*, 329 NLRB 50 (1999), citing *United Charter Service*, 306 NLRB 150 (1992). In this regard, "[T]he Board does not require employees to attempt to keep their activities secret before an employer can be found to have created an unlawful impression of surveillance. . . . Further, the Board does not require that an employer's words on their

face reveal that the employer acquired its knowledge of the employee's activities by unlawful means." *Tres Estrellas de Oro*, supra at 51, quoting *United Charter Service*, supra at 151. The rationale behind "finding 'an impression of surveillance' as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways." *Tres Estrellas de Oro*, supra, quoting *Flexsteel Industries*, 311 NLRB 257 (1993). Thus, the question before us is whether the above-quoted language in Elkins' memorandum would lead employees reasonably to assume that their union activities had been placed under surveillance. Of course, the General Counsel has the burden of establishing by a preponderance of the evidence that the Respondent unlawfully created the impression of surveillance.³

Like the judge, we focus on the text of the allegedly unlawful language. The comment is couched in conclusory terms. On its face, the language does not address surveillance, and it does not refer to specific employees. Additionally, the language does not suggest how the Respondent reached its general conclusion that the union campaign had been unsuccessful. Thus, the language, by itself, does not reasonably create the impression that the Respondent engaged in surveillance of its employees' organizing activities to reach its conclusion that the union movement had not succeeded.

We turn next to the context in which the above-quoted statement was made. Significantly, the judge found that from the fall of 1995 through the winter and spring of 1996, the employees openly conducted their union activities and posted union-related materials on a bulletin board. Elkins' memorandum, which was dated August 15, was distributed to employees at the conclusion of the openly conducted organizing campaign. Contrary to the judge, in this context, it would not be reasonable for employees to believe that the Respondent had engaged in surveillance of their union activities simply based on the Respondent's observation that "organizing activities had failed from lack of employee interest and support."⁴ To

³ See, e.g., *LRM Packaging*, 308 NLRB 829, 831 (1992).

⁴ The cases cited by the judge to support his finding that Elkins' comment created the impression of surveillance involve factual contexts that are clearly distinguishable from Elkins' conclusory statement in her memorandum of August 15. In *Keystone Lamp Mfg. Corp.*, 284 NLRB 626, 627 (1987), enf'd. 849 F.2d 601 (3d Cir. 1988), cert. denied 488 U.S. 1041 (1989), the Board found, inter alia, that the employer's controller created the impression of surveillance when he stated, to Betty Lou Phillips, a known union activist, "I understand that your attendance at meetings is dropping." Significantly, the controller's comment to Phillips occurred the morning after a union meeting. Id.

the contrary, it would be more reasonable for employees to assume, if anything, that the Respondent had reached its conclusion that the union movement had not succeeded through lawful means, i.e., the absence of a demand for recognition, the absence of a representation petition, or lawful observation of an openly conducted campaign. In sum, nothing in the context in which the above-quoted statement was made would lead employees reasonably to assume that the Respondent engaged in surveillance of their union activities. Thus, we conclude, contrary to the judge, that the General Counsel has not met his burden of establishing that this comment violated Section 8(a)(1).

However, contrary to our dissenting colleague, we agree with the judge that the Respondent violated Section 8(a)(1) by the statement in the August 15 memorandum quoted above, that the Respondent's delay in implementing the two new benefits was caused by the Union's organizing campaign.

In this memorandum, which, as noted above, was prepared by Elkins, she addressed what she saw as arrogant and false claims by the Union regarding its role in helping employees get time-and-a-half for holidays and personal leave time benefits, which benefits had recently been instituted by the Respondent's executive committee. The memorandum stated, in essence, that the Respondent wanted to implement these new benefits, but its attorney advised it that it "could not implement any new benefits while union organizing efforts were active." Upon concluding that the union movement had failed, the memorandum continued, the attorney gave the Respondent the go ahead to implement the new benefits.⁵

The judge found that Elkins placed the onus for the Respondent's delay in implementing the new benefits squarely on the Union by linking the delay to the union campaign, and that the language had the effect of under-

Unlike the circumstances in *Keystone Lamp Mfg. Co.*, supra, Elkins comment, which was published at the end of the union campaign, and which did not single out any particular employee, was a conclusory statement unrelated to specific union activities.

In *Airport Distributors*, 280 NLRB 1144, 1147 (1986), the employer twice interrogated an employee as to whether that employee had signed a union authorization card. Both times, after the employee responded that he had not signed an authorization card, the employers' president told the employee, "[t]hey're telling me you did." Id. The Board adopted the judge's conclusion that the employer's statement created the impression of surveillance. The Board also adopted the judge's conclusion that the employer had created the impression of surveillance by telling an employee that the employer had "narrowed it down to three" individuals who supported the Union. Id. at 1148, 1149. Elkins' conclusory comment is significantly dissimilar to these remarks.

⁵ The judge found that there is no record evidence demonstrating that, as of the date of the memorandum, the campaign had ceased. The judge also noted that the Respondent did not state that there was a business justification for the delay in implementation.

mining the Union by creating the impression that, but for the ongoing campaign, the Respondent would have implemented the benefits.

Under Board law:

It is well established that an employer is required to proceed with an expected wage or benefit adjustment as if the union were not on the scene. . . . An exception to this rule, however, is that an employer may postpone such a wage or benefit adjustment so long as it “[makes] clear” to employees that the adjustment would occur whether or not they select a union, and that the “sole purpose” of the adjustment’s postponement is to avoid the appearance of influencing the election’s outcome.

KMST-TV, Channel 46, 302 NLRB 381, 382 (1991), quoting *Atlantic Forest Products*, 282 NLRB 855, 858 (1987). “[I]n making such announcements, however, an employer must avoid attributing to the union ‘the onus for the postponement of adjustments in wages and benefits,’ or disparag[ing] and undermin[ing] the [union] by creating the impression that it stood in the way of their getting planned wage increases and benefits.” *Atlantic Forest Products*, supra at 858, quoting in part *Uarco, Inc.*, 169 NLRB 1153, 1154 (1969).

In light of the facts and principles described above, the Respondent’s statement that it had been counseled that it “could not implement any new benefits while union organizing efforts were active” is overly broad: this statement effectively blames the delay on the mere presence of the union campaign. Thus, contrary to our colleague’s assertion, the memorandum does not merely “explain[] that the benefits were not give during the Union campaign because such a grant of benefits might well have been unlawful [or] objectionable.” This is an excessively benign characterization of the memorandum, which as quoted above, unequivocally stated that the Respondent had been advised by its attorney that it “*could not*” implement “any new benefits while union organizing efforts were active. (Emphasis added.) The language in the memorandum went beyond merely “blaming” the law for the delay in implementing benefits.

Importantly, in no way did the Respondent make clear that its decision to grant or not grant new benefits was not dependent on the results of the union campaign. Nor did the Respondent explain “that the ‘sole purpose’ of the adjustment’s postponement [was] to avoid the appearance of influencing” the outcome of the campaign. *KMST-TV, Channel 46*, supra at 382. Thus, as the judge found, the memorandum had the effect of telling em-

ployees that, but for the Union’s presence, they would have obtained these benefits earlier.⁶

Our colleague contends that our analysis of this issue somehow relies on a “false dichotomy.” This is not so. In finding that the Respondent attributed to the Union “the ‘onus for the postponement of adjustment in wages and benefits,’” we have analyzed the entire relevant portion of the memorandum pursuant to the principles detailed above. *Atlantic Forest Products*, supra at 858.

Contrary to our dissenting colleague, we also adopt the judge’s finding that Manager-on-Duty William Caron’s statement to employee Terry Widdifield violated Section 8(a)(1). In either May or April 1996, towards the conclusion of the union campaign, Widdifield, a server and an ardent union supporter, remarked to Caron, during an informal gathering, that it would be very nice if servers could have wage increases. Caron responded, “[Y]ou know this Union movement thing wasn’t happening. You know, I can get these things for you.” The judge found that Widdifield could unmistakably infer from the statement that the union campaign would not succeed and that Caron could obtain items that the union supporters wanted without the Union’s interference. Thus, the judge concluded that Caron’s statement constituted a definite promise of unspecified benefits made to dissuade employees from supporting the Union.

In parsing Caron’s statement, our dissenting colleague observes that the first part of Caron’s statement was perhaps intended to convey the thought that the union campaign was not doing well, and that, in the second part of his statement, Caron was not saying that he would secure benefits for employees only if the Union were defeated. On this basis, our colleague concludes that Caron’s statement is hopelessly ambiguous and, thus, not violative of Section 8(a)(1).

The Board’s test for interference, restraint, and coercion under Section 8(a)(1) is an objective one and depends on “whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with

⁶ Although the benefits were not expected by the employees, the memorandum plainly states that the benefits “have been on the owner’s agenda.” We agree with the judge that the legal principles described above are applicable in situations where a respondent has blamed a union for employees’ loss of unexpected benefits. See, e.g., *Jaison’s*, 212 NLRB 1, 7–8 (1974). Cf. *Noah’s Bay Area Bagels, LLC*, 331 NLRB 188, 191–192 (2000) (finding an 8(a)(3) violation based on the employer’s withholding restoration of a health insurance plan at one store (the “Telegraph” store) while at the same time lawfully restoring the plan at all of its other stores, without regard to whether the restored benefit was expected, because the employees at the Telegraph store were not provided with assurances that the withholding of the restoration of the plan at that store was only temporary and that it would be restored retroactively following the election, regardless of the outcome of the election).

the free exercise of employee rights under the Act.” *American Freightways Co.*, 124 NLRB 146, 147 (1959). Thus, the key question here is whether Caron’s statement may reasonably be understood as unlawful under Section 8(a)(1).

We agree with the judge that it may. Regardless of the precise meaning of the words “this Union thing wasn’t happening,” it is clearly a comment about the ongoing union campaign. Further, the second part of Caron’s statement—“[Y]ou know, I can get these things for you”—cannot be justifiably separated from the first part of his statement. Concededly, Caron did not state with precise clarity that he would only secure benefits for employees if the Union were defeated. But the fact that Caron did not make such an explicit statement does not absolve the unlawfulness of the remarks he did make. The words “I can get these things for you,” which immediately followed Caron’s statement that “this Union thing wasn’t happening,” can reasonably be interpreted as an enticement to get Widdifield, an ardent union supporter, to give up her efforts on behalf of the Union. As the judge found, the inference of Caron’s remark is unmistakably clear. Nothing more is required to find a violation of Section 8(a)(1) here. As our colleague correctly observes, an employer may speak about a union campaign. Under Section 8(c), however, employer statements cannot contain, among other things, a “promise of benefit,” as Caron’s remark to Widdifield did.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Grouse Mountain Associates II, A Limited Partnership, d/b/a Grouse Mountain Lodge, Whitefish, Montana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(i) and reletter the subsequent paragraphs.

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

MEMBER HURTGEN, dissenting in part.

Unlike my colleagues, I conclude that the judge erred by finding unlawful a statement made by William Caron, the Respondent’s hotel manager-on-duty, to employee Terry Widdifield. Widdifield said, during an informal postshift gathering of employees and Caron, that it would be very nice if the Respondent’s servers (of whom she was one) could have wage increases. Caron replied, “Terr, you know this Union movement thing wasn’t happening. You know, I can get these things for you.”

The judge found that Caron’s message to Widdifield, an ardent union supporter, was that the union campaign would not succeed and that he could obtain what the union adherents wanted without a Union. The judge viewed Caron’s comment to Widdifield as a definite promise of unspecified benefits (“these things”). The judge further concluded that the promise was made to dissuade employees from supporting the Union, in violation of Section 8(a)(1).

In my view, Caron’s statement is ambiguous. The first part of it says that “this Union thing wasn’t happening.” In fact, the union campaign *was* happening. Perhaps, Caron’s comment was intended to convey the thought that the campaign was not doing well. In any event, the bottom line is that the meaning of the comment (either as intended or understood) is far from clear.

My colleagues apparently disavow the judge’s statement that the Respondent was saying that the Union would not win the campaign. They say only that the statement was “clearly a comment about the Union campaign.” I agree. However, an employer is free to speak about a union campaign.

The second part of the comment is similarly unclear. Even if Caron was saying that he could secure benefits for the employees, he was not saying that he would do so only if the Union were defeated.

In sum, I do not share my colleagues’ view that Caron’s comment was “unmistakably clear.” The one thing that *cannot* be said about Caron’s remark is that it is “unmistakably clear.” Nor do I think that the General Counsel has shown that the remark is reasonably to be understood in the way envisaged by my colleagues.

I agree with my colleagues’ finding that the Kayla Elkins’ memorandum did not create an impression of surveillance. In my view, however, they err by upholding the judge’s finding that other parts of the same memorandum violated Section 8(a)(1).

The judge made this finding because he concluded that the memorandum (quoted in pertinent part by my colleagues) blamed the Union for the delay in implementing new benefits.¹ I disagree. In my view, the memorandum was a permissible response to the Union’s claim that the Union had helped the Respondent’s employees to obtain the increased benefits. The memo explains that the benefits were not given during the union campaign because such a grant of benefits might well have been unlawful/objectionable. The memo concludes that, once the campaign was over, this impediment was removed and the increase was given. In sum, Respondent gave a rea-

¹ The judge conceded that the announced benefits were not expected by the Respondent’s employees.

sonable and correct explanation in response to a union claim. There was nothing unlawful in Respondent's doing so.

My colleagues quote from, and then apply, the principle set forth in *Atlantic Forest Products*, 282 NLRB 855 (1987). However, that principle is inapplicable here. The principle is that, during a campaign, "an employer is required to proceed with an *expected* wage or benefit adjustment." (Emphasis added.) In the instant case, there was no expected benefit, and the Respondent was therefore not required to proceed with one during the campaign. Indeed, as discussed below, it is likely that the Respondent was required *not* to proceed with one.

Further, even if the principles of *Atlantic Forest* are applied, there is no violation here. In this regard, my colleagues assert that the Respondent acted unlawfully because it blamed the Union for the delay in the increase. I disagree. The benefits had not been planned prior to the Union's campaign. Thus, if the benefits had been granted during that campaign, the grant would likely be held unlawful or objectionable, or at least the Respondent had reasonable concerns in this respect. The Respondent therefore delayed the increase until after the campaign was over, and explained this to the employees. The Respondent did not attribute to the Union the onus for the postponement. Nor did the Respondent disparage and undermine the Union by creating the impression that it stood in the way. Rather, the Respondent accurately conveyed to the employees the legal advice it had received and which caused it to delay the implementation of the new and unexpected (by the employees) benefits. In short, the Respondent did not "blame" the Union; the Respondent "blamed" the law.

My colleagues say that the Respondent did not offer any "business justification" for delaying the implementation of the benefits. My colleagues then leap to the conclusion that the Respondent was blaming the Union for the delay. My colleagues have missed the point, and they have thereby set up a false dichotomy. The Respondent's justification was not grounded in business necessity, and the delay was not blamed on the Union. Instead, as the Respondent carefully explained, the delay was grounded in considerations of law. Further, the Respondent did not *blame* the Union for the delay. The Respondent simply explained that the Union *could not take credit* for the ultimate grant of the benefits.

My colleagues state that their analysis does not rely on a false dichotomy. I disagree. Essentially, they have devised a conceptual scheme whereby the Respondent must either have grounded its justification for the delay on business necessity or have blamed the delay on the

Union. Those are not the only two possibilities and, in fact, the Respondent did neither.

Finally, in agreeing with the judge's conclusion that the Respondent violated Section 8(a)(2) by assisting the Respondent's quality assurance (QA) program, I do not rely on his finding that Caron was the executive committee's conduit to the employee participants at QA meetings for all matters about which the executive committee desired additional employee input.

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.

WE WILL NOT interrogate our employees as to their union membership, sympathies, and activities and the union membership, sympathies, and activities of their fellow employees.

WE WILL NOT promise unspecified benefits to our employees in order to induce them to forego support for Hotel and Restaurant Employees Union, Local 427 (the Union).

WE WILL NOT threaten our employees with loss of unspecified privileges if required to negotiate a collective-bargaining agreement with the Union in order to induce them to forego support for the Union.

WE WILL NOT threaten our employees that we will change our staffing practices during nonpeak months in order to induce them to forego their support for the Union.

WE WILL NOT publish and maintain a work rule in our employees' manual, mandating that our employees initially discuss work "problems" with their supervisors rather than with their fellow employees.

WE WILL NOT offer to implement a 401(k) savings plan for our employees in order to dissuade them from supporting the Union.

WE WILL NOT make veiled threats to terminate known supporters of the Union.

WE WILL NOT inform our employees that our delay in implementing new benefits was a result of the Union's organizing campaign.

WE WILL NOT assist and support the QA program, a labor organization within the meaning of Section 2(5) of the Act.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remove from our employees' manual the provision mandating that our employees initially discuss work "problems" with their supervisors rather than with their fellow employees.

GROUSE MOUNTAIN ASSOCIATES II, A
LIMITED PARTNERSHIP, D/B/A GROUSE
MOUNTAIN LODGE

Daniel R. Sanders, Esq., for the General Counsel.
Daniel D. Jones, Esq. (Crowley, Haughey, Hanson, Took & Dietrich), of Kalispell, Montana, for the Respondent.
Scott Hanson, of Missoula, Montana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charge in Case 19-CA-24764 was filed by Hotel Employees and Restaurant Employees Union, Local 427 (the Union) on September 5, 1996, and the unfair labor practice charge in Case 19-CA-24765 was filed by the Union on September 6, 1996. After investigation of the unfair labor practice charges, on November 27, 1996, the Acting Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a consolidated complaint, alleging that Grouse Mountain Associates II, a Limited Partnership, d/b/a Grouse Mountain Lodge, had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the National Labor Relations Act (the Act). On December 17, 1996, the Union filed a first amended unfair labor practice charge in Case 19-CA-24765. Thereafter, on July 18, 1997, the Acting Regional Director for Region 19 issued an amendment to the aforementioned consolidated complaint and, on August 20, 1997, the Regional Director for Region 19 issued a second amendment to the aforementioned consolidated complaint. Respondent timely filed answers to the consolidated complaint and to its amendments, essentially denying the commission of the alleged unfair labor practices. Pursuant to a notice of hearing, which accompanied the consolidated complaint, a trial on the merits of the unfair labor practice allegations was held before me on September 16 and 17, 1997, in Kalispell, Montana. At the hearing, all parties were afforded the opportunity to examine and to cross-examine all witnesses, to offer into the record all relevant documentary evidence, to argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel and by counsel for Respondent and have been carefully considered by the undersigned. Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the respective testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a State of Montana limited partnership with an office and place of business located in Whitefish, Montana, where it is engaged in the business of operating a full-service

resort. During the 12-month period preceding the issuance of the consolidated complaint, which period is representative, in the normal course and conduct of its business operations described above, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods and products, valued in excess of \$50,000, directly from suppliers located outside the State of Montana. Respondent admits that, at all times material, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that, at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The consolidated complaint alleges and the General Counsel contends that Respondent engaged in acts and conduct violative of Section 8(a)(1) and (2) of the Act by recognizing and bargaining with an in-house labor organization, known as the quality assurance (QA) committee, an entity to which Respondent renders assistance and support and which it dominates, even though the QA committee does not represent a majority of Respondent's employees in a unit appropriate for collective bargaining. The consolidated complaint also alleges and the General Counsel also contends that Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act, through its supervisors, by interrogating its employees regarding their activities and support for the Union, by informing its employees it was attempting to gain increased wages and benefits for them through the QA committee but, in view of their support for the Union, could not do so, by announcing new benefits for its employees in QA committee memoranda, by stating, in the presence of current and former employees, that, if it could get rid of named union supporters, the union movement would die, and by offering financial incentives to its employees in order to encourage them not to support the Union. Further, the consolidated complaint alleges and the General Counsel contends that Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act by maintaining in its employee handbook a provision which prohibits its employees from discussing working conditions and problems with other employees; by, in a March 15, 1996 memorandum to its employees, impliedly threatening employees that, if they chose representation by the Union, it would discontinue its practice of keeping employees employed during those months of the year when its operating revenues were lower than during peak tourist seasons and that current benefits enjoyed by employees would not be included in a collective-bargaining agreement; and by, in an August 15, 1996 memorandum to its employees, informing its employees that it had withheld additional benefits upon advice from its attorney to not implement new benefits during a union organizing activity and that it had concluded that their union organizing activities had failed from lack of interest and support, thereby implying to its employees that it had engaged in surveillance of their union organizing activities. Respondent denied the commission of the alleged unfair labor practices, arguing that the QA committee is not a labor organization within the

meaning of Section 2(5) of the Act and that, in any event, it does not assist and dominate the QA committee, that the prohibition in its employee handbook has nothing to do with the employees' terms and conditions of employment, and that the statements, in its memoranda to its employees, were privileged by Section 8(c) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent, which is a limited partnership consisting of four limited partners and two general partners (Harry (Buzz) Crutcher and Brian Gratton),¹ operates a 144-room resort hotel and bar and restaurant facility, including public meeting rooms and a lap swimming pool, in Whitefish, Montana. The record reveals that Crutcher is Respondent's managing partner for the resort hotel; that, instead of a general manager, day-to-day operations of the facility are overseen by a three-member group, known as the executive committee, consisting of Toby Slatter, the director of operations, Kayla Elkins, the controller, and Glenn White, the vice president of sales and marketing; that, with the approval of the managing partner, the executive committee makes all decisions regarding Respondent's employees' terms and conditions of employment; that William (Bill) Caron is the resort hotel's manager-on-duty (MOD),² and that Patrick Tobin is the lodge bar manager.³ Respondent employs a core group of approximately 110 employees at the resort hotel, with the number fluctuating to as high as 145 employees during peak season (June through October) and to as low as 100 employees during the slowest period, November through early December. The record further reveals that the Union commenced an organizing campaign amongst Respondent's hotel employees in the fall of 1995; that such continued through the winter and spring of 1996;⁴ that the employees openly conducted their union activities, including the posting of union-related materials on a bulletin board,⁵ at the hotel; and that Respondent was aware of employee Terry Widdifield's membership on the Union's organizing committee.

B. The Alleged Unlawful Interrogation

Neil Clements, who worked for Respondent from the spring of 1994 through the fall of 1996 as a "buser" in the hotel's res-

¹ In reality, there are just five partners, with Crutcher acting as both a limited and general partner.

² Caron is on duty from approximately 4 p.m. until midnight and, except for the bar manager, the chef, and the restaurant manager, he is the only management representative in the hotel for most of his work shift. As such, Caron is responsible for taking care of guest needs and overseeing all operations of the hotel. With regard to matters involving the hotel's employees, Caron has no authority to hire or fire, and issues relating to employee discipline, which arise during his shift, are referred to the employee's department manager.

³ Respondent admits that Crutcher is its agent within the meaning of Sec. 2(13) of the Act; that Elkins and Tobin are its supervisors and agents within the meaning of Sec. 2(11) and (13) of the Act; and that Caron is its supervisor within the meaning of Sec. 2(11) of the Act. Respondent denies that Caron and Tobin are its agents within the meaning of Sec. 2(13) of the Act.

⁴ Unless otherwise stated, all dates herein shall be in 1996.

⁵ This includes GC Exh. 5, a document, dated March 15 and entitled "Why Union," which sets forth various demands of those employees, who support the Union, including "time and one half for working our posted day off, after 6 consecutive days and for holidays."

taurant while attending high school, testified that, one day in April during the height of the union organizing campaign, his family's automobile, which he used to travel to and from work, required repair and that Bill Caron picked him up at his home⁶ in the hotel's van and "he offered to give me a ride home after my shift was over." Clements accepted Caron's offer. According to Clements, during the ride home, they spoke, and "he just asked me if I knew anything about the Union . . . I said I didn't know anything about it, and we didn't talk about it anymore." Caron testified that he recalled using the hotel's van to give Clements a ride home from work but that he could not recall the content of their conversation. There is no record evidence that Clements was an avowed union adherent or that Respondent suspected Clements of having such sympathies. Further, while both Clements and Caron testified that they often spoke about various subjects while the latter collected his tips at the conclusion of his shift, they were not social friends and, according to Clements, prior to the incident in the hotel van, they had never spoken about the Union.

Clements impressed me as being an honest and forthright witness and, given Caron's lack of recall, I credit the former as to his above-described conversation with Caron. With regard to whether, as alleged in the consolidated complaint, Respondent's supervisor's questioning of Clements constituted conduct violative of Section 8(a)(1) of the Act,⁷ the test is "whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act." *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *Rossmore House*, 269 NLRB 1176 (1984), *affd.* 760 F.2d 1006 (9th Cir. 1985). While Caron's question was arguably casual, utilizing the above analysis convinces me that such was, in fact, coercive. Thus, Clements was not a known union adherent, and there is no evidence to suggest that Respondent believed he was a union supporter. Also, as they had never previously discussed the Union, Caron's question must have been unexpected. Further, while Caron and Clements may have spoken often at work, they were neither social friends nor had apparently anything more than a supervisor-employee relationship, and, rather than posing his question in the restaurant before leaving the hotel when Clements was amongst other employees, Caron interrogated Clements in a one-on-one context while in the hotel van. Moreover, as will be discussed *infra*, Respondent

⁶ Clements lives approximately 10 minutes from the hotel.

⁷ Counsel for Respondent argues that Caron's conduct may not be attributed to Respondent as the record evidence does not warrant a finding that he was Respondent's agent and that a finding of agency is necessary "before the Board can conclude that statements allegedly made by [an individual] are attributable to the Respondent." However, Respondent did admit that Caron was a supervisor within the meaning of Sec. 2(11) of the Act, and, contrary to counsel, the Board has long held that "Section 2(13) of the [Act] makes it clear that an employer is bound by the acts and statements of its supervisors whether specifically authorized or not." *Ideal Elevator Corp.*, 295 NLRB 347, 347 fn. 2 (1989); *Dorothy Shamrock Coal Co.*, 279 NLRB 1298, 1299 (1986). Further, that Respondent may have undertaken extensive efforts to train its supervisors against engaging in certain acts and conduct during a union organizing campaign neither insulates Respondent from a finding that it committed unfair labor practices nor raises any presumption that the individuals did not engage in unlawful acts and conduct.

had previously disclosed its opposition to the Union to its employees, and Caron gave no assurances against reprisals to Clements. Finally, and most significantly, as will also be discussed infra, Caron's interrogation occurred in the midst of other unlawful acts and conduct committed by Respondent, including conduct attributed to Caron himself. In these circumstances, I believe Caron's deceptively innocuous⁸ interrogation of Clements was coercive and, thus, violative of Section 8(a)(1) of the Act. *Advance Waste Systems*, 306 NLRB 1020 (1992).

C. Comments Attributing Loss of Potential Benefits for the Employees to Their Support for the Union

The consolidated complaint alleges that Respondent, acting through William Caron, violated Section 8(a)(1) of the Act by telling employees that it was trying to obtain employee raises and benefits through the QA committee but could not do so because of the Union. In this regard, Pam Driscoll, who worked for Respondent from 1987 through 1996 as a server in the hotel's restaurant and who was a member of the Union's organizing committee,⁹ testified that, from the summer of 1995 through the summer of 1996, she and Bill Caron often spoke about the QA committee;¹⁰ that Caron would inform her about the employees' ideas and suggestions, on which QA was working; that she, in turn, would relate her own suggestions and proposals to Caron; and that "he was very good about sharing [QA matters] with the employees that didn't attend" QA meetings. In particular, according to Driscoll, "We talked frequently after work We discussed the Union the issues that the people who wanted the Union had. It was Bill's hope to resolve those issues without a union to take them to QA."¹¹ In the same regard, Terry Widdifield, who has worked for Respondent at the hotel as a night server in the restaurant since the facility opened in 1984, testified that Caron was usually on duty on Saturday nights when she worked and that, after employees clocked out, everyone gathered informally; and that there would be general discussions. She recalled, "I can remember always saying that it would be very nice if our servers could have wage increases" and, at least once in April or May, Caron replying, "Terr, you know this Union movement thing wasn't happening. You know, I can get these things for you"¹² While specifically denying the language of the consolidated complaint allegation, Caron averred that "there would probably

be a . . . comment that I could make that got turned into that allegation." As to this, he testified that employees were always asking him questions, and "I tried not to" answer. "But I just got approached by so many people" and might have told employees "I wish there was something that I could do for you guys. But, with all the Union activity I can't, it's illegal." He added that all decisions on employees' terms and conditions of employment are made by the executive committee, that he is not a member of that body; and that employees were aware of his limited authority.

In his posthearing brief, counsel for the General Counsel argues that the respective testimony of Driscoll and Widdifield supports the allegation of the consolidated complaint and that "the only possible conclusion" from the foregoing is that Caron unlawfully communicated a message to employees "that supporting the Union has cost them potential benefits." While I shall rely upon the respective accounts of Driscoll and Widdifield, each, of whom, appeared to be testifying in a candid manner and was a more impressive witness than Caron, I do not believe one may reasonably infer from either account what counsel for the General Counsel concludes, and I see nothing unlawful in Caron's comment to Driscoll. Thus, the latter understood that the QA system was designed to permit employees to propose suggestions and ideas to the hotel's executive committee for its consideration of them and there is no record evidence that the latter accepts all the suggestions and ideas, which are proposed by the hotel's employees. Further, it appears that Caron was merely expressing his opinion to Driscoll and was making no promises to her, and, of course, such is privileged under Section 8(c) of the Act. *Alterman Transport Lines*, 308 NLRB 1282 at 1282 fn. 3 (1992). However, as to Caron's comment to Terry Widdifield, while I do not view it in the same light as does counsel for the General Counsel, I likewise believe the supervisor's comment was unlawful. Thus, Caron's comment, unlike what he said to Driscoll, was not couched in terms of the QA program, and the unmistakable inferences, which, I believe, he desired Widdifield, who Respondent knew, was one of the ardent supporters of the Union amongst the employees, to draw, was that the union campaign would not succeed and that he could obtain what the union adherents demanded in their posted materials without the Union's interference.¹³ Put another way, I view Caron's comment to Widdifield as a definite promise of unspecified benefits ("these things") in order to dissuade employees from supporting the Union—a patent violation of Section 8(a)(1) of the Act, and I so find. *Highland Yarn Mills*, 313 NLRB 193, 207 (1993); *Airtex*, 308 NLRB 1135 at 1135 fn. 2 (1992).

⁸ In this regard, I note that Clements cut off Caron's inquiry by saying he did not know anything. It is likely that, if the employee had answered affirmatively, Caron's search for information would have continued.

⁹ Respondent was aware of her role on the Union's organizing committee.

¹⁰ Briefly stated, according to Driscoll and Terry Widdifield, Respondent's QA program at the hotel was designed to permit the hotel employees to bring to management's attention ideas and suggestions on various issues, ranging from their working conditions to hotel-guest matters and to safety concerns.

¹¹ Among the subjects she and Caron would discuss were daycare for employees' children, seniority, holiday and vacation pay, and other benefits for employees—"We discussed everything."

¹² There is no dispute that Widdifield and Caron were social friends. According to the employee, she communicated Caron's comment to other employees.

¹³ The fact that Caron and Widdifield may have been social friends is irrelevant, and, if anything, I believe that Caron was presuming on their friendship and aware that Widdifield would repeat his remark to other employees. Further, while Caron may not have had authority to institute policy changes, there is no record evidence that he could not suggest policy changes outside of the QA process or that employees were actually aware of his asserted limited authority. Further, the fact that employees approached him to reestablish the QA program may well reflect their belief that, given his position as the hotel's MOD, he did have some influence with the executive committee.

D. The Announcement of the New Employee Holiday Pay Benefit

The consolidated complaint alleges that Respondent violated Section 8(a)(1) of the Act when, on about July 15 and 18, it announced new holiday pay and paid sick leave benefits for employees in unsigned memoranda from the “QA Committee.” With regard to what occurred, Harry Crutcher testified that, along with other suggested benefits, paying employees time and one half for working on “holidays” had been a QA proposal since approximately 1991; however, “the financial status of the company could not justify it” until January 1996 at which time, according to Kayla Elkins, the executive committee and the general partners realized that 1995 had been the first profitable year in the Grouse Mountain Lodge’s existence. Elkins added that “it was at that time that the owners felt that there [were] financial resources . . . to create a benefit for the employees. But because of the union activity . . . at the hotel, it was [our attorney’s] suggestion that we not grant any new benefit.” Subsequently, in July, Respondent’s executive committee, with the approval of the general partners, decided to implement a so-called “holiday incentive plan” under which employees would be paid time and one half for working on four holidays during a calendar year—Christmas after 5 through 11:59 p.m. Christmas Day, New Years Eve after 5 through 11:59 p.m. New Years Day, and two additional holidays, which would be selected after considering suggestions from employees through the QA program. The executive committee’s decision was reached on July 11, and, according to the uncontroverted, respective testimony of Caron and Elkins, the “minutes” of that meeting, Joint Exhibit 1(b) were posted on employee bulletin boards inside the hotel.¹⁴ Four days later, on July 15, a QA program meeting was held. According to the “minutes” of this meeting, Joint Exhibit 1(a), Caron, who conducted the meeting, began by “doing an extensive review” of the executive committee minutes as such related to the personal leave and holiday pay benefits. At that QA program meeting, it was suggested that an employee poll be conducted to choose the two other holidays for which employees would be paid time and one half for working. The suggestion was forwarded to the executive committee and was subsequently adopted.

Based upon the foregoing, it is apparent that the consolidated complaint allegation is factually incorrect, and I agree with counsel for Respondent that, to the extent the General Counsel asserts that the paid holiday benefit was a product of Respondent’s QA program and announced by a “QA Committee,” no record evidence exists to support such a contention. Clearly, the paid holiday benefit was announced and implemented by Respondent’s executive committee. Further, inasmuch as, in his posthearing brief, counsel for the General Counsel has postulated no legal arguments as to why the executive committee’s announcement was violative of Section 8(a)(1) of the Act, one can only assume that he recognizes that the factual error in the consolidated complaint allegation is fatal and that the executive committee’s announcement itself of the new employee benefits was not a violation of Section 8(a)(1) of the Act. In any event,

¹⁴ In the same document, Respondent’s executive committee also announced a new personal leave time benefit.

as I do not believe the mere announcement of the new employee benefits constituted a violation of the Act, I shall recommend dismissal of amended paragraph 7(a)(3) of the consolidated complaint.

E. The March 15 Harry Crutcher Memorandum

There is no dispute that, on March 13, Harry Crutcher drafted and published a memorandum to Respondent’s resort hotel employees entitled, “Be Careful About Union-Organizer’s Promises.” According to Respondent’s managing partner, his memorandum was prompted by the unanswered union literature, which Respondent had permitted employees to post at the hotel during the winter months and a desire to explain Respondent’s position regarding the Union. The General Counsel contends that statements in two paragraphs are unlawful, violative of Section 8(a)(1) of the Act. The second paragraph on page two of the document, which immediately follows Crutcher’s response to the union supporters’ March 15 demands document, reads as follows:

Good, spirited discussion on tough issues is healthy. But, when organizers are intentionally misleading to you—whom they claim they want to help—shouldn’t you questions [sic] their real motives? (Dues!) The sad irony is that the union organizers’ claims of what they have done for others are less good than what Grouse now provides, insurance, vacations—compare. Bonuses? At Grouse, they’re currently common in the summer and at Christmas. There are a number of privileges our employees have that would be unlikely to be included in a union contract.

At no point in his memorandum did Crutcher either explain, to Respondent’s hotel employees, what he meant by the word “privileges” or give any examples. However, testifying at the trial, Crutcher did what he failed to do in his memorandum and explained that, rather than referring to traditional employee benefits, such as insurance and bonus payments, his last sentence refers to “privileges or perks” such as “things we’ve done over the years that would not be traditionally part of any sort of collective-bargaining agreement by nature,” including ski passes, golf privileges, and borrowing money.

The consolidated complaint alleges that the last sentence of the paragraph constitutes an unlawful implied threat that, if Respondent’s employees select the Union as their collective-bargaining representative, current benefits, enjoyed by employees, would not be included in a collective-bargaining agreement. In his posthearing brief, counsel for the General Counsel argues that the last sentence language constitutes a threat of a loss of benefits for employees resulting from their support for the Union. In contrast, counsel for Respondent argues that “to conclude that statement was an implied threat requires a level of insensitivity uncommon in today’s workplace,” and that the language is “innocuous and readily and logically explained.” However, while Crutcher belatedly offered an explanation at the trial, his memorandum contains neither an explanation of nor examples for the word “privileges,” and I agree with counsel for the General Counsel that what Crutcher disingenuously terms privileges are, in reality, types of benefits extended to the hotel’s employees and that the clear implication of the last sen-

tence of the quoted paragraph is a loss of benefits if the employees select the Union as their bargaining representative. A threatened loss of benefits, whether general or specific, because of employees' support for the Union is unlawful. *Harper-Collins Publishers*, 317 NLRB 168, 179 (1995); *Waste Management of Utah*, 310 NLRB 887 (1993). Moreover, Crutcher's threat to employees of lost "privileges" if Respondent is forced to negotiate a collective-bargaining agreement with the Union may be equated with another employer's threatened loss of "favors" if forced to deal with a third party, a statement found by the Board to have constituted an unlawful threat. *Mediplex of Wethersfield*, 320 NLRB 510, 518 (1995). Therefore, rather than being innocuous, I find that Crutcher's written statement was coercive and violative of Section 8(a)(1) of the Act.

The fourth paragraph on the second page of Crutcher's memorandum reads, as follows:

Unfortunately, our Lodge is in a seasonal resort area. The number of skiers is declining nationally, so we have directed our Sales Department to change winter marketing emphasis to corporate groups. We hope to see results next year. Presently, Grouse experiences substantial operating losses from November through May and operating profits from June through October. Five months good—seven months bad. Still, we now choose to keep the Lodge open year round—even in bad months, partially for your benefit. We know that you don't get enough hours during those bad times, but we do the best we can and, I assure you, are concerned about the income pinch on off season. It hits us too, because we have to use profits made in the good months to finance operations during the bad months. A union would force the owners to a totally different approach.

As above, Crutcher neglected to include an explanation of his language for the hotel's employees. However, at the trial, he averred that, recognizing the Union as the employees' bargaining representative would necessitate a change in Respondent's approach to doing business "because . . . we didn't have the flexibility to do what we thought was appropriate." In this regard, he noted that a union contract may specify minimum shifts and scheduling, whether the hotel must remain open, and whether it may send employees home in certain situations and that, in such situations, employers are unfairly handcuffed.

The consolidated complaint alleges that the last sentence of the latter paragraph impliedly threatens Respondent's hotel employees that, if they chose union representation, Respondent would discontinue its practice of keeping them employed during those months, in which it experiences substantial operating losses, and counsel for the General Counsel contends that Crutcher's unmistakable message to the hotel's employees was "that Respondent will not be as lenient or flexible in dealing with the exigencies of the slow season if a union were in place." Again, counsel for Respondent argues that Crutcher's words were "innocuous" and that he was merely responding to the Union's posted demands. Contrary to counsel, if Crutcher was concerned with the Union's bargaining flexibility, it was his obligation to have so informed the employees. He failed to

do so, and, on any "level of sensitivity," the coercive nature of his words is crystal clear. Thus, I agree with counsel for the General Counsel that Crutcher's written language conveyed a clear warning to the hotel's employees that Respondent would change approach to staffing in nonpeak seasons if they chose the Union as their bargaining representative—a blatant violation of Section 8(a)(1) of the Act. *Harper-Collins Publishers*, supra; *Waste Management of Utah*, supra.

F. The Employees' Manual

There is no dispute that Respondent's employees' manual, General Counsel's Exhibit 2, dated March 26, 1996, has been in effect at all times material herein. The section of said the manual, entitled, "Employee Problems," reads as follows:

Problems are bound to occur in the best of companies. This is normal. Such problems should be discussed with your Supervisor first, not with fellow employees. You may expect a fair hearing on any problems or dispute that may arise.

If, after full consideration of the problem, you feel your Supervisor has not rendered a fair and equitable decision, you may request permission to speak to the Executive Committee.

Harry Crutcher explained that there is a business reason for the above provision—"that, in order to maintain productivity and efficiency within an organization, you want as little wasted time as possible. . . . if it is something . . . to be discussed with another employee, it may be good for the soul . . . but it is not necessarily going to get a solution." He added that no employee has ever been disciplined for violating this provision and that it is not a prohibition but, rather, merely a "policy recommendation."

The consolidated complaint alleges that the foregoing employees' manual provision is violative of Section 8(a)(1) of the Act as it prohibits employees from discussing working conditions and problems with other employees. In this regard, counsel for the General Counsel notes that the word "problems" is not defined and, thus, may be interpreted as including grievances involving terms and conditions of employment. Arguing that the provision is not unlawful, counsel for Respondent points out, as discussed above, that Respondent has placed no restrictions on its employees' Section 7 activities and that the provision has never been utilized to discipline employees for discussing terms and conditions of employment with other employees. However, the Board has long held that an employer acts in violation of Section 8(a)(1) of the Act by publishing and maintaining any type of written or oral rule which prohibits employees from discussing matters relating to their terms and conditions of employment with their fellow employees as such has a tendency to coerce employees in the exercise of their rights guaranteed by Section 7 of the Act. *Medeco Security Locks*, 319 NLRB 224, 228 (1995); *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995); *Triana Industries*, 245 NLRB 1258 (1979). Further, where, as herein involved, ambiguity appears in an employee work rule, which is promulgated by their employer, the ambiguity must be resolved against the promulgator of the rule rather than the employees, who are subject to the rule. *Medeco Security Locks*, supra;

Laidlaw Transit, Inc., 315 NLRB 79, 84 (1994). Moreover, contrary to Respondent, a finding that such a rule has been unlawfully maintained is not dependent upon evidence of enforcement of the said rule. *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992). Finally, other than Crutcher's self-serving justification for maintaining the above-quoted employee work rule, Respondent offered no business justification for the rule.¹⁵ Accordingly, I find that Respondent's employee work rule, mandating that employees first discuss "problems" with their immediate supervisors rather than fellow employees, is violative of Section 8(a)(1) of the Act.

G. *The Alleged Unlawful Offer of a Financial Benefit*

The consolidated complaint alleges that Respondent engaged in conduct, violative of Section 8(a)(1) of the Act by offering a financial benefit to an employee to encourage the employee to not support the Union. In this regard, employee Terry Widdifield, who, Respondent knew, was a member of the Union's organizing committee, testified that she had been invited to attend a charity concert and barbecue in Whitefish in late March; that she attended the event with William Caron, Patrick Tobin, the bar manager,¹⁶ and the latter's date; and that, early in the evening of the event, after her work shift, she met Caron, Tobin, and his date in the resort hotel's bar for drinks before leaving for the concert. According to Widdifield, at one point, she and Tobin were speaking to each other while the others were not listening, and "Patrick looked at me and he said, Terr, I got it from the man, how about a 401(k) plan. And it angered me. . . . I said its too late, you know this is bullshit. And he said, I know, Terr." Widdifield added that nothing more was said and that the matter was not raised again. While he recalled having drinks in the hotel bar prior to attending the concert with Caron, Widdifield, and his girl friend, when asked if he discussed a 401(k) plan with Widdifield that night, Patrick Tobin replied, "Not to my knowledge, not the best of my recollection I would recall anything like that." Tobin added that there exists no 401(k) plan for anyone at Respondent's resort hotel.

As between Widdifield and Tobin, the former impressed me as being the more trustworthy and candid witness, and I shall credit Widdifield's version of their conversation in the resort hotel's bar before leaving for the charity concert and barbecue. In support of the consolidated complaint allegation, counsel for the General Counsel characterizes the conversation as Respondent's offer of a benefit to a known union adherent designed to sway her from supporting the Union, and, as there can be no other reasonable explanation for Tobin's offer, I agree. An offer of specific benefits, such as a 401(k) plan, to an employee in order to dissuade said employee from supporting a union is patently violative of Section 8(a)(1) of the Act. *Pincus Elevator & Electric Co.*, 308 NLRB 684, 692 (1992). Accordingly, Respondent's offer of a 401(k) plan to Terry Widdifield was unlawful, and I so find.

¹⁵ While Crutcher professed that the manual provision was not a rule but, rather, a policy recommendation, it is not labeled as such.

¹⁶ As with William Caron, Respondent admitted that Tobin is a supervisor within the meaning of Sec. 2(11) of the Act, and, pursuant to Sec. 2(13) of the Act, Respondent is responsible for the acts and conduct of its supervisors whether or not authorized to engage in such.

H. *The Stumptown Station Incident*

The consolidated complaint alleges that, in April, Respondent, acting through Kayla Elkins, in the presence of current and former employees, stated that the Union had interfered with desired physical improvements to its facilities and that, if they could get rid of a named employee, the Union would die. In support of said allegation, Louise Adams, who worked for Respondent from January 1995 through May 1996, testified that, at approximately noontime one day in the spring of 1996 before she left her job with Respondent, she went to the Stumptown Station, a restaurant in Whitefish, and had occasion to be there at the same time as Kayla Elkins and two friends.¹⁷ According to Adams, she was at the restaurant "to see my friend Jim who is a bartender there I noticed Kayla and two other gals having lunch at a table. . . . I just sat down at the bar and waited for my friend Jim [to finish]" Adams recognized one of the women, who was eating lunch with Elkins, as Kristen Sterns, a former employee at the Grouse Mountain Lodge. She did not know the identity of the other woman at Elkins' table. Placing the table at which Elkins sat, as "maybe 15 feet or so" from where she was seated at the bar, Adams recalled that Elkins and her companions "were the only people in the bar, and they were talking pretty loud" in "bar voices," which are necessary "to talk over the music."¹⁸ Adams continued, "I think I heard Kristen say something like well, what is it that they expect? And, Kayla said something like, well, they expect guaranteed shifts, even when it's not busy." Also, "I think Kayla said that, if we can get rid of Terry and a few others, this whole thing would pass."¹⁹ At this point, Adams recalled, Kristen Sterns stood and walked from the table, passing by Adams on her way to the bathroom, and, when Stern returned to the table, the three women arose and left the restaurant.²⁰ Finally, Adams conceded that, until seen by Sterns as she walked to the bathroom, the three women failed to notice her presence in the restaurant.

Kristen Sterns, who worked for Respondent until July 1995 as director of sales, recalled having lunch at the Stumptown Station restaurant in early April 1996 with Elkins and another friend, Holly Apple. Sterns, who stated that the three women regularly meet for lunch at different restaurants in the Whitefish

¹⁷ Apparently, the Stumptown Station restaurant is a two-room facility. One room is a dining room and the other contains the restaurant's bar and some tables and chairs, which are arranged next to the bar. Also, there is seating at the bar itself.

¹⁸ No music was playing at the time.

¹⁹ Adams assumed that the "Terry" to whom Elkins referred was Terry Widdifield.

²⁰ According to Adams, she returned to the resort hotel after lunch and reported what she observed and heard to Widdifield. The latter corroborated Adams on this point, testifying that, one day, upon leaving Kayla Elkins office and on her way back to the dining room, Louise Adams, who was at the front desk, yelled to her. She immediately went over to Adams, who told her, "Terry, watch your ass, they're out to get you," and "she related briefly what she had overheard in Stumptown" Thereafter, according to Widdifield, she confronted her bar manager with what Adams told her, and "she said it was not true." Also, Widdifield testified, she subsequently met Kristen Sterns, who denied that the alleged conversation ever occurred.

area, testified that they ate at a table in the bar area, that there was just one other couple, who were having lunch at another table, in the bar area at the time, and that it was “quiet.” She further testified that the subject of the Union did arise during the lunch conversation and that she raised it, commenting “that the employees of [Respondent] had quite a few benefits, that’s unfortunate that [the Union was] happening at this time, and Kayla . . . was reiterating what she understood to be the law. And informing Holly and myself . . . that, even if [Respondent] wanted to increase benefits for the employees . . . with the union activity going on, they couldn’t do that because it would be seen as . . . unfair labor practices.” Sterns specifically denied any mention of “Terry” or Terry Widdifield and the comment attributed to Elkins. While conceding she went to the bathroom during the lunch, Sterns denied seeing Adams, with whom she is acquainted, in the bar area during the lunch and specifically denied seeing her while walking to the bathroom. Finally, Sterns denied having a conversation with Widdifield about what might have been said during the lunch. Holly Apple, who worked for Respondent from 1987 until 1993, testified similarly about the lunch with Sterns and Elkins at the Stumptown Station restaurant. According to her, other than a couple having lunch at another table, the only other person in the bar area while she ate lunch was the bartender, and she denied seeing a woman at the bar. As to the lunch conversation, she confirmed that the hotel employees’ union activities were a subject of the conversation. “I recall . . . Kayla telling us how things that were happening. Just how it was upsetting her. . . . And I do remember Kristen talking about the benefits and how good they were at Grouse Mountain. I recall Kayla explaining the laws about how they can’t change any benefits, or add anything now as the union activity was going on.” Apple specifically denied any mention of Terry Widdifield’s name during the lunch and the comment, which was attributed to Elkins. During cross-examination, Apple conceded that she was sitting in a manner so that “my side was to the bar” and that it was possible a woman could have been sitting at the bar without her knowledge. Testifying with regard to her lunch with Sterns and Apple, Elkins recalled that she was the only one of the three who sat facing the bar, and she specifically denied seeing Adams in the area of the bar at any point during the lunch. According to her, the Union arose during the lunch conversation—“Kristen had brought up the benefit issue. . . . I made the comment, I’m really not sure what the Union was looking for. . . . shared with them my personal opinion of the Union, and the activity that was taking place.” Elkins specifically denied mentioning “Terry” or Terry Widdifield and the comment, which was attributed to her.

Whether Respondent engaged in conduct violative of Section 8(a)(1) of the Act depends upon my analysis of the credibility of the respective witnesses, and, in this regard, notwithstanding that Elkins, Sterns, and Apple each specifically denied what was attributed to Elkins by Adams, the latter appeared to be a far more candid and believable witness. Thus, if one is to rely upon the respective accounts of Elkins, Sterns, and Apple that Adams was not present in the bar area of the restaurant during their lunch, the inevitable conclusion to be reached is that Adams fabricated her entire testimony. However, unless Adams

was, in fact, present at the Stumptown Station restaurant, as she testified, how could she have known three facts not in dispute—that the three friends ate lunch together at the restaurant, that a topic of their conversation was the Union’s organizing campaign, and that, at one point during the meal, Sterns left the table and went to the bathroom. In these circumstances, the only reasonable conclusions are that Adams was truthful as to her presence and what she overheard and that Elkins, Sterns, and Apple each dissembled. Two points buttress my conclusions. First, while Sterns and Apple corroborated each other as to what was said about the Union during the lunch, Elkins contradicted them, giving an entirely different account about what was said with regard to the union activity. Next, Adams’ testimony that she informed Terry Widdifield as to what was said about her was corroborated by Widdifield, who, I previously stated, impressed me as being an honest and straightforward witness. In these circumstances, I find that, during lunch with her friends, Sterns and Apple, and in Adams’ presence, Kayla Elkins remarked that, if they could get rid of Terry “and a few others,” the union movement would pass and that, by “Terry,” Elkins meant Terry Widdifield, a known union adherent. I agree with counsel for the General Counsel, and find, that the comment, overheard by an employee,²¹ constituted a veiled threat to terminate employees, whom Respondent knew or suspected were supporters of the Union, and, thus, was violative of Section 8(a)(1) of the Act. *Great Lakes Window, Inc.*, 319 NLRB 615 at 615 (1995).

I. Elkins’ August 15 Memorandum to the Employees

On August 15, Kayla Elkins issued a memorandum to Respondent’s resort hotel employees which, in part, states:

I just read a bulletin in which the Union arrogantly and falsely claims to have “helped” Grouse Mountain Lodge employees get the increased benefits (time and one half for holidays and personal leave time) recently announced by the Executive Committee. I know for a fact that since first being mentioned by the QA Committee several years ago, those added benefits have been on the owners’ agenda but Lodge finances would not permit them. When the owners recognized 1995 would be our first profitable year ever, they put things in motion. Unfortunately, legal counsel to Grouse Mountain Lodge said they could not implement any new benefits while union organizing efforts were active. When the Executive Committee recently concluded those organizing activities had failed from lack of employee interest and support, our attorney gave us the go ahead. The QA Committee deserves our thanks and credit, but the Union had no impact on the Owners’ and Executive Committee’s decisions

With regard to the sentence, in which she discussed Respondent’s attorney’s advice not to implement the above benefits, Elkins testified that Respondent’s managing partners and the executive committee had decided, in January, to implement time and one half for holiday pay, “but because of the union

²¹ Elkins admitted that she had a clear view of the bar area from where she sat. Therefore, I believe that not only did she see Adams sitting at the bar but that she meant for Adams to overhear what she said. Thus, the reference to a “few others” was left deliberately vague.

activity . . . at the hotel, it was [our attorney's] suggestion that we not grant any new benefit. . . . And so we did not." As to the sentence regarding the failure of the Union's organizing activities, Elkins testified that "[i]t's a small hotel. . . . You could just tell, from employees coming up to us, people who are against the Union, that the support that the Union had [was] waning."

The consolidated complaint alleges that Respondent violated Section 8(a)(1) of the Act when Elkins informed Respondent's employees that it had withheld additional benefits based upon advice from its attorney not to implement new benefits during a union organizing campaign. The Board law is quite clear that, in the midst of a union organizing campaign, an employer must proceed with an expected wage or benefit adjustment as if the organizing campaign had not been in progress. *America's Best Quality Coatings Corp.*, 313 NLRB 470, 484 (1993); *Atlantic Forest Products*, 282 NLRB 855, 858 (1987). The Board has, however, recognized an exception to this rule—an employer may postpone the implementation of such a wage or benefit adjustment if it makes clear to its employees that the granting of the adjustment is not dependent upon the result of the union organizing campaign and that the "sole purpose" of the postponement is to avoid the appearance of influencing employees in their decision to support the union. *Atlantic Forest Products*, supra. In so doing, however, an employer acts in violation of Section 8(a)(1) of the Act if it attributes its failure to implement the expected wage or benefits adjustment to the presence of the union. *Twin City Concrete*, 317 NLRB 1313, 1318 (1995); *Atlantic Forest Products*, supra. Herein, in her memorandum to the resort hotel's employees, Elkins placed the onus for Respondent's delay in implementing the above-described new employee benefits squarely upon the Union by linking Respondent's delay to the ongoing organizing campaign, and, notwithstanding that the two announced benefits were not expected by the hotel employees, I believe the same principle applies.²² Thus, despite Elkins' belief that the Union's organizing campaign had lost its momentum, there is no record evidence that, in fact, the campaign had ceased, and her written comment clearly had the effect of undermining the Union by creating the impression that, but for the ongoing organizing campaign, Respondent would have implemented the time and one half holiday pay and personal leave benefits. Accordingly, I find that Elkins' written comment, that Respondent's delay in imple-

²² Citing *Brooks Bros.*, 261 NLRB 876 (1962), Respondent's attorney argues that, inasmuch as Respondent has no historic practice of granting benefits early in a calendar year, implementation of the two new benefits during the organizing campaign would have constituted presumptive unfair labor practices and that Elkins was merely responding to the Union's attempt to take credit for the new benefits with a statement of fact. While I obviously can not, and do not, comment upon the advice, which was given to Respondent by its attorney, Respondent is bound by what Elkins wrote and, if the executive committee's stated rationale for delaying implementation of the two benefits is unlawful, Respondent will just have to live with the consequences of its dishonesty. Presumably, if business justification for implementing the benefits had existed in January 1996, Respondent would have done so. Likewise, if business justification existed for the delay in implementation, Elkins would have so stated.

menting the two new benefits was caused by the Union's organizing campaign, was violative of Section 8(a)(1) of the Act.

The consolidated complaint next alleges that Elkins' comment, in her August 15 memorandum, that the executive committee had concluded that the Union's organizing campaign had failed from lack of employee interest and support, created the impression that Respondent was engaging in surveillance of its employees' activities in support of the Union in violation of Section 8(a)(1) of the Act. In support, counsel for the General Counsel contends that such a statement would have made the resort hotel's employees believe that Respondent knew the levels of support for the Union and, as such, created the impression that Respondent had engaged in surveillance of their union activities. On the other hand, counsel for Respondent argues that what Elkins wrote "was merely a statement of the obvious" and that "noticing the decrease in organizing activity did not require surveillance but not to notice it would have been gross inattentiveness." As to whether Elkins' statement was unlawful, I must concentrate solely on her words, and, in this regard, note that, in her memorandum, she offered no explanation, justification, or basis for the executive committee's conclusion. Moreover, her comments were not phrased in terms of speculation; rather, the clear implication from her statement was that the executive committee had knowledge that the Union's organizing campaign had no support and had failed. Absent explanation, an employee reasonably may have believed that Respondent's executive committee gained its knowledge illegally by engaging in surveillance of its employees' organizing activities. In these circumstances, I believe that Respondent created the impression, amongst its employees, that it had engaged in surveillance of their union activities and, thereby, engaged in conduct violative of Section 8(a)(1) of the Act. *Keystone Lamp Mfg. Corp.*, 284 NLRB 626, 627 (1987); *Airport Distributors*, 280 NLRB 1144, 1149 (1986).

J. The Quality Assurance Committee

Paragraphs 5(a) and (b) and 6(a) through (c) of the consolidated complaint alleges that, at all times material herein, an entity, known as the QA committee, has existed at Respondent's resort hotel to deal with Respondent concerning wages, hours, and other terms and conditions of employment of its employees and is a labor organization within the meaning of Section 2(5) of the Act and that Respondent has rendered assistance and support to and dominated the QA committee, has recognized and bargained with the QA committee regarding wages, hours, and other terms and conditions of employment of its employees, and has engaged in the foregoing acts and conduct notwithstanding that the QA committee did not represent a majority of Respondent's employees in an appropriate unit in violation of Section 8(a)(1) and (2) of the Act. At the outset, in Respondent's employee's manual, under the heading "Suggestions," is the following language:

The Lodge feels that each employee is important. Therefore, his/her ideas are important also. Any suggestions for improvement will be appreciated by [Respondent]. This is your organization and we want to grow together. Please sign any written suggestions and place them in the QA Box located in the employees' lunchroom and kitchen break areas. All sug-

gestions are discussed at the QA meetings. (QA= Quality Assurance.)

In this regard, the labor organization allegation of the consolidated complaint refers to the “QA Committee,” and William Caron and Kayla Elkins, in her August 15 memorandum, both referred to the “QA Committee.” Nevertheless, Harry Crutcher testified that quality assurance, which has existed at the resort hotel since its opening in 1984, is not a committee or an organization but, rather, a “program” designed to address guest satisfaction, employee satisfaction, and safety issues and to give “people” an opportunity to bring “concerns” in these areas to the attention of management. Likewise, employee Terry Widfield and former employee Pam Driscoll each described Respondent’s QA program as a method designed to enable the resort hotel’s employees to bring to management’s attention ideas and suggestions on various issues, ranging from their working conditions to hotel-guest matters to safety issues.²³ The record establishes that the QA program exists on two levels—an employee suggestion box, into which employees place anonymous suggestions, and meetings, which employees are invited and encouraged to attend. It is the latter aspect of the QA program, which is alleged to bring it within the definition of a labor organization within the meaning of Section 2(5) of the Act. As to this point, while the record reveals that the QA program has no formative documents, such as bylaws, and no established structure or formal operating procedures, it does appear that Respondent viewed the program’s meetings with more formality than as simply an opportunity for employees to make anonymous suggestions, such as would be deposited in the suggestion box. Thus, analysis of the minutes of the QA program meetings, which are in the record, discloses that William Caron continually refers to QA as an entity, as in “QA requested” or “QA would like to add,” refers to those attending QA meetings as “QA members,” does not attribute suggestions to any individual employee, and differentiates between those attending QA meetings and other employees, as in “QA members and other employees have expressed” Moreover, the executive committee utilized the QA program for determining which holidays would generate the time and one half wage rate and for obtaining employees’ views on the types of lunches, which Respondent would provide for them.

The record establishes that, during 1995 and 1996, QA program meetings were scheduled and held once a month at the resort hotel. Further, while, in the first few years of Respondent’s facility’s existence, the employees, who attended the QA program meetings, were elected by the employees in their respective departments as representatives of the departments, at least during 1995 and 1996, attendance at QA program meetings was open to every employee of the resort hotel, including supervisors and management representatives, who only “occasionally” attended. The record also establishes that between

²³ Examples of the matters raised, by employees, in the QA program include daycare for employees’ children, employees’ meals, linoleum floor covering in the employee rest room, employee parking, smoking in the employees’ cafeteria, informational signs, VCR rentals by guests, grounds upkeep, the glass covering for the pool area, and nonskid strips in entry areas.

four and 20 employees attend each QA program meeting; that few, if any, employees attend every such meeting; and that those employees, who do attend, normally are either beginning or ending their work shifts and are paid for the time spent at QA program meetings. William Caron has been the chairperson for the QA program meetings since October 1995. Apparently, the QA program had become moribund in the mid-1990s, and, according to Caron, he became involved after “I had a couple of employees to approach me . . . they thought I would be the perfect person to get it going again.” As chairperson, Caron is the one responsible for setting the dates, the times, and the locations of the QA program meetings, opening each meeting and introducing topics of discussion, and preparing a “minutes.” With regard to these documents, Caron faithfully records, without comment, each suggestion or response to an executive committee question” and, after each QA program meeting, drafts and posts the meeting’s minutes throughout the resort hotel and sends copies to each department head and to the executive committee. The latter group either accepts or rejects the QA program meeting suggestions and ideas or requests further employee input. Caron testified, and there is no dispute, that, with regard to what is discussed at each QA program meeting, “there really [isn’t] any definition. [Those who attend are] allowed to bring up anything that they [want] to suggest” as to employee, guest, and hotel matters. Kayla Elkins described what then occurs as a “conversation amongst employees,” with one employee suggesting something, other employees giving their opinions as the suggestion’s value, and the idea thoroughly debated. On occasion, according to Elkins, the discussion sometimes results in a different suggestion than what was originally proposed. She added that Caron sometimes participates in the discussion. According to Caron, he initially will raise matters, which are “on-going” and have not yet been answered by the executive committee or a department head, or as to which the executive committee desires further employee input. Caron further testified that he sees his role as being that of a conduit between the employees and the resort hotel’s management, and there is no record evidence that he ever has vetoed a suggestion. Finally, Elkins testified that she has attended two QA meetings since the fall of 1995, and, “if someone brought up an idea and I had an opinion. A variation of what they were talking about, I would voice my opinion.” Likewise, Terry Slatter, the resort hotel’s director of operations, testified that he has attended QA meetings and that he has participated in discussions—“I would contribute my input when I could.”

As to whether Respondent has unlawfully rendered assistance and support to and dominated the QA program in violation of Section 8(a)(1) and (2) of the Act, counsel for the General Counsel and counsel for Respondent agree that I must initially determine whether the QA program falls within the definition of a labor organization within the meaning of Section 2(5) of the Act.²⁴ In this regard, the Board has held that an

²⁴ Sec. 2(5) of the Act defines a labor organization as follows:

The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in

“organization of any kind, or any agency or employee representation committee or plan” is a labor organization “if (1) employees participate, (2) the organization exists, at least in part, for the purpose of ‘dealing with’ employers, and (3) these dealings concern ‘conditions of work’ or concern other statutory subjects, such as grievances, labor disputes, wages, rates of pay, or hours of employment. Further, if the organization has as a purpose the representation of employees, it meets the statutory definition of ‘employee representation committee or plan’ under Section 2(5) . . . if it also meets the criteria of employee participation and dealing with conditions of work or other statutory subjects.” *Electromation, Inc.*, 309 NLRB 990, 994 (1992). Regarding the initial element, as employees suggest and debate ideas at the QA program meetings, it is clear that employees participate in the QA program. Further, while it lacks the structure of the employee action committees in *Ona Corp.*, 285 NLRB 400 (1987), and in *Electromation, Inc.*, supra, the safety and fitness committees in *E. I. du Pont & Co.*, 311 NLRB 893 (1993), or the grievance committee in *Keeler Brass Co.*, 317 NLRB 1110 (1995), or similar employee entities, which are the subject of Section 8(a)(1) and (2) of the Act decisions by the Board, given its use, by Respondent, for the development of the process for determining the holidays, for which employees would be paid time and one half, and for determining the types of lunches, which would be provided to employees, and given Caron’s comments regarding the suggestions and ideas and the process itself, the QA program meeting process seems to be perceived, by Respondent, as constituting some sort of employee representative entity and certainly viewed with a degree of formality greater than due a mere suggestion box procedure. In this regard, that the QA program lacks any formal structure or formative documents, including bylaws, is, of course, irrelevant in resolving the QA program’s status as a labor organization. *Electromation, Inc.*, supra; *Armco, Inc.*, 271 NLRB 350 (1984); *S & W Motor Lines, Inc.*, 236 NLRB 938, 942 (1978).

As to the second of the criteria, the Supreme Court held in *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959), that the term “dealing with” in Section 2(5) of the Act is broader than the term “collective bargaining.” In *E. I. du Pont & Co.*, supra, the Board noted that “the term ‘bargaining’ connotes a process by which two parties must seek to compromise their differences and arrive at an agreement. By contrast, the concept of ‘dealing’ does not require that the two sides seek to compromise their differences. It involves only a bilateral mechanism between two parties.” The mechanism “ordinarily entails a pattern or practice in which a group of employees . . . makes proposals to management, management responds to these proposals by acceptance or rejection by word or by deed, and compromise is not required.” If such a pattern or practice is established by the record evidence, and a group exists for the purpose of following said practice, “the element of dealing is present.” *Id.* at 894. In my view, such is exactly what occurs between the participants in the QA program meetings and Respondent’s executive committee. Thus, at the QA meetings,

part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

while suggestions and ideas are initially raised by individual employees, these are then debated amongst the employees, who have attended the meeting, sometimes altered, and then submitted to the executive committee in the name of QA program rather than as an individual employee’s suggestion.²⁵ Thereafter, the executive committee either accepts or rejects the ideas or returns them to the next QA program meeting for further development. Finally, concerning the third element, there can be no doubt that, among the subjects raised at the QA program meetings and submitted to the executive committee, are matters related to the employees’ terms and conditions of employment, including such issues as daycare for the children of employees, employee parking, holiday pay, employee lunches, and employee smoking areas. In these circumstances, while not free from doubt, I believe that the resort hotel’s QA program qualifies as a labor organization within the meaning of Section 2(5) of the Act.

Section 8(a)(2) of the Act provides that

It shall be an unfair labor practice for an employer—

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *Provided*, That subject to rules and regulations made and established by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay[.]

An employer violates this section of the Act by interfering with, assisting, or dominating a labor organization. As to domination, which, by degree, is the more serious of the unlawful acts and the finding of which is essential to a disestablishment remedy,²⁶ in *Electromation, Inc.*, supra, the Board noted that, although Section 8(a)(2) of the Act does not define the specific acts which may constitute domination, “a labor organization that is the creation of management, whose structure and function are essentially determined by management . . . and whose continued existence depends upon the fiat of management, is one whose formation or administration has been dominated under Section 8(a)(2).” However, “when the formulation and structure of the organization is determined by employees, domination is not established, even if the employer has the potential ability to influence the structure or effectiveness of the organization.” *Id.* at 995–996. Further, while an employer’s involvement with a labor organization may not rise to the level of domination, such may constitute unlawful assistance or interference. Thus, while not exercising control over the activities of an employee organization, an employer may unlawfully interfere with said entity by suggesting its establishment, indicating a willingness to bargain with it, or suggesting the drafting of certain proposals. *Texas Bus Lines*, 277 NLRB 626, 627 (1985); *Wheelco Co.*, 260 NLRB 867 (1982). Likewise, an

²⁵ This is significant and differentiates the QA program meeting from its suggestion box, for, in the suggestion box concept, “where employees make specific proposals to management, there is no dealing because the proposals are made individually and not as a group.” *E. I. du Pont & Co.*, supra at 894.

²⁶ *NLRB v. Mine Workers District 50*, 255 U.S. 453, 458–459 (1958); *Ona Corp.*, 285 NLRB 400 (1987).

employer may unlawfully assist, but not dominate, a labor organization by, among other acts and conduct, recognizing and bargaining with the labor organization at a time when it was under a statutory duty to recognize another, by meeting on company time with payments to employee representatives, and by “the preparation and distribution of minutes of those meetings” *Mooreville IGA Foodliner*, 284 NLRB 1055, 1068 (1987).

Herein, contrary to counsel for the General Counsel, as the current QA program does not appear to be the creation of Respondent’s hotel management, I do not believe that Respondent’s hotel management’s involvement in the QA program constituted domination of it. In this regard, notwithstanding that the function of the program remains as set forth in the employees’ manual, there is no record evidence that Respondent devised the structure of or prepared formative documents for the conduct of the QA program or that the hotel’s management exerts any control over which employees attend meetings or over the subjects raised and discussed at QA program meetings. However, at all times material herein, Respondent’s manager-on-duty, William Caron, has designated the dates, times, and locations for all QA program meetings. Further, he has acted as the chairperson for each QA meeting and recorded the minutes, distributing the document to the executive committee and to all department managers, and has been the executive committee’s conduit to the employee participants at QA meetings for all matters about which the executive committee desires additional employee input. In these circumstances, I believe that, while not arising to the level of dominance, Caron, an admitted supervisor, on behalf of Respondent, has rendered significant assistance and support to the QA program, conduct violative of Section 8(a)(1) and (2) of the Act. *Mooreville IGA Foodliner*, supra.

CONCLUSIONS OF LAW

1. 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. By interrogating an employee as to his union membership, sympathies, and activities, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
4. By promising unspecified benefits to an employee in order to induce her to forego support for the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
5. By threatening its employees with loss of unspecified privileges if required to negotiate a collective-bargaining agreement with the Union in order to induce them to forego support for the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
6. By threatening its employees that it would change its staffing practices during nonpeak months in order to induce them to forego support for the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
7. By publishing and maintaining a work rule in its employees’ manual, mandating that employees initially discuss work “problems” with their supervisors rather than their fellow em-

ployees, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

8. By offering to implement a 401(k) savings plan for an employee in order to dissuade her from supporting the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

9. By making veiled threats to terminate known supporters of the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

10. By informing its employees that its delay in implementing new benefits was as a result of the Union’s organizing campaign, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

11. By informing its employees that the Union’s organizing campaign had failed due to lack of employee support, Respondent created the impression in the minds of its employees that it had engaged in surveillance of their union activities and thereby engaged in conduct violative of Section 8(a)(1) of the Act.

12. The QA program is a labor organization within the meaning of Section 2(5) of the Act.

13. Through its manager-on-duty, an admitted supervisor, by arranging the time, date, and location of meetings, acting as chairperson of meetings, acting as a conduit for information from the executive committee to its employees at meetings, and by taking the minutes of meetings, Respondent assisted and supported the QA program in violation of Section 8(a)(1) and (2) of the Act.

14. Respondent’s above-described unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

15. Unless specified above, Respondent engaged in no other unfair labor practices.

THE REMEDY

I have found that Respondent has engaged in serious unfair labor practices herein. Accordingly, I shall recommend that it be ordered to cease and desist from said the activities and to take certain affirmative actions designed to effectuate the purposes of the Act, including removing the unlawful provision from its employees’ manual and the posting of an appropriate notice to its employees.²⁷

On the basis of the foregoing findings of fact and conclusions of law and the entire record herein, I issue the following recommended²⁸

ORDER

The Respondent, Grouse Mountain Associates II, A Limited Partnership, d/b/a Grouse Mountain Lodge, Whitefish, Montana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

²⁷ Inasmuch as I have found that Respondent only offered unlawful assistance to the QA program and did not dominate the labor organization, I shall not recommend that it disestablish the entity.

²⁸ 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.

(a) Interrogating its employees as to their union membership, sympathies, and activities and the union membership, sympathies, and activities of their fellow employees.

(b) Promising unspecified benefits to employees in order to induce them to forego their support for the Union.

(c) Threatening its employees with loss of unspecified privileges if required to negotiate a collective-bargaining agreement with the Union in order to induce them to forego their support for the Union.

(d) Threatening its employees that it would change its staffing practices during nonpeak months in order to induce them to forego their support for the Union.

(e) Publishing and maintaining a work rule in its employees' manual, mandating that employees initially discuss work "problems" with their supervisors rather than with their fellow employees.

(f) Offering to implement a 401(k) savings plan for its employees in order to dissuade them from supporting the Union.

(g) Making veiled threats to terminate known supporters of the Union.

(h) Informing its employees that its delay in implementing new benefits was as a result of the Union's organizing campaign.

(i) Informing its employees that the Union's organizing campaign had failed due to lack of employee support, thereby creating in the minds of its employees that it was engaging in surveillance of its employees' union activities.

(j) Assisting or supporting the QA program, a labor organization within the meaning of Section 2(5) of the Act.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Remove from its employees' manual the provision, mandating that employees initially discuss work "problems" with their supervisors rather than with their fellow employees.

(b) Within 14 days after service by the Region, post at its facility in Whitefish, Montana, copies 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 authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 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.

IT IS FURTHER ORDERED that the complaint be dismissed as to any other alleged violations of Section 8(a)(1) of the Act not specifically found herein.

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."