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Chartwells, Compass Group, USA, Inc. and Civil Service Employees Association, CSEA Local 1000, AFSCME, AFL-CIO. Case 3-CA-23533

September 22, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On October 1, 2002, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent, the General Counsel, and the Charging Party each filed exceptions and a supporting brief. The Respondent also filed an answering brief.

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 only to the extent consistent with this Decision and Order.³

A. The Facts

1. Background

The Respondent is a contractor providing food service for public school systems. In the late 1990s, Quality Food Management (QFM) was awarded a 5-year contract to provide food service for the Oneonta, New York school district (the District). In August, 2000, the Respondent purchased QFM and, in early 2001, commenced providing food service for the District under the QFM contract. The Respondent retained many of the QFM managers and employees. The Respondent's food

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

² There were no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(1) by promulgating an overbroad no-solicitation rule orally on February 8, 2002, and in writing on March 6, 2002, and by directing employees by letter on February 14, 2002, to inform the Respondent of their coworkers' union activities. There were also no exceptions to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) by threatening employees on February 8, 2002, with a pay reduction.

³ We shall modify the judge's notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enf. 354 F.3d 534 (6th Cir. 2004).

service employees at Oneonta were unrepresented. The Union represented the District's custodial and grounds employees.

The events at issue here occurred in February and March 2002.⁴ Becky Morin was the Respondent's food service director and the senior Respondent official at the Oneonta location. Mary Jane Harrington was a supervisor at the Oneonta location. Denise Swedish was the Respondent's human resources manager; her office was in Waterford, New York. Cynthia Yonkers was the Respondent's regional manager with responsibility for the Oneonta location; her office was in Latham, New York.

Eileen Bramsen was a food service employee. Her husband was the immediate past president of the Union and a custodian for the District. Carol Roberts was a mentally challenged food service employee whom the Respondent had hired through a local employment service that provided Roberts with a job coach. Susan Hitchcock, Gloria Fink, and Sharon Walker were food service employees.

2. The union campaign and the Respondent's response

On February 7, Bramsen, Roberts, Hitchcock, and Fink met with two union officials in the high school break-room. The employees decided to undertake a union organizing campaign. Later that day, Bramsen told Supervisor Harrington about the meeting. During the next few weeks, the Union conducted several meetings. Bramsen and other employees who attended the February 7 meeting encouraged employees to attend these union meetings. Bramsen also wore a union button to work; she was the only employee who did so. Supervisor Harrington knew, based on kitchen gossip, that Bramsen was a leading union supporter.

On February 8, Director Morin and Supervisor Harrington conducted a mandatory group meeting for all of the Respondent's employees. At the meeting, Morin announced a rule prohibiting all solicitation, specifically including union discussion, during working hours anywhere on school property. Bramsen spoke up, asking if the no-solicitation rule constituted a "double standard." Previously, the Respondent had no rule prohibiting solicitation, and employees routinely solicited for a wide variety of subjects in kitchen work areas during non-working time.⁵

During the February 8 mandatory group meeting, Morin and Harrington also reminded the employees that the Respondent's 5-year contract with the District was up

⁴ All dates are 2002 unless otherwise noted.

⁵ As found by the judge, the Respondent's no-solicitation rule is overbroad and was promulgated in response to the union campaign; for each of these reasons, the judge found that the rule violated Sec. 8(a)(1).

for renewal the next year, stated that District Business Manager Tom Austin looked favorably on the Respondent's employees, said that the Respondent would take employee concerns to Austin for possible inclusion in the new contract, and asked the employees what their concerns were.

On February 14, Director Morin distributed a letter to the employees responding to the union organizing campaign. The letter stated that Morin and the Respondent did not support the union activity and set forth arguments against unionization. The letter also stated: "As I stressed at the [February 8] meeting I held, those of you who choose not to be involved in this activity have every right to do so without ANY FEAR for your job. If you feel pressured or coerced in any way, please report it to me immediately" (capitalization in original).⁶

On February 18, the Respondent conducted another mandatory meeting for all its employees. At that meeting, Human Resources Manager Swedish stated that a new Respondent-District contract was coming up, asked what the employees wanted that they did not already have, and promised to try to do something about the employees' concerns. The employees spoke up, mentioning additional benefits including a 401(k) plan, snow days, sick days, personal days, and bereavement pay.⁷

On March 6, Director Morin distributed written work rules to employees as they left work. These were the first written rules that the Respondent had ever provided the employees. Morin told the employees to take the rules home, read them, and initial and return a cover sheet affirming that they had read the rules.

Category B of the rules was captioned (emphasis in original): "*B. Examples of Serious Offenses Which Call for Strong Disciplinary Action and Possible Suspension or Dismissal.*" Rule B3 prohibited: "Threatening, intimidating or interfering with fellow associates on Company and/or client premises." Rule B18 prohibited: "Soliciting of any type on Company and/or client premises during working hours." As Morin distributed the rules, she told employee Walker that the employees could not discuss any union business on school property and that, if they did, there could be serious consequences.⁸

3. Bramsen's warning and resignation on March 7

⁶ As found by the judge, the Respondent, by this letter directing employees to inform the Respondent of their coworkers' union activities, violated Sec. 8(a)(1).

⁷ The judge found that the Respondent violated Sec. 8(a)(1) by soliciting grievances and impliedly promising to remedy the grievances during the February 8 and February 18 employee meetings. The Respondent excepts to these findings. We affirm the judge's findings.

On February 28, Roberts, the mentally challenged employee who had attended the initial meeting with the union officials, came to Director Morin in tears. Roberts told Morin that she did not want to be discharged. After assuring Roberts that she would not be discharged, Morin scheduled a meeting later in the day with Roberts and her job coach. At this second meeting, Roberts told Morin that Bramsen told her that she (Roberts) would be discharged if Roberts did not join the Union. Roberts stated that employees Hitchcock and Fink had also been "pushing" her about the Union and that District employee Lee March had made pronoun statements to Roberts. At about the same time, two other employees complained to Morin that Bramsen's pronoun statements made them feel uncomfortable; however, they declined to press complaints against Bramsen.⁹

After the second meeting with Roberts, Morin decided to issue Bramsen a verbal warning.

On March 5 or 6, the Respondent showed an antiunion videotape to the employees in a school classroom. Bramsen's husband, the school custodian and former union president, complained to the school principal and to the Union about the Respondent's use of school facilities to show the videotape. On March 7, Director Morin, Regional Manager Yonkers, two District officials, and the current union president met to discuss that complaint.

That same day (March 7), after Bramsen had clocked out, Director Morin and Regional Manager Yonkers summoned her to Morin's office. They read the just-distributed Rule B3 (prohibiting threatening, intimidating, or interfering with employees) to Bramsen, told her that she was in violation of that rule, and stated that three employees had accused Bramsen of intimidating them and making them feel uncomfortable.¹⁰ Bramsen denied the accusation. She asked who her accusers were and what her allegedly improper conduct was. Morin refused to provide the requested information, stating that it would "polarize" the issues and citing confidentiality concerns. Bramsen asked "How can I defend myself if I don't know who made the complaints?" and started to leave the office, saying "I'm out of here." As Bramsen departed, Yonkers asked if she was resigning; Bramsen replied "Yes" and angrily left the office.¹¹

⁸ As found by the judge, Rule B18 was an overbroad no-solicitation rule that violated Sec. 8(a)(1). Furthermore, as discussed below, we reverse the judge and find that Rule B3 likewise violated the Act.

⁹ These two employees are not identified in the record.

¹⁰ As set forth above, Morin testified that only Roberts had made such a complaint; the two other employees had declined to press complaints against Bramsen.

¹¹ Bramsen testified that, although she started to leave the office in anger, she did not say she was quitting and that instead Yonkers told Bramsen to "turn in your apron"—a food service industry phrase con-

The next day, Morin sent Bramsen a letter stating: “This serves to inform you that Chartwells has accepted your verbal resignation that you provided to Cindy Yonkers on 3/7/02. Your resignation is effective 3/7/02.” Morin also announced to the employees that Bramsen no longer worked for the Respondent, that Morin was sorry about Bramsen’s departure because Bramsen had been a good worker, and that things “had not gone the way [Bramsen] had hoped.”

B. Rule B3

The judge found that the Respondent did not violate Section 8(a)(1) by distributing workrule Rule B3 prohibiting “threatening, intimidating or interfering with” fellow employees. In rejecting the General Counsel’s contention that employees would interpret Rule B3 as prohibiting employees from discussing the Union, the judge noted that Rule B18, which was simultaneously distributed, separately prohibited all solicitation. The judge reasoned that the presence of Rule B18 negated any inference that Rule B3 was intended to prohibit employees from discussing the Union. We find a violation. More particularly, we find that the Respondent’s motive in promulgating Rule B3 was to deter employees from discussing the Union.

This finding follows directly from Director Morin’s own testimony. Morin admitted on cross-examination that, in her opinion, an employee would be subject to discipline for violating Rule B3 if the employee’s pronoun comments caused another employee to “feel uncomfortable.” Although an employer may lawfully discipline an employee for making pronoun (or antiunion) statements that threaten fellow employees (for example, with physical harm), an employer may not lawfully discipline an employee for making pronoun (or antiunion) statements that merely cause another employee to feel uncomfortable. See *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000), *enfd.* 263 F.3d 345 (4th Cir. 2001). Therefore, Director Morin’s testimony that Rule B3 applied where an employee’s pronoun statements merely caused another employee to “feel uncomfortable” is an admission of unlawful motive regarding Rule B3.

Our finding—that the Respondent’s motive for promulgating Rule B3 was the employees’ union activity—is reinforced by additional evidence.

First, Director Morin explicitly tied the work rules to the union campaign when, as she distributed the work rules, she told employee Walker that the employees

noting discharge. The judge credited the Respondent witnesses’ testimony that Bramsen replied “yes” when Yonkers asked if Bramsen was resigning. The judge also implicitly credited the Respondent witnesses’ testimony that Yonkers did not tell Bramsen to “turn in your apron.”

could not discuss any union business on school property and that discussing union business on school property could result in “serious consequences.”

Second, the timing of the Respondent’s promulgation of the rules indicates a nexus between the rules and the union campaign. The Respondent had not issued any written work rules before the union campaign. However, just 1 month after it began, the Respondent issued the work rules, including Rule B3.

For these reasons, we find that the Respondent violated Section 8(a)(1) by promulgating Rule B3 on March 6. See *Dilling Mechanical Contractors, Inc.*, 318 NLRB 1140, 1144–1145 (1995), *enfd.* 107 F.3d 521 (7th Cir. 1997), *cert. denied* 522 U.S. 862 (1997).¹²

C. Bramsen’s Resignation

We first address the issue of whether Bramsen quit or whether the Respondent discharged Bramsen. The judge concluded, on credibility grounds, that Bramsen quit her employment when the Respondent issued her a verbal warning for violating Rule B3. We affirm the judge’s conclusion that Bramsen quit and that she was not discharged. Thus, Bramsen’s conduct of walking out in the middle of a meeting with Manager Yonkers, while stating “I’m out of here,” and affirming that she was quitting, amply supports the judge’s finding that Bramsen quit her employment.¹³

We next address, and reject, the General Counsel’s contention that the Respondent refused to reinstate Bramsen after she quit on March 7. In this regard, we note that, although Bramsen telephoned Supervisor Harrington’s home the evening of March 7 and appeared briefly at work the morning of March 8, Bramsen never requested reinstatement. Accordingly, we find that the Respondent did not refuse to reinstate Bramsen.

We now turn to the contention of the General Counsel and the Charging Party that the Respondent constructively discharged Bramsen by presenting her with a “Hobson’s choice” of obeying the warning to adhere to Rule B3 or quitting.¹⁴

¹² Member Walsh concludes that the Respondent violated Sec. 8(a)(1) by promulgating Rule B3 on March 6. However, he does not reach the issue of the Respondent’s motive for promulgating the rule and instead bases his conclusion on his finding that the employees reasonably would have believed that Rule B3 prohibited protected discussion of the Union. See *Greenfield Die & Mfg. Corp.*, 327 NLRB 237, 237–238 (1998).

¹³ Accordingly, we reject the General Counsel’s and the Charging Party’s contention that the Respondent told Bramsen to “turn in her apron” and thereby discharged Bramsen during the March 7 interview. This contention is based on testimony that the judge discredited.

¹⁴ See *Hoerner Waldorf Corp.*, 227 NLRB 612 (1976); *Intercon I (Zercom)*, 333 NLRB 223, 224 (2001).

We find that, even assuming the validity of the “Hobson’s choice” theory of constructive discharge, that theory has no application to the facts of this case.¹⁵

We have found, *supra*, that the motive for issuing Rule B3 was unlawful, i.e., that it was intended to reach protected activity that made employees feel uncomfortable. However, the motive for reading Rule B3 to Bramsen was the report that she had intimidated employees. That motive is not even alleged as unlawful. In this regard, we agree with the judge that the complaint did not allege that the March 7 warning was motivated by Bramsen’s protected activities. Further, even if there were such a complaint allegation, the judge found no violation as to the warning, and there were no exceptions to that finding.

Our dissenting colleague, in arguing that the Respondent’s motive for the March 7 warning was unlawful, notes that Morin did not seek out potential witnesses to the Bramsen-Roberts incident before disciplining Bramsen. However, it is not within the province of the Board to tell an employer how to investigate allegations of employee misconduct. The fact that an employer does not pursue an investigation in some preferred manner before imposing discipline does not establish an unlawful motive for the discipline. This is particularly true here where Bramsen’s conduct was serious enough to reduce Roberts to tears and where the discipline imposed was a mere verbal warning. That is, we decline to infer that a reasonable employer confronted with such evidence of employee misconduct and contemplating the imposition of only minor discipline would necessarily have undertaken a further investigation of the complaining employee’s allegations and we decline to infer from the employer’s failure to undertake such a further investigation that the employer had an alternate unlawful motive for the discipline.

¹⁵ Because we find that Bramsen voluntarily resigned her employment for reasons unrelated to protected Sec. 7 activity, we need not pass on the validity of the “Hobson’s choice” theory of constructive discharge posited in the cases cited by our dissenting colleague. Member Schaumber notes that in other contexts, Federal courts repeatedly have insisted on “carefully cabin[ing] the theory of constructive discharge, “[b]ecause [such] claim[s] [are] so open to abuse by those who leave employment of their own accord.” *Honor v. Booz-Allen & Hamilton, Inc.*, ___ F.3d ___ (Case No. 03-2076, 4th Cir., September 2, 2004) (Title VII) (quoting *Paroline v. Unisys Corp.*, 879 F.2d 100, 114 (4th Cir. 1989)). The dissent would do the opposite, extending what is already an extension of the constructive discharge theory beyond the narrow confines previously contemplated by the Board. *Cf. ComGeneral Corp.*, 251 NLRB 653, 657–658 (1980) (recognizing Hobson’s choice doctrine only in the narrow circumstances where an employee is confronted with a “clear and unequivocal” choice of remaining employed or foregoing fundamental Sec. 7 rights).

The dissent also notes that the Respondent refused to tell Bramsen which employees had complained about her conduct and specifically what statements Bramsen had made that violated Rule B3. Again, it is not the province of the Board to assure that employees can confront their accusers. An employer’s failure to accord an employee this asserted “right” does not establish a discriminatory motive. Furthermore, the Respondent here provided Bramsen reasonable information regarding the nature of her misconduct. That is, the Respondent read Rule B3—prohibiting “threatening, intimidating or interfering with fellow associates”—to Bramsen, told Bramsen that several employees had complained against Bramsen, explained to Bramsen that the identity of the complaining employees was “confidential,” and explained to Bramsen that identifying the complaining employees would only “polarize” matters. Plainly, there was a concern that identifying Roberts to Bramsen would expose Roberts to potential reprisals and we decline to draw any adverse inference from the Respondent’s reluctance to do so.

Moreover, even assuming *arguendo* that the Respondent had an unlawful motive for giving Bramsen the March 7 warning, this would not prove a “Hobson’s choice” constructive discharge unless the evidence also established that Bramsen’s reason for quitting was her fear that the Respondent would discharge her if she continued her union activities. The evidence here, however, does not support such a finding. Instead, it shows that Bramsen quit due to anger at the Respondent for refusing to tell Bramsen the names of the complaining employees.

During the March 7 interview, Bramsen did not make any reference to her union activities but rather denied that she had engaged in intimidating conduct. Indeed, it was at this point that the disagreement arose between Bramsen and the Respondent, and Bramsen became angry. Bramsen wanted to confront her accusers, and the Respondent did not wish to proceed in that manner, citing the confidentiality concerns of the complaining employees. Bramsen stated that, in view of the Respondent’s position on this matter, she was “out of here.” The Respondent asked if this meant that she was resigning, and she said “yes.” Thus, Bramsen quit because the Respondent would not let her confront her accusers, not because of any limitation on her Section 7 rights. Indeed, Bramsen herself testified that she left the March 7 meeting “because I couldn’t defend myself and I was on my own time and I figured I did not have to stay there and be accused of something I couldn’t defend.”

In sum, Bramsen quit because she could not confront her accuser in an effort to show that she did not intimidate anyone. She did not quit because of any refusal by

the Respondent to permit her to engage in protected Section 7 activities.

Our dissenting colleague argues that there is an unlawful constructive discharge, even if there is no unlawful threat. In his view, the choice before Bramsen was to refrain from union activity or quit. However, at most, the choice was to refrain from intimidating conduct or quit. Further, even if the choice were as our colleague would have it, Bramsen quit because she thought that the Respondent was not giving her a fair chance to defend against the accusation.

For these reasons, we find that the evidence does not support a finding that the Respondent constructively discharged Bramsen in violation of Section 8(a)(3). Accordingly, we dismiss this allegation.

CONCLUSIONS OF LAW

1. By promulgating, by oral announcement on about February 8, and by written rules on about March 6, work rules prohibiting union solicitation of any kind at work, the Respondent violated Section 8(a)(1) of the Act.

2. By promulgating, by written rules on about March 6, work rules prohibiting employees from discussing the Union with fellow employees, the Respondent violated Section 8(a)(1) of the Act.

3. By on about February 8 and February 18, soliciting grievances from its employees and impliedly promising to remedy the grievances in order to dissuade employees from supporting the Union, the Respondent violated Section 8(a)(1) of the Act.

4. By on about February 14, in a letter to its employees, directing them to inform the Respondent of their union activities and the union activities of their fellow employees, the Respondent violated Section 8(a)(1) of the Act.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent promulgated unlawful rules prohibiting union solicitation and prohibiting employees from discussing the Union, we shall order the Respondent to rescind the unlawful rules and to notify the employees, in writing, that it has done so.

ORDER

The National Labor Relations Board orders that the Respondent, Chartwells, Compass Group, USA, Inc.,

Oneonta, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating work rules prohibiting union solicitation of any kind at work.

(b) Promulgating work rules prohibiting employees from discussing Civil Service Employees Association, CSEA Local 1000, AFSCME, AFL-CIO (the Union) or any other labor organization with fellow employees.

(c) Soliciting grievances from its employees and impliedly promising to remedy the grievances in order to dissuade employees from supporting the Union.

(d) Directing employees to inform the Respondent of their union activities and the union activities of their fellow employees.

(e) 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) Rescind the unlawful rules prohibiting union solicitation and prohibiting employees from discussing the Union and notify the employees, in writing, that it has done so.

(b) Within 14 days after service by the Region, post at its facility in Oneonta, New York, copies of the attached notice marked "Appendix."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the 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 the Oneonta facility at any time since February 8, 2002.

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

¹⁶ 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."

Dated, Washington, D.C. September 22, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting in part.

My colleagues find that employee Eileen Bramsen's resignation from her job did not constitute a constructive discharge in violation of Section 8(a)(3) and (1) of the Act. For the following reasons, I find that Bramsen's resignation was an unlawful constructive discharge under the Board's "Hobson's choice" doctrine.

"A constructive discharge is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it. Such situations may arise when an employer confronts an employee with the Hobson's choice of either continuing to work or foregoing rights protected by the Act." *Intercon I (Zercom)*, 333 NLRB 223 (2001), citing *Multimatic Products*, 288 NLRB 1279, 1348 (1988). Under the Hobson's choice line of cases, an employee's voluntary resignation will be considered a constructive discharge when an employer conditions the employee's continued employment on the employee's abandonment of his or her Section 7 rights and the employee quits rather than comply with that condition. *Intercon I (Zercom)*, supra; *Hoerner Waldorf Corp.*, 227 NLRB 612 (1976).

Here, the Respondent gave Bramsen a discriminatorily-motivated verbal warning on March 7, 2002, that effectively threatened Bramsen with discharge if she continued her union activities. Thus, the Respondent caused Bramsen to reasonably believe that her continued employment was conditioned on her abandonment of her Section 7 activities, and she quit her employment rather than comply with that condition. Her resignation under these circumstances constitutes a constructive discharge in violation of Section 8(a)(3) and (1) of the Act.

Although the March 7 warning itself was not alleged to be unlawful, the critical issue is whether Bramsen reasonably would have understood that she faced the prospect of discharge if she continued her union activities. If the Respondent placed Bramsen in this position, and if she quit in response to this discharge threat, then the Respondent constructively discharged Bramsen in violation of Section 8(a)(3) regardless of whether the March 7

warning was itself separately alleged or found to be unlawful.¹

Here, the Respondent threatened Bramsen with discharge if she engaged in union activities. The verbal warning issued to Bramsen on March 7 was imposed under Rule B3 which subjected employees to "Strong Disciplinary Action and Possible Suspension or Dismissal" and which reasonably would lead employees to believe that their protected union activity was prohibited. Faced with a no-solicitation rule apparently applicable to protected union activities and the prospect of suspension or discharge if she continued her protected union activities, Bramsen reasonably would have perceived that her choice was either to eschew her Section 7 rights or quit.

The evidence shows that the March 7 warning was motivated by Bramsen's protected union activities rather than, as the majority suggests, by unprotected harassment of employee Roberts. Bramsen was the leading union organizer and the Respondent was aware of her strong support for the Union. The Respondent's union animus is amply demonstrated by its swift and unlawful opposition to the union campaign, including its immediate announcement of an unlawfully overbroad ban on all union solicitation. The timing of the March 7 warning—only 1 month after the start of the union campaign and only 1 day after Bramsen's husband, the former union president, had complained to the District about the Respondent's use of District facilities to show an antiunion videotape—is further evidence of unlawful motive for the warning.

Moreover, the Respondent's asserted justification for the warning—Bramsen's alleged harassment of employee Roberts—is pretextual. The Respondent refused Bramsen's requests for information regarding what she had done to harass other employees or whom she had allegedly harassed. Even assuming arguendo that, as the majority suggests, the Respondent wished to maintain the confidentiality of the allegedly complaining employees, one would expect that an employer, when imposing a verbal warning for harassment, would give the disciplined employee at least a general description of the nature of the conduct triggering the discipline. The Re-

¹ The complaint allegations encompassed the Hobson's choice constructive discharge violation. The complaint alleged that the Respondent threatened Bramsen with discharge if she engaged in union activities, that the threat caused Bramsen's termination, and that Bramsen's termination violated Sec. 8(a)(3). Furthermore, although the majority notes that neither the General Counsel nor the Charging Party specifically excepted to the judge's failure to find that the March 7 warning violated Sec. 8(a)(1), this absence of exceptions is not equivalent to a concession that there was no violation. The General Counsel and the Charging Party did except to the judge's finding that the March 7 warning was not discriminatorily motivated.

spondent's refusal to provide any information to Bramsen regarding the nature of her alleged misconduct is strong evidence that the March 7 warning was directed at Bramsen's union activities, not her alleged harassment of employee Roberts.

There is additional evidence suggesting pretext. Although Bramsen testified that she did not harass Roberts, the Respondent did not call Roberts as a witness and instead relied solely on the testimony of the Respondent's food service director, Becky Morin, regarding the allegations that Roberts allegedly made to Morin. Furthermore, although Morin knew that Roberts was mentally challenged and that there were witnesses to Bramsen's alleged harassment of Roberts, Morin made no effort to investigate Roberts' allegation by speaking to the witnesses. Although Morin decided on February 28 to give Bramsen a verbal warning, Morin delayed an entire week before giving Bramsen the March 7 warning. Morin's testimonial explanation for the week-long delay—that Morin needed a management witness for the disciplinary interview—is itself evidence of pretext; Morin admitted on cross-examination that Supervisor Harrington was at work throughout the entire intervening week and Morin offered no explanation for not using Harrington as a witness. Finally, given that Bramsen's alleged harassment of Roberts occurred on February 28, and that the Respondent did not issue Rule B3 until March 6, the Respondent's March 7 warning to Bramsen for violating Rule B3 suspiciously accused Bramsen of violating a rule that had not existed at the time of Bramsen's alleged misconduct.

The majority also finds that Bramsen quit out of anger at the Respondent's refusal to provide her with specifics regarding the allegations against her, rather than because of restrictions on her Section 7 activity. I reject this effort to artificially parse out aspects of the March 7 meeting. It ignores the very background against which Bramsen was disciplined on March 7, and the fact that Bramsen quit because the Respondent threatened her with discharge if she continued her union activities.

In this regard, the record shows that the union campaign was very important to Bramsen. She attended the first meeting with the union officials and she attended each subsequent union meeting. She encouraged other employees to attend the union meetings. She was the only employee to wear a union button to work. She spoke up to challenge Director Morin when Morin announced the unlawful no-solicitation rule to the assembled employees. And, she was married to the former union president who protested the Respondent's anti-union activity immediately before Bramsen's March 7 warning. Further, during that interview, the Respondent

officials implicitly threatened Bramsen with discharge if she continued her union activities. In these circumstances, I conclude that an employee, who felt as strongly about the union campaign as Bramsen did, reasonably would be angered by such a threat and would decide to quit rather than discontinue her union activities.

Moreover, the anger cited by the majority as the reason for Bramsen's decision to quit (her anger at the Respondent for refusing to provide her with specifics regarding the allegations against her) was itself based, at least in part, on the Respondent's unlawful response to Bramsen's union activities. When the Respondent officials interviewed Bramsen on March 7, Bramsen knew that she had not been harassing her fellow employees and also knew that she had been speaking out strongly on behalf of the union campaign. When the Respondent officials accused Bramsen of violating Rule B3, which rule unlawfully proscribed protected union activity, Bramsen would have immediately suspected that this rule was being directed at her union activities. These suspicions would have been reinforced when the Respondent refused Bramsen's request for specifics regarding her alleged violation. Accordingly, even assuming *arguendo* that Bramsen's decision to quit was triggered by her anger at the Respondent's refusal to provide her with specifics regarding the allegations against her, Bramsen's decision ultimately would still be based on the Respondent's unlawful discharge threat.

I also reject the majority's reliance on Bramsen's testimony that she left the March 7 meeting because she "could not defend herself" against the Respondent's allegations, as support for its finding that her quit resulted from anger, not impeded Section 7 rights. This cited testimony is part of a larger block of testimony that must be read in context. In this regard, the judge found that, at the end of the March 7 meeting, Bramsen got up to leave the meeting after the Respondent officials informed her that she was disciplined for violating Rule B3 and refused her requests for specifics regarding the allegations against her. In these circumstances, Bramsen's testimony cited by the majority—that she left the meeting because she could not defend herself—should not be read as an explanation by Bramsen of why she quit; at most, it should be read as an explanation of why she left the meeting.

The Respondent contends that, assuming *arguendo* the March 7 warning was unlawfully motivated, the March 7 warning did not give Bramsen reason to fear discharge and that therefore Bramsen acted unreasonably in quitting. I reject this contention and find that the Respondent threatened Bramsen with suspension and discharge.

Regional Manager Yonkers read Rule B3 to Bramsen during the March 7 verbal warning interview. The preface to Rule B3 explicitly states that violation of the rule will subject the employee to “strong disciplinary action and possible suspension or dismissal.”

Furthermore, the internal structure of the Respondent’s work rules suggests that violation of Rule B3 will subject the employee to discharge rather than to progressive discipline. In this regard, the introduction to the Respondent’s work rules identifies three categories of offenses (A, B, and C), states that category A offenses will “normally result in immediate dismissal,” states that category B offenses will “normally result in strong disciplinary action and possible suspension or dismissal,” and states that category C offenses will “not normally result in immediate dismissal, but . . . will generally be subject to progressive counseling.” Given this internal structure, an employee who had been disciplined for an alleged category B offense reasonably would conclude that he or she likely would face suspension or dismissal for a repeat offense. Indeed, in this case, having already been issued a “strong” verbal warning under Rule B3, Bramsen reasonably would have concluded that she was subject to suspension or dismissal if she again violated Rule B3 by continuing to encourage her fellow employees to support the Union. These circumstances would have led Bramsen to reasonably believe that her continued employment was conditioned on her abandonment of her Section 7 rights. “The right of an employee to protect his Section 7 rights without having to relinquish them or suffer loss of employment due to an employer’s discriminatory conduct, is a choice the Board has unfailingly sustained.” *Hoerner Waldorf Corp.*, supra at 613.²

For all these reasons, I find that the Respondent violated Section 8(a)(3) and (1) by constructively discharging Bramsen during the March 7 interview.

Dated, Washington, D.C. September 22, 2004

Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD

² Contrary to the judge’s suggestion, Bramsen was not required to continue working and pursue other remedies—such as seeking the Union’s advice and/or filing an unfair labor practice charge with the Board—rather than resign in response to the Respondent’s March 7 conduct. The Board has explicitly held that the Act protects an employee in Bramsen’s position who, in the face of an unlawful discharge threat, chooses to quit rather than continue to work while pursuing other remedies. See *Hoerner Waldorf Corp.*, supra at 613.

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT promulgate work rules prohibiting union solicitation of any kind at work.

WE WILL NOT promulgate work rules prohibiting you from discussing Civil Service Employees Association, CSEA Local 1000, AFSCME, AFL–CIO (the Union) or any other labor organization with your fellow employees.

WE WILL NOT solicit grievances from you and implicitly promise to remedy the grievances in order to dissuade you from supporting the Union.

WE WILL NOT direct you to inform us of your union activities or the union activities of your fellow employees.

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

WE WILL rescind the unlawful rules prohibiting union solicitation and prohibiting you from discussing the Union and WE WILL notify you, in writing, that we have done so.

CHARTWELLS, COMPASS GROUP, USA, INC.

Alfred Norek, Esq., for the General Counsel.

Brian Oppeneer, Esq., for the Respondent.

William Herbert, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on August 5, 2002,¹ in Oneonta, New York. The complaint herein which issued on May 24, was based upon an unfair labor practice charge and an amended charge that were filed on March 26 and April 9, by Civil Service Employees Association, CSEA Local 1000, AFSCME, AFL–CIO, (the

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2002.

Union). The complaint alleges that Chartwells, Compass Group, USA, Inc. (the Respondent), engaged in the following conduct in violation of Section 8(a)(1) and (3) of the Act between February 8 and March 6: promulgated and maintained work rules prohibiting union solicitation at any time and directed its employees to refrain from discussing the Union at any time, threatened to reduce its employees' pay if they unionized, solicited grievances from its employees and impliedly promised to remedy the grievances in order to dissuade its employees from supporting the Union, directed its employees to inform Respondent of their union activities as well as the union activities of their coworkers, interrogated its employees about their union activities and threatened to discharge them if they engaged in union activities, promised its employees improvement in terms and conditions of employment in order to discourage them from supporting the Union, and promulgated and distributed work rules that prohibited employees from engaging in lawful union solicitation and from discussing unions while at work and from soliciting on behalf of the Union during non-working time. It is further alleged that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging, or constructively discharging, Eileen Bramsen on March 7, 2002 because of her union activities.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

The employees involved are food service employees employed by the Respondent, which provides food services for the Oneonta, New York school system. The Respondent purchased and took over this operation from the predecessor employer, Quality Food Service, in about August 2000, or September 2001, and continued the operation under Quality's 5-year contract with the Oneonta school district. The Respondent's representatives herein are Becky Morin, food service director, Cindy Yonkers, district manager, although not employed by the Respondent at the time of the hearing herein, Mary Jane Harrington, supervisor, and Denise Swedish, human resources manager, each of whom were admittedly supervisors and agents of the Respondent at the time of the events herein.

A. Union Activity

Bramsen testified that on February 7, she and three fellow employees, Susan Hitchcock, Gloria Fink, and Carol Roberts, were approached by Frank Antonucci, a union representative at about 9:30 a.m. in the breakroom at the high school. Bill Hansen, the president of the union representing the custodial workers and groundsman at the school district, was with him and he introduced them to Antonucci. Antonucci told them that he wanted to see if they were interested in forming a union and

they said that they would listen to what he had to say. He asked them to contact some of the other employees and that they would set up a meeting for a later time. After that brief meeting, Bramsen spoke to a number of the other employees about the Union. Later that day she told Harrington about the meeting with Antonucci, and Harrington told her that she had already heard about it, but wasn't interested. Bramsen and 10 other employees next met with Antonucci on February 14 at a place away from the workplace, where they spoke about the possibility of organizing. Bramsen, Hitchcock, and one or two of the other employees notified the others of this meeting. Hitchcock testified that she spoke to Harrington on February 7 about the Union, and Harrington told her that Bramsen had told her that Antonucci was coming to the facility to talk to the employees. Harrington testified that she did not know ahead of time that Antonucci was going to speak to the employees about the Union. Her knowledge of the Union came from a remark that Bramsen made to her while in the kitchen: "I think we need a union." Harrington's answer was: "I don't." She was aware that Bramsen was one of the employees who was for the union. Beginning on February 14, Bramsen wore two union buttons to work; she was the only person who did so. In 2001 Bramsen's husband was the president of a local union of the Union.

B. February 8 Meeting

Morin presided over a mandatory meeting of all the employees on February 8 at about 1:30 p.m. Bramsen testified that Morin described the meeting as a human resources meeting and said that there was a rule against solicitations, but that she had never enforced it, but the rule was there, so there could be no solicitations; no Avon sales, Girl Scout cookies, raffle tickets, or union pamphlets could be brought into the kitchen area. She said that these matters couldn't even be discussed on their breaktime, because they were still on the clock. Bramsen asked if this applied to everyone or whether there was a double standard. Morin said that there were no double standards. Harrington then said that "if we had any request," the employees could take them to Tom Austin, the business manager for the school district, who ". . . was very good at handling things for the kitchen and for the school district." Prior to this, the employees had never been told that they could bring their workplace concerns to the school board. Bramsen also testified that she believes that Harrington said that: ". . . if another company took over, even if the union was in, that we could go back to a lower pay and maybe even base pay . . ." Bramsen, who had been employed by Quality and the Respondent for 9-1/2 years, testified that she had never previously attended a mandatory meeting other than the meetings customarily held at the beginning of the school year, where the new employees are introduced and employees are given their schedules. Prior to February 8, they had never been informed of a rule against solicitations, and employees regularly sold cookbooks, Girl Scout cookies, raffle tickets, and other items, and were free to talk amongst themselves at the workplace without restriction. After this meeting, the employees took all sale items from the kitchen and put them in the custodian's office, which they used as a breakroom, but is not otherwise used by the Respondent, and stopped talking about the Union on the school premises.

Hitchcock testified that all of the employees attended this meeting after regular working hours. Morin told the employees that she didn't want them soliciting on the job: "she didn't want us even doing it on our break and that we should not even bring it into school" Harrington said, ". . . something about a pay rate and with a union and I'm not sure exactly what about our pay rate could be dropped" Harrington said that ". . . if we had any concerns, like if we were interested in . . . 401(k) plan or bereavement days, snow days that we should talk to either one of Mary Jane or Becky Morin and . . . they would take it to Tom Austin." Other than the orientation meetings the employees had at the beginning of the school year, she had never previously attended a mandatory meeting for the Respondent in her 10 years of employment at the facility. In addition, prior to that time there was no restriction on soliciting during working hours. Gloria Fink, who has been employed at the school district for 3 years, testified that she was told by Morin that there was to be a mandatory meeting at 1:40 that day; all the employees as well as Morin and Harrington were present. At the meeting, Morin said that soliciting would no longer be allowed; she had previously permitted it, but that since the Respondent took over at the facilities, she had to enforce the rule. That was the first time that she was told of a no-solicitation rule and, in the past, employees had been allowed to sell Avon products, books, raffles, and Girl Scout cookies. After Morin spoke, Harrington said that if the employees had any problems, or were not satisfied, she would be willing to take their concerns to Austin. That was the first time that the Respondent had made such an offer to the employees.

Sharon Walker, who has been employed as a food service employee at the school district for 18 years, was notified by Morin on February 8 that there was a mandatory meeting after work that day. At the meeting Morin said that soliciting would no longer be allowed. Previously anybody could sell Avon products, Girl Scout cookies, or other items, but after February 8, it was no longer allowed in the building. Glen Adore Super, who has been employed as a food service employee at the school district for 35 years, testified that at the February 8 meeting Morin said: ". . . there was to be no more soliciting, no bringing in of raffle tickets, Avon books, Girl Scout cookies, in fact Becky had said this is something she should have taken care of before but let it slide." Harrington said: ". . . that if we had any problems or needed any help, she could go to Tom Austin, who would be very willing to help us out." Prior to this meeting, employees had brought Girl Scout cookies, Avon books, and raffle tickets to work. After February 8, "It was over." Prior to this meeting, she was never told by the Respondent that if they had any problems or something that they were interested in, they could take it to the school district.

Morin testified that she conducted the meeting on February 8 because the Respondent's human resources department notified her that as part of the "transition" from Quality to the Respondent she should notify the employees that the human resources people would be coming to the facility to obtain information for an associate satisfaction survey. She notified all the employees at the facility that a meeting would take place that day. At the meeting she told the employees that she wanted them to know that human resources would be conducting a survey, and she

wanted them to know the subjects that would be discussed: a harassment policy, an EEOC policy, an open communications policy, and a no-solicitation policy. As to the latter, she said that the Respondent had a no-solicitation policy that encompassed the sale of magazines, Girl Scout cookies, raffle tickets, and union solicitation, and that the policy prohibited these solicitations on school property while they were on the clock and being paid, including breaktime. As to the harassment policy, she said that every employee was entitled to a workplace free of harassment and intimidation and the open communication policy meant that if employees had employment concerns they could always come to see her. Bramsen asked if the no-solicitation policy applied to everybody, and Morin replied that it did. Harrington asked her what effect a union would have on their pay, and she said that when a union comes in, ". . . all benefits and pay are renegotiated by a third party and nothing was guaranteed." She also said: "The possibility of losing any benefits or pay would be extremely slim were we to unionize because Mr. Austin always looks out . . . for the employees' best interest." Harrington also stated that since the contract with the school district was coming up for renewal, if any of the employees had "any concerns or whatever," Austin would always listen to any complaints that the employees had. She testified that in New York State contracts with school districts are awarded to the lowest responsible bidder for 5-year periods. In the past, she has discussed with the employees what they wanted in a new contract prior to the expiration of prior contracts. As far as she knows, the only solicitation that occurred after this meeting at the facility were in the breakroom. Morin testified that beginning in about October 2001, she heard "discussions," "quips and gossip" about a union, but nothing definite about union meetings or employees soliciting until after the February 8 meeting.

Harrington testified that at this meeting, Morin stated that the contract with the school district would be coming up for renewal in about another year, and ". . . that she was open for questions or concerns or anything. She does that every time a contract comes up." The last time that Morin did that was about 4 years earlier, when the prior contract with Quality was about to expire. Employees mentioned snow days and bereavement days as items that they would like to have, and Morin said that they should tell her of their concerns and she would discuss them with Austin at contract time. She testified as well that at this meeting:

I asked Becky Morin a question that, being that we were a contract company and that I knew that Tom Austin wrote up the contract, that, if these things weren't in the contract, with a third party coming in, whether it was union or anybody else, if it wasn't in the contract, could we go back to minimum wage with no rights or anything.

Morin responded that "It very well possibly could be, but highly irregular . . ." because Austin was very much for the employees and wouldn't let that happen. She testified that she never threatened to reduce the employees' wages, nor did she promise to obtain benefits for the employees.

C. February 14 Letter To Employees

On about February 14, the Respondent distributed to its employees a one-page letter from Morin to all employees; it was prepared by Morin between February 8 and February 14. This eight-paragraph letter makes numerous statements indicating her opposition to the Union. The portion that is alleged to violate the Act states:

As I stressed at the meeting I held, those of you who choose not to be involved in this activity have every right to do so without ANY FEAR for your job. If you feel pressured or coerced in any way, please report it to me immediately . . . Frankly, what bothers me the most is that our whole team has not been included in what certain individuals are proposing as a “team effort.” Some of you have been selectively left out of the “informational network”, and you have expressed your concerns to me. Unfortunately, that is not the “team spirit” that I have worked 15 years to build, and for that, I am **extremely disappointed** in those of you have been willingly chosen to compromise your coworkers *trust*.

It is alleged that the second sentence violates the Act because it directed its employees to inform the Respondent of their union activities and the union activities of coworkers. Each of the employees who testified, testified that the Respondent never explained what this paragraph meant, and never rescinded or altered that policy. Morin testified that this was in the letter to employees in order that they be aware that they “. . . not be intimidated by anything they had no reason to fear a loss of their job.” She testified further that the purpose of this letter was not to have employees report on the union activities of fellow employees, but that employees would be aware that they were entitled to be free from harassment—“Harassment about anything . . . Anytime that an employee feels uncomfortable in a work place, it becomes my obligation if they bring it to my attention, to address it.”

D. February 18 Meeting

Denise Swedish, Respondent’s human resources manager, spoke at a meeting of all the Respondent’s employees at the school district on February 18. It is alleged that what she said during this meeting violated Section 8(a)(1) of the Act by soliciting grievances from its employees and impliedly promising to remedy the grievances in order to dissuade the employees from supporting the Union. Bramsen testified that Swedish said that a new contract was coming up soon “. . . and she was there to find out if there was anything that we’d be interested in, if there is something that we wanted that we didn’t have, that she would listen and see . . . what we wanted and she’d try to do something about it.” Employees then stated that they wanted snow days, bereavement pay, and personal leave, none of which they had, and an employee mentioned 401(K) plans. Swedish said that the 401(K) plan was already in effect, but that she would “. . . see what she could do . . .” about the other items. Prior to this meeting, the Respondent had never asked employees for their input on benefits. Hitchcock testified that Swedish introduced herself as being from the human resources department and “. . . she was there to talk to us about if we had any concerns or questions . . .” “Everybody” then asked ques-

tions about 401(K) plans, bereavement days, snow days, sick days, and insurance plans. In response, Swedish said that she would look into the issues for the employees. At that time, the employees were not receiving snow days, sick days, or bereavement pay, and prior to this meeting the Respondent had never asked the employees for their input on what benefits they would like to have. Fink testified that Morin introduced Swedish by saying that the human resources department was going to listen to what the employees would like added to their contract, and Swedish asked: “Do you have anything that you would like added to your contract that you don’t have?” Fink asked about insurance and other employees brought up snow days, bereavement days, and personal days, and Swedish said that she would look into it and see what they could do about it with the new contract. The Respondent had never previously asked the employees what benefits they would like to receive. Walker also testified that Swedish asked the employees “. . . if there was anything that we wanted in the contract that we didn’t have . . .” and some employees mentioned sick days, snow days, bereavement pay, and insurance, and Swedish said that she would check into it and would let them know what she could do. That was the first time that the Respondent asked the employees for their input on benefits that they would like to receive. Super testified that Swedish said that the “. . . contract would be coming up and if we had any wishes, she would like to know what they were.” The employees mentioned snow days, bereavement days, and personal days, and she said that she would look into it for them. That was the first time that the Respondent asked the employees what benefits they would like to receive.

Swedish testified that she has been employed by the Compass Group since June 2001; the Respondent is a division of the Compass Group. In February, she went to meet with the employees as part of an “assessment” of the facility, which is an all inclusive “. . . learning tool that covers questions from recruitment and staffing, associate relations, training and safety and H.R. administration.” The choice of February 18 to meet with the employees was a random date as she was attempting to meet with the employees of the former Quality accounts. That was the first time that she was at the Oneonta facility. Prior to this meeting she was not aware that some of the Respondent’s employees had been discussing the Union. She began the meeting by telling the employees about the Respondent and its policies, including its open door policy and harassment policy, and then asked if there were any questions. Employees asked questions about snow days and funeral leave and Swedish responded that she would look into it. She testified that she didn’t promise to remedy complaints that came up at the meeting, nor did she imply that she would remedy any of the complaints. Morin testified that in the past she has spoken to employees about benefits before the contract with the school board was about to expire. She also testified that even though the Respondent took over from Quality almost a year earlier, the choice of mid-February to do the human resources evaluation was just a coincidence.

E. March 6 Rules Restricting Solicitation

On March 6, the Respondent distributed a list of its work rules to the employees as they were leaving work. Among the work rules are two which the complaint alleges violates Section 8(a)(1) of the Act because they prohibit employees from engaging in lawful union solicitation and prohibit employees from discussing unions while at work and from soliciting on behalf of unions during nonworking time. The introduction to these work rules states that violations of the rules may result in some form of disciplinary action, depending upon the seriousness of the offense involved. The two work rules involved herein are:

B. Examples of Serious Offenses Which Call for Strong Disciplinary Action and Possible Suspension or Dismissal:

3. Threatening, intimidating or interfering with fellow associates on Company and/or client premises;

18. Soliciting of any type on Company and/or client premises during working hours.

The employees were told to read the rules, sign them and return them to the Respondent. Neither of the above-mentioned rules were ever rescinded or further explained by the Respondent. In addition, that was the first time that work rules were distributed to the employees. Walker testified that when Morin handed her the work rules, she told her that the employees could not discuss union business on school property and, if they did, there could be serious consequences. Morin testified that she received the work rules in question sometime between February 8 and March 6; as to Rule B-3: "I would say that it would probably restrict work place harassment or intimidation."

F. Bramsen's Termination

Morin testified that on about February 28, she was approached by employee Carol Roberts,² who was in tears saying that she was fearful of losing her job. She said that Bramsen had told her that if she didn't join the Union she would lose her job, that she would be ". . . right out of the door." Morin told her not to worry, that she (Morin) was the only person who could affect her job, and that she had no intention of firing her. After Roberts left, Morin decided that she would meet with Bramsen to discuss this matter, but Yonkers, Morin's boss, was not available until March 7, so on that date (with Yonkers present) she called Bramsen into her office at the conclusion of work that day.

Bramsen testified that after she signed out for the day on March 7, Morin and Yonkers stopped her as she was leaving the facility and said that they would like to speak to her and asked her to come into the office. They walked into Morin's office, the door was closed and Yonkers asked her if she had received the work rules and Bramsen said that she received them, but had not yet read them. Yonkers asked her if she was familiar with Rule B-3 and Bramsen said that she didn't know and when Yonkers handed her the rules, Bramsen asked her to read it to her, which she did. Yonkers or Morin asked her if she was familiar with anyone violating the rule and one of them

² Roberts is a mentally compromised individual who was referred to employment at the Respondent by a local employment service, which provides job coaches for these employees.

said, "Are you aware that you are in violation of this?" Bramsen said "no" and Morin said that she had three complaints against her, that she had been intimidating her coworkers and making them feel uncomfortable. Bramsen said that she wasn't aware of it, and asked who the employees were. Morin said that was privileged information and that she didn't have to tell her the names of the employees who filed the complaints and Bramsen said: "Well, if I don't know who filed the complaint, what was I supposed to have done, what did I say?" Yonkers responded that was also privileged information and they would not tell her. Bramsen said: "You mean to tell me that I am sitting here being told that I said something and I can't defend myself?" Yonkers said, "That is exactly what I am saying." Bramsen then said, "Well, if I can't defend myself, I am out of here." Yonkers then asked: "Does this mean you're quitting?" Bramsen responded: "Anything you want to say. I am out of here." Yonkers stood up and said, "Well, hand your apron in." She testified: "I left because I couldn't defend myself and I was on my own time and I figured I did not have to stay there and be accused of something I couldn't defend." When Bramsen got home that day, because of the uncertainty of the situation, she called Harrington's home and spoke to her husband, who said that she wasn't home; Harrington never called her back. The next morning Bramsen reported to work at the regular time wearing her usual outfit and had her apron with her. She walked into the facility with some of her fellow employees. On a few occasions that morning, when she saw Harrington, she (Harrington) walked in a different direction. Bramsen stayed for about 15 minutes "to see if she [Harrington] would tell me to start doing my work or if I was done or what was going on." Because Harrington avoided her that morning, Bramsen left. The Respondent never offered to take her back after that. In addition, she testified that she never spoke to Roberts about the Union. As to Yonkers' statement to her on March 7 to hand in her apron, she testified that in her experience that meant that you are fired. Hitchcock, Fink, and Walker each testified that on March 8, Morin told the other employees that Bramsen was no longer working for the Respondent, and that she was sorry to see her go because she was a good worker. By letter dated March 8, Morin write to Bramsen, inter alia: "This serves to inform you that Chartwells has accepted the verbal resignation that you provided to Cindy Yonkers on 3/7/02. Your resignation is effective 3/7/02."

Morin testified that she asked Bramsen to come into her office because she and Yonkers wanted to speak to her. Morin told her that she called her into the office to give her a verbal warning because several employees had approached her and said that Bramsen had intimidated them and made them feel uncomfortable in the workplace. Bramsen demanded to know the names of the employees and Morin said that it was not necessary for her to know the names, because she felt that it was confidential, and giving the names would polarize the issue. Bramsen became agitated and said, "How can I defend myself if I don't know who made the complaints?" Morin told her that it was not necessary for her to know who made the complaints. They then asked Bramsen if she remembered seeing the work rules and she said that she didn't. They asked if she wanted to read them and she asked to have them read to her. Yonkers

read her the work rules and Bramsen stood up and said: "I'm out of here" and walked toward the door. As she opened the door, Yonkers asked her if she was resigning and she answered either "Yes" or "yeah," slammed the door and left.

Morin testified that, in addition to Roberts, other employees had told her that they were pressured about the Union and didn't like it. Morin told them that unless they wanted her ". . . to formally do something about it" she could not do anything about their complaints. They replied that they felt strong enough to deal with it; Roberts told her that she was not strong enough to deal with it. Morin testified that Bramsen was generally a very good employee; Harrington testified that Bramsen was a good employee who followed orders.

Yonkers testified that between the end of February and the beginning of March she was called by Morin, who said that Roberts had come to her crying and upset and that she (Morin) had arranged to meet that afternoon with Roberts and her job coach. Prior to the afternoon of March 7, Yonkers was aware that Morin intended to give Bramsen a verbal warning for violation of work Rule B-3. At about 1:30 on March 7, as the employees were leaving, she and Morin asked Bramsen to come into Morin's office to speak for a few minutes. Morin told her that she was issuing her a strong verbal warning. Yonkers asked her if she was familiar with the Respondent's work rules and Bramsen expressed uncertainty about it. Yonkers showed her the rules and asked her if she was familiar with them, and Bramsen asked Yonkers to read them to her, which she did. Yonkers told her that they had received a number of complaints from employees that she was making the workplace uncomfortable for them. Bramsen became irate and demanded to know who the employees were and what they said. They told her that they need not tell her the employees' names, that they wanted to ". . . discuss her creating a potentially hostile work environment for fellow employees." Bramsen then stood up and said, "I don't need this, I'm out of here." As she was walking out of the door Yonkers asked her if she was resigning, ". . . and I believe her reply was 'yes' and the door slammed behind her . . ." She testified that she does not recall saying, "Turn in your apron." She testified that the Respondent does not have a formal policy requiring that hourly employees' resignations be in writing.

There was testimony of prior situations where Bramsen resigned or indicated an interest in resigning. In about 1996, Bramsen got another job and quit her employment with Quality, although she continued to work for Quality at the facility as a replacement worker, but with, apparently, fairly regular work hours. When a regular position became available, Morin told Bramsen about the position, she said that she was interested and Morin rehired her. Morin testified that in about 1999, Bramsen expressed dissatisfaction with her working conditions and wrote a letter of resignation to Morin. Morin asked her why she wanted to resign and Bramsen said that she didn't really want to go. After some further conversation, she said, "I'll stay and I'll try it." Morin testified that sometime in about 2001, Bramsen ". . . was upset about something" and told Morin she wanted to quit. Morin told her to think it through slowly, because she had resigned in the past and she had taken her back, but ". . . she could no longer continue to operate like this." She

told Bramsen that if she quit, she could not take her back, and Bramsen reconsidered and did not leave. Morin testified that the normal procedure is that she asks all employees who resign to give her a letter of resignation. However, she never got a resignation letter from Bramsen: "I had no time, Mrs. Bramsen was out the door." Bramsen testified that on one of the earlier occasions when she told Morin that she was quitting, Morin told her: "Eileen, we cannot ask you to stay, but I can ask you to reconsider." Morin never told her that if she was going to quit she should be certain about it because if she did quit again, the company would not take her back.

IV. ANALYSIS

There are three distinct 8(a)(1) allegations regarding the February 8 meeting: that the Respondent unlawfully instituted a no-solicitation rule, that it, by Harrington, threatened to reduce the employees' pay if they unionized and, again by Harrington, solicited grievances from the employees and impliedly promised to remedy the grievances in order to dissuade the employees from supporting the Union.

The evidence is clear that prior to February 8, either there were no restrictions on solicitations by the Respondent's employees or, if there were, they were not enforced. There was credible testimony of numerous solicitations that occurred prior to February 8; the sale of Avon products, Girl Scout cookies, and raffle tickets by the Respondent's employees at the schools' facilities. The evidence establishes that at the February 8 meeting Morin told the employees that no solicitations would be allowed, that the restriction included union solicitations, and that it applied for the entire time that they were on the clock, including their breaktime.

I find that the no-solicitation rule announced by Morin on February 8 is unlawful for two reasons: initially, the restriction was in effect even while the employees were on their break. Because of this, it is not necessary to discuss *Our Way, Inc.*, 268 NLRB 394 (1983), which discusses the difference between "working time" and "working hours." Because it applied even during the employees' breaktime, the rule herein is clearly an unwarranted infringement upon the employees' Section 7 rights. *Hilton Environmental, Inc.*, 320 NLRB 437 (1995). In addition to the facial invalidity of the rule, it is also unlawful because of its timing, one day after a number of the employees first met with the Union. I credit Bramsen and Hitchcock's testimony that they told Harrington about the meeting, and this testimony is reinforced by the timing of the announcement of the rule—the day after the Union meeting. In *Youville Health Care Center*, 326 NLRB 495 (1998), the Board stated:

There is no evidence that any rule restricting employee discussions of working conditions was previously imposed or made known to the employees. Nor does the Respondent argue that prior to the advent of the employees' protected concerted activities involved in this case there were any restrictions on employee discussions concerning working conditions. Thus, the record supports a finding that Poster precipitously adopted a new rule restricting employee discussions of working conditions in response to the employees' protected concerted activity. We find that this conduct supports the conclusion that the rule was established in order to stifle and

interfere with the employees' exercise of their Section 7 rights. Because the rule was adopted for a discriminatory purpose, we find that its promulgation violated Section 8(a)(1).

Respondent defends that the no-solicitation rule does not violate the Act (through its promulgation at the February 8 meeting or in the March 6 letter setting forth Rule B-18) based upon Morin's testimony that the policy was never enforced and was rescinded. I reject this defense. It is one thing to testify that a no-solicitation rule announced to all the employees has not been enforced, but that doesn't mean anything if the employees were never told that it was not going to be enforced. Further, counsel for the Respondent, in his brief, quotes Morin as testifying that the no-solicitation rule was rescinded. However, the full sentence from that testimony is: "The solicitation policy was rescinded, but my letter wasn't." Although it is not clear from this testimony what she means by ". . . but my letter wasn't," it makes no difference as there is no record evidence that she informed the employees that the no-solicitation rule was rescinded. I therefore find that Respondent's promulgation and announcement of the no-solicitation rule violated Section 8(a)(1) of the Act.

It is next alleged that Harrington threatened the employees that their pay would be reduced if they unionized, in violation of Section 8(a)(1). The only testimony supporting this allegation was Bramsen's testimony that Harrington said: ". . . if another company took over, even if the Union was in, that we would go back to a lower pay, and maybe even base pay . . ." and Harrington's testimony that something was said about the pay rate and the Union and that the pay rate could drop. On the other hand, Morin testified that Harrington asked her what affect a union would have on their pay and she said that all pay and benefits were subject to negotiation, and nothing was guaranteed, but that the possibility of losing pay or benefits was "extremely slim" because Austin always looked out for the employees' best interest. Harrington testified that she asked Morin if they could go back to minimum wage in negotiations and Morin answered that it was possible, but highly irregular because Austin was for the employees and wouldn't let it happen. In *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980), enfd. 679 F.2d 900 (9th Cir. 1982), the Board stated:

It is well established that "bargaining from ground zero" or "bargaining from scratch" statements by employer representatives violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore. On the other hand, such statements are not violative of the Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations.

Bramsen and Hitchcock's testimony in support of this allegation is unclear and confusing. Because Harrington is an admitted supervisor and agent of the Respondent and is clearly opposed to the Union, I find it likely that Harrington and Morin's statements were prepared and staged. However, I would still

credit their testimony on this allegation. In *Mediplex of Connecticut, Inc.*, 319 NLRB 281 (1995), the Board stated: "The Respondent's message to its employees that union representation was no guarantee of better benefits and might result in less desirable benefits, is legitimate campaign propaganda, which employees are capable of evaluating." The same is true herein, and I recommend that this allegation be dismissed.

The final allegation regarding this meeting is that the Respondent, by Harrington, solicited grievances from the employees and impliedly promised to remedy them, in order to dissuade them from supporting the Union. Bramsen, Hitchcock, Fink, Walker, and Super each testified that this was the first time that the Respondent had asked for their input on what benefits they would like to receive or what problems or concerns they had working for the Respondent.³ Bramsen, Hitchcock, Fink, and Super each testified that Harrington said at this meeting that if the employees had any "requests," "concerns," or "problems" she could take them to Austin. Bramsen and Super testified that she also said that Austin was very willing to, or was good at, helping the kitchen employees. Morin testified that she told the employees that since the contract was coming up for renewal, if any of the employees had "any concerns or whatever," Austin would listen to their complaints, and Harrington testified that Morin said that since the contract expiration was coming up, "that she was open for questions or concerns or anything."

I found the employees herein to be credible and believable witnesses who were attempting to recollect the events of February as best as they could and credit their testimony over that of Morin and Harrington. I find it significant that these employees, who had worked at the facility for periods of from 3 to 35 years, had never previously been asked for their input on what benefits they would like to have. And yet, on the day after some of them met with the Union for the first time, the Respondent asked them for their opinion on what benefits or requests they had for the next contract with the school board. Although the Respondent had taken over the operation from Quality only about a year or two earlier, Morin had been the food service director at the facility for 16 years and had never previously surveyed the employees on problems or preferred benefits.

In *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), the Board stated:

Where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary.

In *Pikeville United Methodist Hospital of Kentucky, Inc.*, 109 F.3d 1146, 1154 (6th Cir. 1997), the court stated:

³ Actually this testimony relates to both this incident and the February 18 meeting with Swedish.

It is undisputed that Dr. Tummons conducted regular discussions with employees to solicit their input on working conditions at Pikeville United Methodist Hospital. Nevertheless, the breadth and scope of the SESCO survey, coming eight years after the most recent similar grievance solicitation and only after hospital administrators learned of the employees' desire to organize was clearly a substantive change in the nature of the hospital's responsiveness to grievances. Furthermore, the timing of that change, coming as it did only a week after communication of the employees' desire for union representation, leads to the natural inference that the increased concern was improperly precipitated by the threat of union activity.

Similarly, in the instant matter, the solicitation of grievances and work problems occurred a day after the first union meeting and at a mandatory meeting of the employees where they were told, for the first time, that no solicitations, including union solicitations, would be allowed. Even though neither Morin nor Harrington made any promises to improve the employees' wages or other working conditions at this meeting, by asking for their input on benefits, for the first time in the employees' memory, they were soliciting the employees' grievances, and impliedly promising to remedy these grievances in violation of Section 8(a)(1) of the Act. *Orbit Lightspeed Courier Systems, Inc.*, 323 NLRB 380 (1997). When an employer solicits grievances from its employees during a union organizational campaign, even if the employer carefully phrases its statements so as not to promise anything, that ". . . does not cancel the employees' anticipation of improved conditions if the employees oppose or vote against the unions." *Reliance Electric Co.*, supra. The inference that an employer is impliedly promising to correct grievances is rebuttal. *Uarco, Inc.*, 216 NLRB 1 (1974). However, the Respondent has produced no credible evidence to rebut this inference. I therefore find that these statements violated Section 8(a)(1) of the Act.

It is next alleged that, through its February 14 letter to its employees, the Respondent directed its employees to inform it of their union activities as well as the union activities of their coworkers, in violation of Section 8(a)(1) of the Act. The targeted section of the letter states: "As I stressed at the meeting I held, those of you who choose not to be involved in this activity have every right to do so without ANY FEAR for your job. If you feel pressured or coerced in any way, please report it to me immediately." In *Eastern Maine Medical Center*, 277 NLRB 1374, 1375 (1985), the Board stated:

. . . a statement by an employer urging its employees to report if they have been "harassed" or, as here, "pressur[ed] . . . into signing cards," is overly broad and unlawful. Such a statement has a potential dual effect on employees. It both encourages employees to report to the employer any union card solicitor who approaches them in a manner subjectively offensive to the solicited employees, and correspondingly discourages union card solicitors in their protected organizational activities.

In *Automotive Plastic Technologies, Inc.*, 313 NLRB 462 (1993), the Board stated that the *gravamin* of these messages is that, "Such a request could be interpreted by employees to in-

clude lawful attempts by union supporters to persuade employees to sign union cards." That is precisely the problem with Morin's February 14 letter to the employees. It asks the employees to report to her "if you feel pressured or coerced in any way." Some employees, such as Roberts, may feel pressured by a solicitation from a more senior employee, while others would not feel pressured at all. That is one of the dangers of Morin's message, and I therefore find that it violated Section 8(a)(1) of the Act.

As was true of the February 8 meeting, I credit the testimony of the employees regarding the February 18 meeting. Swedish told them the contract was coming up for renewal and asked them if there was anything that they did not have that they would like to have in the new contract. Employees mentioned 401(K) plans, snow days, sick days, bereavement pay, and personal days and Swedish said that she would look into it and see what she could do about it. Although I did not find Swedish to be an incredible witness, I find incredible the Respondent's assertions that the timing of this meeting and the February 8 meeting were a mere coincidence. As stated above, the employees credibly testified that prior to February 8, the Respondent had never asked for their input on benefits or what they would like to have in a contract. It is too much to believe that beginning the day after the Union's first meeting, and soon after the Respondent learned of the Union's organizational attempt, the Respondent all of a sudden took an interest in the employees' contractual desires. For the reasons stated above for the February 8 meeting, I find that Swedish's statements at the February 18 meeting violated Section 8(a)(1) of the Act.

It is next alleged that work Rules B-3 and B-18, distributed on March 6, violate Section 8(a)(1) of the Act. Rule B-18 prohibits: "Soliciting of any type on Company and/or client premises during working hours." In *Our Way*, supra, the Board decided that rules banning solicitation during working time are presumptively lawful because they imply that solicitations are permitted during nonworking time. However, the Board also stated that, as stated in *Essex International*, 211 NLRB 749 (1974), rules restricting solicitations during working hours are presumptively invalid because that term connotes periods from the beginning to the end of the workshift, which includes the employees own time. These rules were never further explained or rescinded by the Respondent, and Walker testified that when Morin gave her the rules, she told Walker that the employees could not discuss union business on school property. I find that the Respondent has not rebutted the presumption that this rule is invalid, and I therefore find that the implementation of the rule violates Section 8(a)(1) of the Act.

Rule B-3 prohibits: "Threatening, intimidating or interfering with fellow associates on Company and/or client premises." Counsel for the General Counsel alleges that this rule violates the Act because, in effect, it prohibits employees from soliciting for, or discussing, the Union during nonworktime. I note that Rule B-2 prohibits swearing or the use of other abusive language, Rule B-4 prohibits the making of false or harmful statements concerning the company, its product, or any company associate, and Rule B-5 prohibits sexual harassment. I find insufficient evidence to establish that Rule B-3 was meant to stifle union solicitation among the Respondent's employees.

It wasn't really necessary for that purpose as the Respondent promulgated Rule B-18 for that purpose. I therefore recommend that this allegation be dismissed.

The final allegation is that the termination of Bramsen's employment on March 7, either by discharge or constructive discharge, violated Section 8(a)(1) and (3) of the Act. It is clear that at the conclusion of her workday Bramsen was called into Morin's office to speak to Morin and Yonkers. It is also clear that Morin was prepared to give her a verbal warning because of what she had learned from Roberts and other employees. Either Morin or Yonkers asked Bramsen if she was familiar with Rule B-3, and after it was read to her, Morin told her that she had received complaints from some employees saying that she had intimidated them and made them uncomfortable. Bramsen denied it, and asked for the names of the complaining employees, but Morin said that the names were privileged, and that she would not tell her the names of the complaining employees. Bramsen then said that she had no way of defending herself if she didn't know who made the complaints, and she got up, said, "I'm out of here" and left the room. Before she left, Yonkers asked, "Does this mean you're quitting?" The credibility issues arise at that point. Bramsen testified that she answered: "Anything you want to say, I'm out of here" and Yonkers responded, "Well, hand your apron in." Morin testified that when Yonkers asked her if she was resigning, she answered either "yes" or "yeah." Yonkers testified that she believes that Bramsen's reply to her question was "yes" and that she does not recall telling her to turn in her apron. Bramsen testified that she left the office for two reasons: because Morin would not give her the names of the complaining witnesses, she couldn't defend herself, and because she was on her own time as the workday had ended.

Counsel for the General Counsel initially alleges that this constitutes a constructive discharge. Two elements must be proven to establish a "traditional" constructive discharge:

First, the burdens imposed on the employee must cause, or be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

Crystal Princeton Refining Co., 222 NLRB 1068, 1069 (1976); *Algreco Sportswear Co.*, 271 NLRB 499, 500 (1984). Taking the second requirement first, there can be no question that Morin was aware that Bramsen was one of the chief supporters of the Union. She told Harrington of the Union's organizing drive, wore union buttons to work, spoke to other employees about the Union, and her husband had been the president of another local of the Union representing other area employees. However, there were no anti-Union statements made to her, nor were there any statements indicating any animus to her because of her union activities. I therefore find that counsel for the General Counsel has not proven the second requirement of *Crystal*, supra. I also find that he has not proven the first requirement either. Morin told Bramsen that she was giving her a verbal warning for intimidating employees; when Morin refused her request to name the employees, Bramsen left, saying that she could not defend herself. The test of "so difficult or

unpleasant as to force him to resign" is an objective one. The receipt of a verbal warning, while unpleasant, especially when the employer refuses to tell you of the underlying facts, does not meet this standard. Board cases have found constructive discharges in situations where an employer reduces an employee's wages or benefits to an extent that it knows that he/she cannot afford to continue at that rate, or where an employer changes an employee's shift knowing because of child care or similar obligations the employee will have to quit. The facts herein do not come close to these requirements.

The other variety of constructive discharge is often referred to as the "Hobson's Choice" constructive discharge. These involve situations wherein an employer, rather than simply affecting the employee's economic conditions by lessening the employee's hours, wages, benefits, or work shift, restricts an employee's right to engage in Section 7 rights, causing the employee to quit rather than having to work without being allowed to engage in his/her statutory rights. In *Hoerner Waldorf Corp.*, 227 NLRB 612 (1976), the employer disparately and discriminatorily enforced a no-solicitation rule in order to prevent its employees from discussing union topics, and told an employee that he would have to comply with this rule and refrain from such discussions in order to return to work. He refused and quit, rather than complying with this unlawful condition. The Board found that this constituted a constructive discharge because the employer conditioned continued employment upon the employee abandoning his right to engage in Section 7 activity and the employee was compelled to quit rather than relinquish these rights. In *Intercon I (Zercon)*, 333 NLRB 152, 153 (2001), the Board found a constructive discharge, stating:

We find that the Respondent's conduct led Witha to reasonably believe that she was compelled to choose between abandoning her union support or being terminated. When the Respondent told Witha that she had 4 days to improve her "negative attitude," a euphemism for prounion activity, the Respondent effectively told Witha that she had 4 days to abandon her prounion attitude if she wanted to preserve her job. As a result, Witha was presented with a Hobson's choice of relinquishing her statutory rights or facing termination. She resigned rather than abandon her union support.

In *Alpine Log Homes, Inc.*, 335 NLRB 885 (2001), the employer issued the employee two disciplinary notices and two suspensions because of his union activity, and one of these notices stated that further solicitations would result in his termination. Within days of returning to work from a 5-day suspension, without pay, he was suspended for an indefinite period of time for "continued harassment of coworkers." After this suspension, he quit. The Board stated:

The Respondent, however, presented no evidence that Lehman engaged in any behavior that would constitute harassment of his coworkers sufficient to deny him the protection of the Act. It was reasonable for Lehman to conclude that, if he returned to the Respondent's employ, he would continue to suffer repeated loss of earnings as a result of the Respondent's conduct. In these circumstances, we find that Lehman's decision not to return constituted a constructive discharge.

These cases are distinguishable from the instant matter, where Bramsen was told that she was receiving a verbal warning for intimidating other employees. It is not alleged, and there is no evidence that, this verbal warning was discriminatorily motivated. Morin testified that Roberts told her of the intimidation, Bramsen denied it, and Roberts did not testify. Although this was clearly an unpleasant situation for Bramsen, she was not asked or told to relinquish any statutory rights in return for remaining in the Respondent's employ. Quitting wasn't her only reasonable response; she could have contacted the Union for advice and/or filed a charge with the Board. I therefore find that the situation does not reach the level of a "Hobson's Choice" constructive discharge.

In the alternative, counsel for the General Counsel alleges that Bramsen was terminated because of her union activities. This theory relies upon the fact that the Respondent refused to allow Bramsen to rescind her resignation of the prior day. Bramsen attempted to call Harrington after she left on March 7, and appeared at the facility on March 8 ready to work, but when Morin and Harrington refused to speak to her, she left. I find this allegation without merit as well. Initially, I find that she did quit on March 7. I credit the testimony of Yonkers that when she asked Bramsen, on her way out the door, whether she was quitting, she said that she was. In addition, even if I didn't credit that testimony, Bramsen's actions left little doubt that she was quitting. She walked out of the office in the middle of a meeting with the words: "I'm out of here." Considering the circumstances, a reasonable interpretation of those words were: "I quit." Additionally, when Yonkers asked her if she was quitting, she could have answered "no," rather than, "Anything you want to say. I am out of here." Furthermore, the evidence establishes that on two or three occasions over the past 6 years Bramsen had quit or threatened to quit. Because of this past history, I find reasonable Morin's testimony that about a year earlier she told Bramsen to be certain about quitting, because the next time she quit she would not take her back, and I credit this testimony. I therefore find that when Bramsen returned to the facility on March 8, Morin and Harrington decided not to rehire her, but that this decision did not violate Section 8(a)(1) and (3) of the Act under *Wright Line*, 251 NLRB 1083 (1980), and I recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. The Respondent violated Section 8(a)(1) of the Act in the following manner

(a) Promulgating, by oral announcement on about February 8, and by written rule on about March 6, work rules prohibiting union solicitation of any kind at work.

(b) On about February 8 and February 18, soliciting grievances from its employees and impliedly promising to remedy the grievances in order to dissuade employees from supporting the Union.

(c) On about February 14, in a letter to its employees, directing them to inform the Respondent of their union activities and the union activities of their coworkers.

4. The Respondent did not further violate the Act as alleged in the complaint.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. In that regard, I shall recommend that the Respondent be ordered to rescind its unlawful no-solicitation rule and to notify its employees, in writing, that it has done so.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Chartwells, Compass Group, USA, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating or maintaining work rules prohibiting or restricting union solicitation of any kind at the workplace.

(b) Soliciting grievances from its employees and impliedly promising to remedy the grievances in order to dissuade its employees from supporting the Union.

(c) Directing its employees to inform the Respondent of their union activities and the union activities of their fellow employees.

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

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

(a) Rescind its unlawful work rules prohibiting or restricting union solicitation of any kind at the work place.

(b) Within 14 days after service by the Region, post at its facility in Oneonta, New York, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices 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

⁴ 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.

⁵ 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."

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 February 8, 2002.

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

3. IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, DC October 1, 2002

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 Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT tell our employees that they are not allowed to talk about Civil Service Employees Association, CSEA Local 1000, AFSCME, AFL-CIO (the Union) or any other labor organization while at work.

WE WILL NOT ask our employees what benefits they would like to have in our next contract in order to convince them not to support the Union.

WE WILL NOT ask our employees to report on their fellow employees if they feel "pressured or coerced" in their discussions with fellow employees about the Union.

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

WE WILL withdraw work Rule B-18 and notify our employees, in writing, that this has been done and that this rule will not be enforced.

CHARTWELLS, COMPASS GROUP, USA, INC.