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Field Hotel Associates, LP d/b/a Holiday Inn-JFK Airport and Field Hotel Associates, LP d/b/a Holiday Inn-JFK Airport, Debtor-in-Possession[1] ***and*** **New York Hotel and Motel Trades Council, AFL–CIO.** Cases 29–CA–26385, 29–CA–26388, 29–CA–26454, 29–CA–26488, 29–CA–26537, 29–CA–26584, and 29–CA–26812

August 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On August 4, 2005, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent and the Union filed exceptions and supporting briefs. The General Counsel filed a limited exception.

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[2] and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions except as specified below and to adopt the recommended Order as modified and set forth in full below.[4]

The Field family organization owns seven hotels, including the Crowne Plaza at La Guardia Airport, the Hampton Inn NY-JFK Airport, and the Holiday Inn-JFK Airport. The New York Hotel and Motel Trades Council (the Union) began organizing Crowne Plaza employees in March or April 2004,[5] and won the representation election held there on May 13. The Union began organizing employees at the two JFK Airport hotels on May 20 and won representation elections held at both on August 12 and 13.[6]

1. We adopt the judge's finding, for the reasons stated in his decision, that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Angela Vasquez and Maria Pineros for wearing union insignia in nonpublic areas of the hotel. We also adopt his dismissal of the 8(a)(1) allegation that the Respondent summoned police to evict supporters of the Union from the public sidewalk in front of the hotel,[7] and his dismissal of allegations that the Respondent violated 8(a)(3) and (1) by beginning to enforce, for discriminatory reasons, a preexisting rule imposing time limits on employees punching in or out of work, and by discharging employees Shakela Stephens and Monique Bullen.

2. We reverse the judge's finding that the Respondent violated Section 8(a)(1) when it promised wage increases and other benefits at a May 25 meeting with employees with the intention of dissuading employees from voting for or supporting the Union. The issue is identical to one in a related case, *Hampton Inn NY-JFK Airport*, 348 NLRB No. 2 (2006), which was heard at the same time but not consolidated with this case. There, the Board reversed the judge and found that because the General Counsel did not establish that the Respondent knew of the organizational activity at the JFK Airport hotels when it promised wage increases and other benefits, the Respondent did not interfere with the employees' Section 7 rights in violation of Section 8(a)(1). As the facts and our analysis are fully set out in our decision in that case, which is controlling on this issue, we need not discuss them here.[8]

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[1] We have amended the caption to conform to the General Counsel's amended consolidated complaint.

[2] The parties' exceptions are limited to the issues discussed in this Decision. In the absence of exceptions, we adopt the judge's findings and conclusions disposing of all other unfair labor practice allegations.

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

[4] We disagree with the General Counsel's assertion that the judge failed to provide a remedy for the finding that the Respondent unlawfully *promulgated and enforced a rule* banning the wearing of union insignia. The judge did not make this finding, and the General Counsel did not except to the judge's failure to make that finding. The recommended Order and notice accurately reflect his findings, which we adopt, that the Respondent unlawfully told employees to remove union insignia in nonpublic areas of the hotel and discharged two employees for refusing to do so. We have modified the Order and notice to more accurately reflect the violations found.

We shall also substitute a new notice in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[5] All dates are in 2004 unless otherwise noted.

[6] See *Holiday Inn-JFK Airport*, 345 NLRB No. 73 (2005).

[7] Member Schaumber notes that Fernando Arias, who provided the *only* testimony to support this allegation, stated that he saw police at the hotel on three occasions, and that they told him they had been called because of reports that union supporters were blocking the entrance, but that as long as the union supporters did not block the entrance, they were fine. Notwithstanding this record evidence, the General Counsel asserted in his brief to the Board that the Respondent "unlawfully summoned police officers" and that the undisputed evidence showed that the "Respondent attempted to have employees and Union organizers evicted." The General Counsel's brief also mischaracterized the judge's decision on this point. Member Schaumber emphasizes that the General Counsel's prosecutorial role carries a heightened responsibility to ensure the accuracy of representations in pleadings and briefs filed with the Board.

[8] For the reasons stated in her dissent in *Hampton Inn NY-JFK Airport*, 348 NLRB No. 2 (2006), Member Liebman dissents from the majority's failure to find that the Respondent violated Sec. 8(a)(1) by

3. We also reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by suspending employee Dawlat Sookram for wearing union insignia in a nonpublic area of the hotel. Contrary to the judge, we find that the General Counsel has failed to prove that animus against Sookram's protected activity motivated the decision to suspend him. Instead, the suspension was a legitimate response to Sookram's undisputed failure to follow an instruction to report to the Respondent's personnel office before he clocked out of work.

Sookram provided the only testimony relating to his suspension; no written disciplinary record is in evidence. In late June or early July, Sookram was wearing a union T-shirt while waiting to punch out when new Supervisor Hyland told him to go to the personnel office. Sookram testified that he refused and explained that he had to leave because he had to pick up a prescription, but that he would be available the next day.[9] The next day, Sookram was summoned to meet with Executive Housekeeper Elizabeth Carbonaro and Human Resources Director Quentin Nelson in the personnel office, where Nelson asked him why he had refused to report to the office the previous day. Sookram explained that he was on his own time and that he had to pick up a prescription. Nelson then suspended him for 2 days. Sookram testified that he was neither told nor did he ask the reason for his suspension. When Sookram returned from his suspension, Nelson and Carbonaro again asked him why he had refused Hyland's directive to report to the personnel office. Sookram told them that he had not refused, but that he had to pick up the prescription, and he displayed the receipt as proof.

The judge found that Sookram was suspended for 2 days because he wore a union T-shirt as he was punching out from work, not because he refused to stay after he had already punched out, and that the Respondent therefore violated Section 8(a)(3) and (1) of the Act. The judge apparently based his finding on an inference of unlawful motivation drawn from the unlawful discharges of employees Vasquez and Pineros for wearing union insignia and the unlawful statements to employees Williams and Benton that they could not wear union T-shirts in nonpublic areas of the hotel. Nelson was the Respondent official involved with Vasquez, Pineros, and Williams; Hyland made the unlawful statement to Benton.[10]

Under *Wright Line*,[11] the General Counsel must first prove by a preponderance of the evidence that animus against union or other protected activity motivated Sookram's suspension. We find that this burden has not been met.

Although Sookram was wearing a union T-shirt as he prepared to clock out, he did not testify that Hyland made any reference to this or any other protected activity when telling Sookram to report to the personnel office. Likewise, he did not testify that Nelson and Carbonaro made any reference to the T-shirt in their discussions before and after Sookram's suspension. They focused exclusively on his failure to report to the personnel office while still on duty. Sookram's explanation was purely personal—i.e., the need to pick up a prescription—and did not implicate any protected activity.

"While the General Counsel may rely on circumstantial evidence from which an inference of discriminatory motive can be drawn, the totality of circumstances must show more than a 'mere suspicion' that union activity was a motivating factor in the decision.'" *Cardinal Home Products*, 338 NLRB 1004, 1009 (2003). In this case, there is nothing more than mere suspicion linking Sookram's situation with each of the unlawful incidents on which the judge relied to infer animus against his wearing of a union T-shirt. In those other incidents, management officials specifically challenged the wearing of union insignia. By contrast, neither at the time of Sookram's suspension nor at any time during the litigation of this case has the Respondent contended that Sookram's wearing of a T-shirt while waiting to leave work was prohibited.

In sum, we find that Sookram's insubordination was the managers' sole concern. "Employees are entitled to be union activists, and they are protected by the Act for their union activity. However, the Act does not insulate them when they are insubordinate." *Domsey Trading Corp.*, 310 NLRB 777, 789 (1993). In the face of a lack

promising its employees, who were engaged in an active union organizing campaign, wage increases and other benefits.

[9] Sookram testified that he did not know at the time that Hyland was a supervisor. However, he did not offer this as an excuse for failing to go to the office.

[10] As previously stated, we affirm the judge's findings of 8(a)(3) findings for the discharges. Absent exceptions, we also affirm the judge's findings that the Respondent violated Sec. 8(a)(1) by directing Williams and Benton to remove union insignia while in nonpublic areas of the hotel. We note that the judge incorrectly identified the speaker to Williams as Supervisor Hyland, rather than Human Resources Director Nelson. We correct the judge's error. We reject, however, the General Counsel's contention in exceptions that Nelson's statement additionally amounted to an 8(a)(3) violation, as there is no evidence that the Respondent took any adverse employment action against Williams. Member Schaumber notes that the judge based his finding as to the Williams' allegation at least in part on the fact that Supervisor Hyland did not testify, although Hyland was not involved in the incident. Nelson, on the other hand, did testify and refuted the allegation. Though the judge erred in relying on Hyland's failure to testify, Member Schaumber finds it unnecessary to pass on this allegation because any such finding would be cumulative and would not affect the remedy.

[11] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

of evidence linking his T-shirt to the suspension, we are unwilling to supply the connection that the judge infers.[12]

Accordingly, the Respondent did not violate the Act by suspending Sookram.[13]

4. The judge failed to rule on allegations that the Respondent violated Section 8(a)(1) by telling employee Vasquez to refrain from expressing support for the Union during her break, and by interrogating employees Monique Bullen and Shekela Stephens. For the reasons set out below, we find that the Respondent violated the Act, as alleged, with respect to the allegations concerning Vasquez and Supervisor Passley's interrogation of Bullen.[14]

On about June 14,[15] Vasquez was among several employees who began to clap and chant in support of the Union during their lunch break in the employee cafeteria, which is in the hotel basement and not in a public area. Executive Housekeeper Carbonaro testified that the noise disturbed her, that she confronted the employees, and that Vasquez was rude to her in the ensuing exchange. Some days later (it is not clear how many), Carbonaro and Nelson summoned Vasquez to the personnel office. Nelson asked Vasquez what she had been doing in the cafeteria. Vasquez testified: "I told him that I had been eating. And he said I had been doing something else. I told him that I had been clapping and saying that I wanted a union. And he said that I could not say those words." Although Nelson and Carbonaro testified, they did not dispute Vasquez's testimony. We therefore find that the Respondent violated Section 8(a)(1) when Nelson told Vasquez she could not "say those words," prohibiting her from expressing support for the Union while on her break.

As to the interrogation allegation, probationary employee Monique Bullen testified that, in early August, Room Supervisor Marie Passley[16] asked her into an office and queried her about her union sympathies. Bullen testified as follows:

> She asked me to come into the office. I was getting my keys, but she stopped me like when I was going to get the keys out, and she said, I want to ask you a question, and I said, okay. She was like, I'm going to ask you, how do you feel about the union? And then I was like, I said, well I don't really know but I don't like the way I'm being treated around here.

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[12] No party disputes that Sookram defied a management directive to report to the personnel office. Nor is there an allegation or any evidence to suggest that his 2-day suspension represented disparate treatment for insubordination. Moreover, the General Counsel does not contend, and the judge did not find, that Sookram was refusing an unlawful directive to report to the personnel office because he was wearing the union T-shirt. See, e.g., *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 849 (2001) (finding that the respondent unlawfully suspended an employee who refused an unlawful order to remove union stickers from his toolbox). Even if the General Counsel had advanced such a theory, the record, including Sookram's own testimony, fails to support such a finding. Sookram never asked why he was wanted in the office; he simply refused to attend for wholly personal reasons (to pick up a prescription) unrelated to Sec. 7 activity. We do not assume a motive for the directive to Sookram, we simply find that the General Counsel failed to carry his burden of proving that the motive was an unlawful one.

[13] Contrary to the majority, Member Liebman would find that the Respondent violated Sec. 8(a)(3) and (1) by suspending Dawlat Sookram for wearing a union T-shirt in a nonpublic area of the hotel.

The majority acknowledges that Sookram was not violating any work rules by wearing his union T-shit while punching out, but finds that Sookram was lawfully suspended for knowingly defying Supervisor Hyland's order to report to the personnel office. However, the majority fails to acknowledge that the Respondent has not provided any evidence as to why Hyland asked Sookram to report to the personnel office in the first place. The majority assumes that Sookram's T-shirt was not at all a motivating factor. But the judge made a supportable inference, based on the record, that Hyland told Sookram to report to the personnel office and Nelson and Carbonaro subsequently disciplined him because he was wearing a union T-shirt.

Under the principles of *Wright Line*, the General Counsel has shown that Sookram's union activity was a motivating factor in the Respondent's adverse action against him. Sookram, who has been employed by the Respondent since 1981, was an active union supporter and the Respondent was aware of his support as he was wearing a union T-shirt at the time of the incident. Sookram was also part of the group of employees who delivered a public petition to the Respondent and he appeared at the representation hearing on behalf of the Union. Further, Sookram's suspension occurred against the background of unfair labor practices showing that the Respondent bore animus toward the union activities of its employees. See *Amptech, Inc.*, 342 NLRB 1131, 1135 (2004), enfd. 2006 Fed. App. 0084N (6th Cir. 2006). In fact, two employees were unlawfully discharged for wearing union insignia and two employees were unlawfully told that they could not wear union T-shirts in nonpublic areas of the hotel. Supervisors Nelson and Hyland were directly involved in these incidents.

Under these circumstances, the burden shifted to the Respondent to prove that it would have taken the same action even if the employee had not engaged in union activity. Here, the Respondent offered no underlying reason for Hyland's demand that Sookram report to the personnel office. Sookram credibly testified that, at the time of the incident, he did not know who Hyland was, Hyland did not identify himself, and Hyland did not tell him why he was being told to report to the office. Further, although they suspended him, Nelson and Carbonaro never told Sookram what he did wrong or why he was asked to report to the personnel office the prior day. Contrary to the majority's conclusion, the evidence shows that Sookram was targeted by Hyland because he was wearing his union T-shirt when he was punching out from work. Any discipline resulting from this targeting was unlawful.

[14] We find it unnecessary to pass on additional allegations that alleged Supervisor Carmen Hernandez interrogated Bullen and that a Spanish translator for the Respondent interrogated employee Stephens, as the result would be cumulative and would not affect the remedy.

[15] The judge listed the date as June 23, although the record indicates June 14.

[16] Passley is an admitted supervisor within the meaning of Sec. 2(11) of the Act and an agent of the Respondent.

Passley then told Bullen that the Union could not help Bullen save her job, that Passley's husband had had a bad experience with a union, and that "we're all family here." Passley testified but did not refute Bullen's allegation.

The Board applies a totality of circumstances test to determine whether the questioning of an employee would reasonably tend to coerce that employee in the exercise of Section 7 rights, thus constituting unlawful interrogation. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). As stated in *Westwood Health Care Center*, 330 NLRB 935, 939 (2000), when analyzing alleged interrogations, the Board will consider, inter alia, factors that were first set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). Those factors are: (1) The background, i.e., is there a history of employer hostility and discrimination? (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees? (3) The identity of the questioner, i.e., how high was the interrogator in the company hierarchy? (4) The place and method of interrogation, e.g., was the employee called from work to the boss's office? Was there an atmosphere of unnatural formality? (5) The truthfulness of the reply. These and other relevant factors are "not to be mechanically applied in each case." *Rossmore House*, 269 NLRB at 1178 fn. 20. They serve as a useful starting point for an assessment of the totality of circumstances. *Westwood Health Care Center*, 330 NLRB at 939.

Here, we find that the questioning occurred against a background of employer hostility and discrimination against union activity, as reflected by the number of unfair labor practices found here, including findings of discrimination against and coercion of employees for expressing their support of the Union. While it does not appear that Passley was seeking information on which to base adverse action against Bullen, Bullen was a probationary employee, and the Respondent had not determined whether to offer her a permanent position. Further, while not alleged to be unlawful, Passley's ambiguous remark that "we're all family," against the background of employer hostility and discrimination, could reasonably be interpreted to imply that employees who support the Union threatened the "family" atmosphere,[17] and thus that Passley was probing whether Bullen was herself such an employee. Although Passley was a frontline supervisor and not high in the company hierarchy, room supervisors nevertheless reported on new employees' progress to management. Passley asked Bullen into an office specifically to query her about her view of the Union. Bullen responded to the questioning by stating that she did not like the way she was treated at the hotel, but she did not reveal her prounion sympathies. In addition, the record is silent as to whether Passley offered Bullen any assurance against reprisal or provided a reason for probing Bullen's views in the pending secret ballot election.

Based on the totality of the circumstances as described above, we find that Passley's questioning of Bullen constituted unlawful interrogation in violation of Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Field Hotel Associates LP d/b/a Holiday Inn-JFK Airport and Field Hotel Associates, LP d/b/a Holiday Inn-JFK Airport, Debtor-in-Possession, Jamaica, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees for wearing and refusing to remove union insignia in nonpublic areas of the hotel.

(b) Directing employees to remove union insignia when they are in nonpublic areas of the hotel.

(c) Threatening employees with job loss and the closing of the hotel if they selected the Union as their bargaining representative.

(d) Promising employees promotions and raises if they vote against the Union.

(e) Telling employees that it would never sign a contract with the Union.

(f) Telling employees to refrain from expressing their support for the Union.

(g) Coercively interrogating any employee about union support or union activities.

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

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

(a) Within 14 days from the date of this Order, offer Angela Vasquez and Maria Pineros full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Angela Vasquez and Maria Pineros whole for any loss of earnings and other benefits suffered as a

[17] Cf., *Rodeway Inn of Las Vegas*, 252 NLRB 344, 350 (1980) (finding the respondent's threat of the loss of the "family atmosphere" in facility if employees select union to be unlawful).

result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York copies of the attached notice in English and Spanish, marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 29, 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 any time since June 21, 2004.

(f) 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.

Dated, Washington, D.C. August 31, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

APPENDIX

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

The National Labor Relations Board has found that we violated 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 discharge you for wearing and refusing to remove union insignia in nonpublic areas of the hotel.

WE WILL NOT direct you to remove union insignia when you are in nonpublic areas of the hotel.

WE WILL NOT threaten you with job loss or the closing of the hotel for selecting the New York Hotel and Motel Trades Council, AFL–CIO (the Union) or any other labor organization as your collective-bargaining representative.

WE WILL NOT promise you promotions or raises for voting against the Union.

WE WILL NOT tell you that we will never sign a contract with the Union.

WE WILL NOT tell you to refrain from expressing your support for the Union.

WE WILL NOT coercively question you about your union support or activities.

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, within 14 days from the date of the Board's Order, offer Angela Vasquez and Maria Pineros full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Angela Vasquez and Maria Pineros whole for any loss of earnings and other benefits resulting from the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Angela Vasquez and Maria Pineros, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

FIELD HOTEL ASSOCIATES, LP D/B/A HOLIDAY INN-JFK AIRPORT AND FIELD HOTEL ASSOCIATES, LP D/B/A HOLIDAY INN-JFK AIRPORT, DEBTOR-IN-POSSESSION

Sharon Chau, Esq., for the General Counsel.
Andrew S. Hoffmann, Esq., for the Respondent.
Jane Lauer-Barker, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Brooklyn, New York, on various days in March and April, 2005.[1]

The charge in Case 29–CA–26385 was filed on June 28, 2004. The Charge in Case 29–CA–26388 was filed on July 1, 2004. The charge and amended charge in Case 29–CA–26454 was filed on August 4 and 16, 2004. The charge in Case 29–CA–26488 was filed on August 25, 2004. The charge in Case 29–CA–26537 was filed on September 23, 2004. And the charge in Case 29–CA–26584 was filed on October 18, 2004.

The consolidated complaint was issued on January 19, 2005, and alleged as follows:

1. That the Union commenced an organizing campaign on or about May 20, 2004, and filed a representation petition in Case 29–RC–10220 on May 28, 2004. (That petition was withdrawn on June 16, 2004, and a new petition was filed on July 1, 2004, in Case 29–RC–10237.)

2. That on or about May 25, 2004, the Respondent, by Gary Isenberg, its executive vice president of operations, promised employees (a) a wage increase; (b) the reinstatement of a matching 6-percent contribution to their 401(k) plans; and (c) other unspecified improvements in their working conditions.

3. That beginning in June 2004, the Respondent for discriminatory reasons, began enforcing a preexisting rule requiring employees to punch in no more than 7 minutes before their starting time and to punch out no more than 7 minutes after their quitting time.

4. That beginning in June 2004, the Respondent, for discriminatory reasons, began enforcing a preexisting rule requiring employees to refrain from being on its property 15 minutes prior to their starting or quitting time.

5. That in June 2004, the Respondent promulgated and enforced a rule banning the wearing of union identification badges, T-shirts, and insignia. The complaint alleges that the Respondent directed employees to remove their union identification badges or T-shirts on June 14, 2004, and June 28, 2008.

6. That in June 2004, the Respondent, for discriminatory reasons, issued a warning to Sandra Benton.

7. That on June 11 and July 5, 2004, the Respondent, for discriminatory reasons issued a warning to Fernando Arias.

8. That on June 13 and 14 2004, the Respondent, for discriminatory reasons issued warnings to Shakeia Stephens.

9. That on June 14 and 18, 2004, the Respondent, for discriminatory reasons issued warnings to Maria Pineros.

10. That on or about June 21, 2004, the Respondent, by Quentin Nelson, its director of human resources (a) directed employees to refrain from expressing their support for the Union on their breaktimes; (b) directed employees not to wear union T-shirts and badges; (c) threatened employees with unspecified reprisals; (d) threatened employees with job loss; (e) promised employees benefits; and (f) promised benefits if they wrote letters agreeing to abandon the Union.

11. That on or about June 28, 2004, the Respondent, by Elizabeth Carbonaro, its executive housekeeper, engaged in surveillance at the front of the facility.

12. That on June 28, 2004, the Respondent, for discriminatory reasons, discharged Angela Vasquez.

13. That on July 1, 2004, the Respondent, for discriminatory reasons, discharged Maria Pineros.

14. That on or about July 1, 2004, the Respondent, by Nelson directed employees to cover their union identification badges.

15. That on or about July 5, 2004, the Respondent, by Martin Field, an owner, threatened employees with closure of the hotel.

16. That on or about July 6, 2004, the Respondent, for discriminatory reasons suspended Dawlat Sookram.

17. That on or about July 7, the Respondent, by an individual named Olga, interrogated employees about their union support.

18. That on two occasions in July and on August 23, 2004, the Respondent, for discriminatory reasons, issued warnings to Maria Nubia Reyes.

19. That in July 2004, the Respondent, for discriminatory reasons, issued a warning to Monica Bullen.

20. That on or about July 20, 2004, the Respondent by an agent, gave employees the impression that their union activities were being kept under surveillance.

21. That in July and August 2004, the Respondent, for discriminatory reasons, harassed Hilda Cruz by (a) failing to pay her vacation pay promptly; (b) requiring her to provide doctor's notes; (c) refusing to permit her to return to work as previously agreed upon; (d) failing to investigate the assault on her by another employee; and (e) changing her seniority so that she became the least senior employee in the laundry department.

22. That on or about August 2, 2004, the Respondent gave free meals to employees.

23. That on or about August 4 and 5, 2004, the Respondent by Carbonaro and Passley interrogated employees about their union support.

24. That on three occasions in August 2004, the Respondent summoned police officers to evict union officers from public sidewalks in front of the facility.

[1] This consolidated complaint was scheduled to be heard in conjunction with another complaint involving a related hotel (the Hampton Inn), commonly owed with the Holiday Inn. Nevertheless, all of these cases were never officially consolidated and I issued a decision in that case in June 2005.

25. That on or about August 11, 2004, the Respondent, by Kenrick Louison promised employees promotions if they voted against the Union.

26. That on or about August 12, 2004, the Respondent, by Thomas Hyland, the manager of the food and beverage department, directed employees to remove or cover their union T-shirts.

27. That on or about August 12, 2004, the Respondent, for discriminatory reasons, issued a verbal warning to Jose Williams.

28. That on or about August 13, 2004, the Respondent, for discriminatory reasons, imposed more onerous conditions on Jose Williams.

29. That on August 17, 2004, the Respondent, for discriminatory reasons, discharged Shakeia Stephens.

30. That on August 19, 2004, the Respondent, for discriminatory reasons, discharged Monica Bullen.

31. That on August 20, 2004, the Respondent, for discriminatory reasons, caused an employee's car to be towed from the parking lot.

32. That in August 2004, the Respondent, by supervisors Judy Hernandez and Mary Passley, interrogated employees about their union activities.

33. That on January 11, 2005, the Respondent told striking employees that it would never sign a union contract.

Based on the entire record, including my observations of the demeanor of the witnesses and after considering the arguments of counsel, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The parties agree and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Preelection Allegations

I initially note that the General Counsel offered no evidence relating to the allegations regarding Hilda Cruz. I therefore assume that the General Counsel is not pursuing those allegations and they are dismissed.

As noted in my previous decision, the Field family organization owns seven hotels, four in Philadelphia and three in New York. The three New York hotels are the Crown Plaza at LaGuardia Airport, and the Holiday Inn and the Hampton Inn at JFK Airport.

In the spring of 2004, the Union commenced an organizing campaign amongst the employees of the Crowne Plaza Hotel. A petition was filed by the Union in relation to the employees at the Crowne Plaza and an election was held on May 13, 2004. The Union won that election and ultimately was certified as the exclusive collective-bargaining representative.

At the time that the election at the Crowne Plaza was still pending, the Respondent, in April 2004, engaged Quentin Nelson, a labor relations consultant who along with Respondent's managers, Chris Polityka[2] and Gary Isenberg,[3] discussed the Union's organizing effort at the Crowne Plaza and the likelihood that the Union would soon commence organizing at the Respondent's JFK hotels. Nelson suggested and the Respondent's managers approved an "employee relations audit." The plan was that Nelson would hold a series of meetings with the employees and ask them what there concerns were and what they would like to see changed.

On April 28, 2004, Christopher Polityka, the corporate director of human resources sent a letter to the employees stating:

> Last June, we announced a change in our 401k matching contribution for the Airport Hospitality 401k Plan from a dollar for dollar match up to 6% . . . to a dollar for dollar match up to 3%. . . . In our FAQ's sheet on our 401k program dated June 30, 2003, we stated, "this match will be re-evaluated annually based upon business and economic circumstances." With the one-year anniversary of this change approaching, we wanted to assure each of you that the current dollar for dollar match is being revaluated for 2004/2005.

On May 3, 4, and 5, 2004, Nelson conducted meetings with employees of both JFK hotels. He asked them what their problems were and was told that the major issues were the way employees were being treated by some of the supervisors; the cutback that had previously been made in contributions to the 401(k) pension plan; and the failure of the Company to give wage increases. Nelson also showed each group of employees a video concerning unionization.

On or about May 7, 2004, Nelson sent by e-mail, a list of the employees' concerns and complaints. (The Respondent could not locate or retrieve this e-mail message.) The Company's management thereupon met and decided to remedy many of the employees' complaints.

Having won an election at the LaGuardia Airport hotel on May 13, 2004, the Union's initial meetings with the employees of the two JFK hotels took place on May 20, 21, 22, 2004, at the Radisson Hotel, which is right down the street. During that period of time, numerous employees walked over to the Radisson after work and the Union solicited employees to sign authorization cards.

The evidence shows that on May 21, 2004, Mark Lesser, the Holiday Inn's general manager, parked his car outside the Radisson hotel sometime around 6 to 6:30 p.m. There was also evidence that on one other occasion in June, one of the union organizers took a photograph of Carbonaro taking a photograph of her. (Sort of like dueling cameras.) The General Counsel argues that these events constitute surveillance but I don't agree.

Lesser testified that on this date, he was waiting for his wife to arrive by bus and parked near the bus stop which is also near the Radisson hotel. He testified that when there he saw a woman (Terri Harken), approach and take a picture of him, he drove off. In my opinion, this was a reasonable and credible explanation of why he was parked where he was. As to Carbonaro, the testimony at most, showed that she took a photo-

[2] Vice president of human resources.

[3] Vice president of operations.

graph from her car of a union organizer who was outside the hotel.

I do not construe these isolated events as being sufficient to establish that the Respondent engaged in unlawful surveillance.

On May 25, 2004, the Company held a meeting with its employees from the two JFK hotels and announced a group of promises. These are reflected in General Counsel's Exhibit 14, and include the following:

> 1. That all new hires who hadn't yet received a $1.00 increase after 90 days would be paid the increase on June 10, 2004.
> 2. That any employee who had worked overtime and had not gotten properly paid would, after an audit, be paid the correct amount on June 17.
> 3. That effective June 1, 2004, seniority would determine work schedules, days off, vacation and holiday time.
> 4. That wage increases would be announced on or before June 1 and become effective as of that date.
> 5. That the company would be re-installing, as of June 15, 2004, the program of matching up to 6% of the employees' contribution to the 401(k) plan.

At some point during the May 25 meeting, some employees began chanting that they wanted the Union. According to Respondent's witnesses, this was the first time that they had any knowledge of the Union's organizing efforts at the JFK hotels. But this is not likely and it nevertheless was conceded that at least a month earlier, management already had anticipated this union campaign and had hired Quentin Nelson to help deal with it.

On May 28, 2004, 3 days after the May 25 meeting, the Union filed its original petition in Case 29–RC–10220. That petition requested that an election to be held in a combined unit of the two JFK hotels. The petition was later withdrawn on June 15, 2004, because the parties agreed that there would be two separate voting/bargaining units. Two new petitions were filed and elections were held on August 12 and 13, 2005.[4]

In early June 2004, the Respondent sent another letter to the employees, this time taking back the promises that it had made on May 25. The letter stated:

> I have met with several of you over the past two weeks and have indicated as of June 1st that we would restore the 6% matching benefits under the 401K plan and we would increase your wages. . . .
>
> On late Friday afternoon, May 28, 2004 we received notice that the Hotel and Motel Trades Council planned to file a petition with the National Labor Relations Board seeking a secret ballot election to determine whether that union would have the right to represent associates employed by the Hampton Inn and the Holiday Inn. . . . As a result of the NLRB's processing of that petition, implementation of the wage increases and other changes we had announced would go into effect on Tuesday, June 1, will be delayed.
>
> We have been advised that the law does not permit us to make the indicated changes in your wages, fringe benefits and other working conditions during the period prior to the election. If we did so, we would be accused of "bribing" associates in order to influence the outcome of the election. Accordingly, we must postpone making any of these changes. We are doing so for the sole purpose of avoiding the appearance that we were trying to influence either your decision on whether to support the union or the election's outcome. While it is our intention to make these changes, regardless of the outcome of the election, the collective bargaining process (if the union is voted in) may affect our ability to do so.
>
> We will notify you if, and when, the NLRB schedules an election. Between now and then, you will have to decide for yourself whether you are bettor off with or without a union. This will be one of the most important decisions you will ever be asked to make. I hope, after considering all of the facts, you will make what we believe is the right decision and choose to remain union free. I want to make my position crystal clear to you: I am strongly opposed to a union in our hotel.

I have already concluded in my earlier decision, reported at JD(NY)–27–05, that the promises of benefits made on May 25, 2004, constituted violations of Section 8(a)(1) of the Act. There is no need to restate my rationale for that conclusion.

The consolidated complaint alleges that commencing in June 2004, the Company began enforcing two rules that it had previously let slide. One is called the 7-minute rule and the other is called the 15-minute rule.

Regarding the seven minute rule, the employee handbook, which predates any union organizing, states:

> Punching in should not be earlier than 7 minutes before the scheduled start of your shift and punching out should not be later than 7 minutes after the end of your scheduled shift.[5]

Also, the handbook states that failing to abide by clock rules, sign-in, sign-out procedures, although not warranting immediate dismissal, may warrant varying forms of discipline including warnings and suspensions.

The purpose of this rule has to do with Federal and State minimum wage laws. Apparently, for purposes of computing time worked, it is standard to round off the minutes to the nearest quarter hour. For example, an employee who clocks in 8 minutes before her starting time would be recorded as having started 15 minutes before the commencement of the hour. The same thing is true for people who punch out more than 7 minutes after the hour. Therefore, if an employee consistently punches in more than 7 minutes early, or 7 minutes late, she starts to accumulate added time and can, if the minutes add up, start to get overtime pay for time that she did not actually work.

The 7-minute rule is therefore a reasonable way to comply

[4] On June 22, 2005, I issued a Decision on Objections in Cases 29–RC–10237 and 29–RC–10238 (JD(NY)–24–05), where I recommended that the Employer's objections be overruled and that certifications of representative be issued to the Union.

[5] Dawat Sookram, who has been employed by the Respondent since 1981 and who was an active and open union supporter, testified that the 7-minute rule has been hotel policy since he started working there.

with Federal and State minimum wage laws. But the General Counsel asserts that the Company only started to actually enforce this rule after it became aware that its employees wanted to join a union.

The Respondent assert that it posted a notice on April 29, 2004, which among other things, notified the employees that they were required to punch in no sooner than 7 minutes before their shifts started and no later than 7 minutes after their shifts ended. However, a number of employees witnesses who were shown this notice, testified that they never saw it before.

The Respondent further asserts that a second notice was posted on June 2, 2004, which stated, inter alia:

> Weeks ago a memo was issued to all employees advising that employees are required to follow the 7-minute rule and need to check the posted schedule outside the supervisor's office daily.
>
> However, to date there are a hand full of employees whom are not following hotel policies. These policies are put in place for many reasons. . . . The 7 minute rule is in your employee hand books and is also posted on the housekeeping bulletin board.

The General Counsel offered into evidence the following group of disciplinary warnings for violating the 7-minute rule. Fernando Arias received warnings on June 14 and July 5, 2005. Nubia Reyes received a warning on August 19, 2004. Shakeia Stephens received warnings on June 15 and 25, 2004. Maria Pineros received warnings on June 14 and 22, 2004. And Monique Bullen received a warning on June 23, 2004.[6] The Respondent did not produce any evidence to show that other employees received warnings or disciplinary actions for violating this rule before June 1, 2004.

Elizabeth Carbonaro was hired as the executive housekeeper in April 2004 to replace Hilda Cruz. Carbonaro testified that when she arrived, she started to notice, because she was responsible for preparing the weekly payroll, that some employees were punching out more than 7 minutes after their shifts were supposed to end. She testified that she told the supervisors to talk to the employees and remind them about the rule but that this didn't seem to have much result. Carbonaro testified that the next step she took was to physically change the time cards but was told by the accounting office that this was improper under the Fair Labor Standards Act; that if the employees punched in 7 minutes after the end time, they would have to be credited with the extra time. According to Carbonaro, this led her to repost the rule on June 2, 2004, and to her decision to start issuing written warnings to employees who violated the rule. Thus, under the Company's version of events, Carbonaro's decision to first start issuing warnings to employees after June 2, 2004, was not because of the Union's organizing efforts, but instead because her other efforts to gain compliance with the rule had not been successful.

With respect to the 15-minute rule, the employee handbook has a section dealing with loitering and this reads:

> Associates will be allowed in the Hotel no longer than 15 minutes before or after their scheduled shift. You should not be in any public area of the Hotel or on guest room floors unless your duties require you to be there. These areas are for the privacy and convenience of our guests. Please do not return to the Hotel on your days off, during a leave of absence or while on vacation.

Although all sides seem to agree that the Respondent enforced the 15-minute rule, there was no evidence that any employees suffered any adverse action because of the rule either before or after the Union started organizing.

In early June 2004, the Union distributed union badges to employees and advised them to wear them before and after work and during breaktimes in nonworking areas. These badges had the employee's picture, a union logo and measured about 1-3/4 inches by 2-1/2 inches. Employees wore them on a chain around their necks. When on duty in work areas, they put the badges inside their blouses.

Also in June 2004, but at a slightly later date, the Union distributed T-shirts with union logos, which employees were advised to wear under their uniforms but to display when they were not on duty and in nonwork areas.

The Holiday Inn is a full service hotel, contained in a multistory building located near JFK Airport. It has a restaurant on the lobby floor and the guest rooms are above. The basement of the hotel is taken up with an employee cafeteria, a laundry room, supply rooms, and a number of offices for supervisors and managers. Employees at the hotel are given a lunchbreak and most use the basement cafeteria to eat. Guests would not be found in the basement, although it would not be uncommon for a vendor's employees to visit the basement to conduct business.

All bargaining unit employees of the hotel are required to wear a uniform and all have identification tags near the breast pocket. These identification badges are slightly smaller than the badges that the Union distributed to employees. Obviously in a hotel, a uniform makes a lot of sense so that hotel guests will have a clear indication that only authorized people are going into and out of their rooms to perform services. The employee manual states, inter alia:

> No other badges, pins, buttons, or decorations of any kind are to be worn on the uniform unless issued by the manager.

On or about June 23, 2004, a group of employees, including Angela Vasquez, were in the lunchroom and started to chant and clap for the Union. As a consequence, Carbonaro, whose office is right down the hall, told Vasquez and the group to quite down as they were disturbing others who were working in the basement offices. Shortly thereafter, Vasquez went to Carbonaro's office and told her that if she didn't like the noise, she, (Carbonaro), should shut her door.

Later in the day, Vazquez was called into a meeting in a basement office with Carbonaro and Quentin Nelson, who by early June 2004, had accepted the job as the Hotel's human resource director. At this meeting, Vasquez displayed her union identification tag and was told by Nelson that because she was still on duty, she had to remove it. She refused and he repeated his directive. When she continued to refuse, Nelson

[6] Although the complaint alleges a discriminatory warning issued to Sandra Benton, the General Counsel did not introduce any evidence for this.

asked her to leave and gave her a notice of suspension pending a final determination.

On June 28, 2004, Vasquez was called into another meeting and told that she was being discharged. The discharge notice states:

> Management finds you were directed by the director of human recourses, 3 times to remove a union card signer I.D. badge which was worn on a necklace outside of your uniform while on company time. The third time you were warned that you would lose your job if you did not remove the necklace or place it under your uniform. You failed to comply with that direct order.
>
> Therefore, your employment is terminated for insubordination, effective immediately.[7]

Also on June 28, 2004, Maria Pineros accompanied another employee to a meeting in the basement office regarding a disciplinary notice. At that meeting, Pineros opened her blouse to display the union T-shirt and also displayed the union ID tag. Refusing Nelson's directives to button up and hide the tag, she was suspended.

On July 1, 2004, Pineros was discharged because she refused Nelson's directives to button up and hide her union ID tag. (Additionally, another employee, Cruz, who accompanied Pineros to that meeting, was also told by Nelson to put away her union ID tag and she complied.)

Sometime in June or July 2004, Dawlat Sookram received a 2-day suspension that the General Counsel alleges was motivated by his union activity. Sookram was a longtime employee who openly displayed his union T-shirt in the employee cafeteria. He also came with the Union to the NLRB hearing that was scheduled to take place on June 15, 2005.

Sookram testified that at 3:53 p.m., while waiting to punch out, he had his union T-shirt on and was approached by an individual, later identified as Tom Hyland (the new food and beverage manager), who told him to go to the personnel office. Sookram testified that he refused and told this individual that he had to leave because he had to pick up a prescription from the drug store. The following day he was called in by Nelson and Carbonaro and asked why he refused to go the office the preceding day. Rejecting his explanation that he was on his own time and that he was on his way to pick up a prescription, Sookram was given a 2-day suspension.

In somewhat related testimony, Sandra Benton and Jose Williams testified that this same manager, Thomas Hyland, told them that they could not wear their union T-shirts on the premises. They testified that these incidents occurred on August 12, 2004, which was the day of the Holiday Inn election. In Williams's case, he wore his union T-shirt into the voting room and took it off when he exited. He also testified that Hyland told him that he was out of uniform and that he was going to be in trouble.

Hyland did not testify and therefore the testimony described above was not rebutted. In either case, a finding of violation depends upon whether the Respondent was within its rights in prohibiting employees from wearing union insignia in these particular circumstances. I will discuss that question later.

During the period from June to August 2004, the Union and the Company held a large number of meetings with employees, each trying to convince the employees to vote for or against unionization and each answering assertions made by the other. Both parties also distributed numerous leaflets to employees. To a large extent, the basic content of the meetings and leaflets are described in my Decision on Objections in JD(NY)–24–05.

The General Counsel offered evidence that company meetings, held from June through August 2004, were conducted by consultants named James Hultizer and Peter List and that their remarks were translated into Spanish by a person named Olga. A number of the General Counsel's witnesses testified that these individuals (who are conceded by the Respondent to be its agents) made statements to the effect that if the Union won the election, the hotel could or would be closed; that employees could lose their jobs; that negotiations could take years; and that management did not have to sign any contract. In one instance, an employee named Monique Bullen testified that Hultizer mentioned a survey that had been conducted by the Union the previous week and said that it didn't mean anything. (This latter remark is alleged to constitute the impression of surveillance.)

Consistent with my experience dealing with similar campaigns run by outside consultants or labor attorneys, it is entirely possible that the remarks made by these consultants might have been perfectly legal but misconstrued by the employees who heard them. For example, it is not uncommon for employees to construe statements regarding the intention of management to permanently replace economic strikers, as being threats of discharge. Nor is it uncommon for employees to recall hearing that a company will not bargain after an election, when they are, in fact, told that even if a union wins an election, the bargaining process does not guarantee any increase in wages and benefits.

Nevertheless, the Respondent did call the consultants to testify and did not offer any other testimony to rebut the evidence presented by the General Counsel's witnesses. Accordingly, I conclude that the statements, as reported, regarding the possibility of the hotel closing and the loss of jobs, constitute threats of reprisal in violation of Section 8(a)(1) of the Act. On the other hand, the statement about the union survey seems to me to be simply one of the many comments made by each side about the propaganda generated by the other. I don't think that the remark warrants the conclusion that it constitutes the "impression of surveillance."

Contrary to the General Counsel's contention, Fernando Arias' testimony did not support the contention that the Respondent asked the local police to remove union people from the public sidewalks outside the hotel. For example, he testified that on or about August 2, 2004, some police officers arrived and said that they had been called because someone had claimed that the entrance to the hotel was being obstructed. According to Arias, the officers told them that there was no problem with where they were congregating.

On or about August 2, 2004 (10 days before the election), the

[7] This notice did not refer to the cafeteria incident or Vasquez' suggestion that Carbonaro shut her door. Those were not cited as being a reason for her discharge.

Respondent offered free breakfast and dinner to its employees. Several days later, the Respondent held a carnival on its premises, complete with games and food. The General Counsel contends that these two events constituted grants of benefits designed to influence voters in the upcoming election. As to the carnival, the evidence indicates that similar events have taken place in years past and there is no evidence that the Respondent used either this or the August 2 occasion as a platform to present its propaganda. In my opinion, both events were relatively inconsequential and do not amount to violations of the Act. In this regard, I think that the facts here are distinguishable from the facts in *M-W Education Corp*., 223 NLRB 495, 499 (1976), inasmuch as the Respondent here, has had a practice of giving free meals to its employees in the basement cafeteria and the carnival is something of an annual event.

Pedro Lebron testified that a couple of days before the election, he was approached by acting chef, Kenrick Louison, who told him that if he voted against the Union, he would be promoted from dishwasher to cook. He also testified that Louison promised him a raise to $12 per hour. Notwithstanding the alleged promise, Lebron neither got the promotion nor the raise. Nevertheless, as the Respondent did not call Louison to rebut Lebron's testimony, I conclude that these statements constitute violations of Section 8(a)(1) of the Act.

B. Postelection Allegations

1. Jose Williams

Jose Williams (who had earlier testified about being told by Hyland not to wear his union T-shirt on the premises) also testified that about 2 days after the election, he was reading a newspaper during his downtime when Hyland approached and said that instead of reading his paper he should be wiping the walls down, polishing some glasses and mopping the floor.

Although the General Counsel contends that the testimony of Williams shows that the Respondent changed his work duties and imposed more onerous conditions on him, Williams testified that this was a one time event and that his work resumed its normal pattern thereafter. At most, this was a fit of pique, perhaps inspired by the outcome of the election and not a permanent change in William's job description.

Hyland did not testify and to the extent that it can reasonably inferred that this one time action constituted an adverse action against Williams, I conclude that like a suspension or warning, it constituted a violation of Section 8(a)(1) and (3) of the Act.

2. The two discharge allegations

The General Counsel alleges that the Respondent violated Section 8(a)(3) of the Act by discharging Shakeia Stephens and Monique Bullen. Both of these individuals were probationary employees at the time of their discharges and both were employed as housekeepers. Both had been given earlier warnings in relation to the 7-minute rule.

Shakeia Stephens was hired on May 26, 2004, and was discharged on August 17, 2004. Both testified that they signed union cards, attended union meetings, and wore the union badge and T-shirt during their breaks. But this doesn't make them much different from most of the other hotel employees who were encouraged by the Union to openly display their union support. As far as I know, neither Stephens nor Bullen were members of the employee organizing committee (consisting of about 15 employee activists), and neither as far as I can tell, were particularly active in proselytizing for the Union.[8]

The General Counsel seems to place some emphasis on the fact that on August 15 (3 days after the election at the Holiday Inn), Stephens sat with some of the more active union supporters in the church where a funeral was being conducted for a coworker. But I don't see much in this.

3. Monique Bullen

Bullen testified that in or about mid-June 2004, she asked Paul Weatherfield if she could take a vacation in August so that she could participate in a family reunion that was being held in the Caribbean. She states that Weatherfield said that he thought it would be OK, but that he would have to ask Carbonaro. The credible evidence indicates that on or about the following day, Carbonaro gave Bullen permission to take a 1-week vacation starting on August 8 and ending on August 14. (I think it highly unlikely that Carbonaro, during a relatively busy time of the year, would have approved a vacation to last from August 8 to 18.) At the time in question, Bullen was a probationary employee and was not even entitled to any vacation time. Assuming arguendo, that Carbonaro viewed Bullen as being strongly in favor of the Union, this was not exactly the way to retaliate against her. In any event, approval of Bullen's vacation for the period from August 8 to 15 also meant that Bullen would not be present during the election and therefore would not be voting.

According to Bullen, at about the time of the vigil for Paulette Walker (August 4, 2004), she told Carbonaro that she was not going to be leaving until August 11 and could come into work on August 8 and 9. Although her testimony as to the change in her plans was not entirely clear to me, I think that when Bullen told Carbonaro that she was delaying her trip by 3 days, she incorrectly assumed that she could therefore extend her return by 3 days. And that is why I think that she believes and testified that she was scheduled to return to work on August 18 and not on August 15.

Bullen returned to the U.S. on the evening of August 18 and called into the Hotel at about 7 a.m. on August 19. She spoke to Pauline Burnett (the acting supervisor), and was asked to call back at 8:30 a.m. When she did, Bullen was told that Carbonaro had terminated her because she did not return to work on time.

The Respondent's position is that Bullen failed to return to work when she was scheduled to do so and that she failed to call in on the days that she was absent. Carbonaro testified that she made the decision to terminate Bullen's employment for this reason and decided not to apply any additional progressive discipline because Bullen was a probationary employee. The termination notice states:

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[8] Bullen testified that at one of the meetings held by management she asked one of the consultants if he had anything good to say about the Union and that he said no. She also testified that at either this or another meeting, she made a remark to a coworker about the Company's statements to give it "another chance" and that Veronica Lemonius, a coworker told her to mind her own business because she (Bullen) was new at the Hotel.

> On 8/8/04, you were scheduled for 1 week off for a family reunion. You were scheduled to return to work on 8/15/04. However you failed to return to work. You were and are a no-call, no-show for 8/15/04, 8/16/04 & 8/17/04. As a result you are being terminated effective 8/17/04.

4. Shakeia Stephens

As noted above, Shakeia Stephens was also a probationary employee who was responsible for cleaning guest rooms.

By the time of Paulette Walker's funeral (August 15), Stephens had completed her training and was an on-call employee who was assigned to clean 15 rooms on one floor on those occasions when she was called into work. On August 15, the room attendants had their assignments reduced to 12 rooms because many of them, and some of the supervisors, attended the funeral.

According to Stephens, on the afternoon of August 15 and after having returned from the funeral, she spoke to her supervisor at about 4 p.m. and said that she needed another room, because the room to which she was assigned was occupied. According to Stephens, her supervisor, Camorine, told her to clean room 1010 because that room was needed for a guest. Stephens also testified that after the end of her shift, Camorine told her that she had not completed her assigned rooms and that she responded that if anyone had told her that she had to do all the rooms, she wouldn't have gone to the funeral. At that point, according to Stephens, Camorine asked her to punch back in, but she responded that she had already had punched out and was leaving.

Stephens testified that after she arrived at work on August 16, she was told to see Carbonaro who discussed with her the events on August 15. Stephens testified that during the course of this conversation, Carbonaro said that Stephens was keeping bad company.

According to Stephens, she then went to get her cart and was approached by Supervisor Mary Passley who stated that Stephens had not properly cleaned certain rooms from the previous day. Stephens asserts that she said that she did clean those rooms whereupon Passley stated, "[A]re you calling me a liar," and further said, "[Y]ou've got a real nasty disposition about yourself." At that point, according to Stephens, Passley went to Carbonaro's office after which she was called in to speak with Carbonaro and Nelson Quentin. Stephens testified that Carbonaro said that it had been brought to her attention that Stephens was still a probationary employee and that her rooms were not satisfactorily cleaned. Stephens was then given a termination notice that read:

> On 8/16/04 you failed to satisfactorily clean 2 assigned rms. This incident, in conjunction with your overall work performance results in discharge.

Carbonaro acknowledged that she told Stephens on the day of the wake to be careful about whom she hung out with. According to Carbonaro, she saw Stephens standing out in the back of the hotel smoking with Dwight and that she went over to them and told them that they didn't belong there because they didn't have a break at the time. She states that she asked Stephens to stay for a moment and told her to be more careful who she hung out with. Carbonaro testified that she said this to Stephens not because of any union considerations, but because Stephens was a young woman talking to an older married man about whom she had heard some bad things.

As an on-call employee, Stephens did not have a steady assignment. She called in each day and received assignments to different floors and to work under different supervisors. In her case, the Respondent called two supervisors who testified about her work and both were not complimentary.

Carmen Hernandez testified that she supervised Stephens on about 8 to 10 occasions and had to tell her to redo rooms on every occasion. Hernandez testified that she reported this to Paul Fairweather and told Carbonaro on several occasions that she was not happy with Stephen's work or attitude. With respect to the union campaign, Hernandez concedes that she told Stephens that the Union was not in her best interest inasmuch as Stephens was new on the job. Hernandez testified that although she talked to Stephens about the Union, she did not know what Stephen's opinion was about the Union.

Marie Passley testified that Stephens rarely worked on the four floors that she covered, but that when she did, her work was not very good. Passley testified that because of the funeral on August 15, there were not enough supervisors to inspect the rooms. According to Passley, she therefore did not get around to inspecting all of the rooms on her floors until August 16 at which time she discovered that two rooms that Stephens had claimed to have cleaned, had not been properly cleaned. Passley testified that she then talked to Carbonaro about this and that this ended her involvement in the matter. She states that she did not recommend that Stephens be discharged as this was not within the scope of her duties. Passley readily conceded that she saw both Stephens and Bullen wearing union pins on more than one occasion.

5. Yolanda Garcia's Car

The complaint alleges that on or about August 20, 2004, the Respondent caused the car of Yolanda Garcia to be towed from the parking lot in retaliation for her prounion activities.

The evidence, which is not in dispute, shows that Yolanda Garcia, one of the most active union advocates, left her car in the parking lot of the hotel without license plates. The hotel does allow employees to park in the lot, but does not permit employees to store their vehicles there. (Since construction of the Hampton Inn, the parking lot, which is used by both hotels, has been pretty full.) The evidence also shows that since at least 9/11, the hotel has had a policy, for security reasons, to remove vehicles not having license plates.

Garcia testified that she had a problem with her license and that she parked her car, without plates, in the hotel's parking lot, while taking public transportation to and from work. In mid-August (after the election), security supervisor, Wade Smith, noticed the vehicle and tried to find out who it belonged to by asking a number of supervisors, including Carbonaro. Thereafter, during a conversation between Carbonaro and Garcia, the former told Garcia that she had to move her car because it didn't have plates. When Garcia explained that she had an appointment at the Motor Vehicles Bureau to straighten out her situation, Carbonaro reiterated her request that she remove the

vehicle.

Garcia did not remove her car and on or about August 20, Wade Smith had a towing company take the car out of the lot. This resulted in Garcia having to pay the towing company to get her car back.

Notwithstanding my conclusions that the Respondent violated the Act in a variety of ways and therefore has evinced anti-union animus, I cannot find that the Respondent violated the Act with respect to Garcia's car. Clearly Garcia had permission to park her car in the lot when she was using it to go to work. But she didn't have permission to store her vehicle there without license plates. Garcia was given fair warning that she had to remove her car and when she didn't, the car was towed away.

6. Miscellaneous

Finally, the General Counsel offered testimony from Jose Williams, Dawlat Sookram, and Sandra Benton about a conversation that they had with Fields while they were on the picket line in January 2005. Basically, they testified, without contradiction that Fields invited them to return to work and when they said they would if he made an agreement with the Union, he responded by saying that he would never sign a contract.

III. ANALYSIS

A. Union Insignia and the Discharges of Angela Vasquez and Maria Pineros

It is well established that employees have the right to wear union insignia while at work. *Republic Aviation v. NLRB*, 324 U.S. 793, 801–803 (1945). However, an employer can lawfully restrict employees from wearing such union insignia if it can demonstrate the existence of "special circumstances." *United Parcel Service*, 312 NLRB 596, 597 (1993), enfd. denied 41 F.3d 1068 (6th Cir. 1994). One of the special circumstances that have been recognized is where the display of union insignia unreasonably interferes with a public image that the employer has established as part of its business plan, through appearance rules for its employees. *United Parcel*, supra; *Nordstrom, Inc*., 264 NLRB 698, 700 (1982); *Evergreen Nursing Home*, 198 NLRB 775, 778–779 (1972); *United Parcel Service*, 195 NLRB 441 (1972); *Houston Coca Cola Bottling Co*., 256 NLRB 520, 524 (1981). Nevertheless, the Board continues to hold that mere employee contact with customers does not, standing alone, justify the prohibition of union insignia. *United Parcel*, supra at 507; *Nordstrom*, supra; *Florida Hotel of Tampa*, 137 NLRB 1484 (1962), enfd. as modified on other grounds 318 F.2d 545 (5th Cir., 1963). "Rather, the entire circumstances of a particular situation must be examined to balance the potentially conflicting interests of an employee's right to display union insignia and on employer's right to prohibit such display." *Nordstrom*, supra at 700.

In resolving the balance, one of the more significant factors is the size or unobtrusiveness of the particular union insignia. *United Parcel Service*, 312 NLRB at 597 (where a brownish union pin, which was less than an inch in diameter, was found to be small, inconspicuous, and free of provocative message). In that case, the Board found that the pin could not be banned and distinguished the facts from an earlier case (195 NLRB 441, 450) involving the same employer where the Board upheld a prohibition of a much larger white pin that was 2-1/2 inches in diameter. (The white pin made it conspicuous against the brown uniform.)[9]

In the present case, the Respondent had a longstanding policy of requiring its employees to wear uniforms that had identification badges on them. The policy also prohibits employees from wearing other types of insignia on their uniforms. There is no dispute that the wearing of these uniforms predated any union organizational campaign at any of the hotels. There is also no question but that the policy has been uniformly carried out except that there is some evidence that after 9/11, some employees wore small patriotic type buttons on their uniforms.

The evidence shows that most of the bargaining unit employees, such as the people who cleaned rooms or who provided food services, had contact with the guests of the hotel. The hotel therefore was within its rights in requiring these employees to wear uniforms so as to project a public image and also so that the guests could identify those individuals who enter their rooms as being employees of the hotel and not strangers.

Nevertheless, the evidence also shows that the employees were instructed by the Union to openly display their union id badges (which contained a photograph of the wearer), *only* when they were not on duty and were not in the public areas of the hotel. Therefore, the employees wore their union id badges on a chain but when they went to work, cleaning rooms or waiting on tables, they put the badges inside their outer shirts. And if they wore union t-shirts, they wore them under their uniforms and only displayed them before and after work and when they were on breaks, usually while in the employee cafeteria which is in the basement of the hotel and not in an area frequented by the hotel's guests.

Both Angela Vasquez and Maria Pineros were discharged because they displayed their union T-shirts and union id badges while in the basement office of Quentin Nelson. The Respondent's position is that these employees were wearing these union insignia on worktime in a work area and therefore were subject to discipline up to and including discharge for refusing an order to remove them.

I do not agree. In both of these cases, Vasquez and Pineros were in the basement office of the human resource manager, Quentin Nelson. And although these transactions occurred during their working hours, the two employees were not in an area of the hotel where the public (guests or vendors) could possibly be present. Their wearing of union insignia therefore had no possibility of detracting from any legitimate business concern of the Respondent and I therefore conclude that the discharges motivated by the employees' display of union insignia interfered, in these circumstances, with their Section 7 rights and was unlawful under Section 8(a)(1) and (3) of the

[9] For other fairly recent cases dealing with union insignia and "special circumstances," see for example, *Waterbury Hotel Management LLC*, 333 NLRB 482, (2001); *NLRB v. Harrah's Club*, 337 F.2d 177 (9th Cir. 1964); *Meijer Inc. v. NLRB*, 130 F.3d 1209 (6th Cir. 1997); *Flamingo Hilton-Lauglin*, 330 NLRB 287 (1999); and *Reno Hilton*, 319 NLRB 1154 (1995).

Act.

By the same token, I also conclude that the Respondent violated the Act in relation to the transactions involving Dawlat Sookram, Sandra Benton and Jose Williams. In the case of Sookram, I find that the reason he was suspended for 2 days was because he wore his union T-shirt as he was punching out from work and not because he refused to stay after he had already punched out. With respect to Benton and Williams, I conclude that Thomas Hyland told these employees that they could not wear union T-shirts when they were not in public areas and when they were not actually on duty. (In Williams' case, he wore his union T-shirt into the voting room and took it off as he was exiting the voting area, on his way back to his work area.)

Although I am concluding that the Respondent violated the Act as to the above incidents, and particularly with respect to the discharges of Vasquez and Pineros, it is not necessary for me to decide whether the Respondent could have legally banned these particular union id badges if they were worn during employees' worktime and in work areas where they had contact with the hotel's guests.

B. The Timeclock Rules

The evidence shows that the Respondent promulgated the seven minute and the 15-minute rules long before the Union appeared on the scene. The 7-minute rule is for the purpose of preventing the accumulation of unearned time that could lead to overtime. The 15-minute rule was apparently designed to limit loitering in the hotel by employees before or after their shifts. In either case, they were not originally promulgated to thwart unionization.

Nevertheless, the General Counsel's complaint is that these rules were not enforced by way of disciplinary actions until after the Union started to organize.

The General Counsel offered evidence that employees started receiving disciplinary warnings with respect to the 7-minute rule on or about June 14, 2004. The Respondent produced no warnings for infractions of this rule before that date.

Elizabeth Carbonaro testified that when she was hired as the executive housekeeper in late April 2004, one of her duties was to review the payroll. She testified that when she did so, she noticed that a significant number of employees were punching the timeclock either more than 7 minutes before or after their scheduled shift times. Carbonaro therefore realized that the Respondent's existing rule was not being adequately enforced and on April 29, 2004, she posted a notice reminding employees of the rule.[10]

According to Carbonaro, she posted another reminder of the rule on June 2 because some employees were still not complying. She testified that for a time thereafter, she physically changed the timecards until she was advised that this was illegal under the Fair Labor Standards Act. Carbonaro testified that it was only at this point that she decided to enforce the 7-minute rule by issuing disciplinary warnings as she felt that this was the only remaining way of gaining enforcement.

Until Carbonaro testified about this subject matter, I was inclined to agree with the General Counsel's allegations because the evidence showed that warnings were not issued until after the Union started to organize the employees. But given the fact that the 7-minute and the 15-minute rule predated the union campaigns (and had a legitimate purpose), it does not seem unreasonable or incredible that a newly hired executive housekeeper would seek, at the outset of her tenure, to familiarize herself with and enforce the Company's existing rules in a uniform and effective manner. Thus, it is my conclusion that in this instance, the renewed enforcement of these rules, was coincident with the Union's organizational efforts and not caused by that event. Therefore, I will conclude that in this matter, the Respondent did not violate the Act.

C. The Discharges of Shakeia Stephens and Monique Bullen

Given the many other violations of the Act, which evidence antiunion animus, this goes some way in supporting the General Counsel's contention that these two employees were discharged in violation of Section 8(a)(1) and (3) of the Act. Moreover, had I concluded that the Respondent violated the Act by the warnings given to these employees in relation to the 7-minute rule, this would have substantially bolstered the General Counsel's contention that their discharges violated the Act because the Respondent relied on those warnings as being one of the reasons for the discharges. Cf. *Lincoln Park Subacute & Rehab Inc*., 333 NLRB 1137 (2003).

Nevertheless, it seems to me that the ultimate outcome will depend on credibility. In the case of Bullen, the factual issue in dispute is whether she had permission to return to work from a vacation on August 19 as she contends, or whether she was supposed to return on August 15 as the Company contends. In the case of Stephens, the issue is whether she cleaned her rooms well and whether on August 15, she did or did not do a good job of cleaning two rooms on the 10th floor.

Bullen and Stephens both wore union T-shirts and union ID badges during nonworktime and in nonwork areas. At least one of their supervisors had seen both with these union insignia. However, they were not among the more active union supporters, those being the people who were on the Union's organizing committee. They also were probationary employees, who under the Company's rules, were not subject to the progressive disciplinary system that was applicable to nonprobationary employees.

As noted above, Carbonaro approved a vacation so that Bullen could attend a family reunion that was held outside the United States. She didn't have to do this because as a probationary employee, Bullen was not entitled to any vacation time at all. Nevertheless, Carbonaro approved her vacation and I note that under either version, the vacation would have meant that Bullen would not be around for the election.

It seems highly improbable that Carbonaro, even if she was aware that Bullen was one of the many employees who supported the Union, would have gone out of her way to approve the vacation if she wished to retaliate against this employee for her union support. I suppose one could be Machiavellian about this by concluding that Carbonaro approved the vacation only in order to get Bullen away from the polling booth on the day

[10] I credit her testimony that she posted this notice.

of the election. But I doubt that this was the case.

I think that what happened here was that Bullen originally asked for and received a 1-week vacation to start on August 8, 2004, and when she decided to leave on August 11 instead, she asked to postpone her vacation and mistakenly assumed that she could extend her return by 3 days. When she didn't return on August 15, 16, or 17, Carbonaro decided to invoke the Company's preexisting rule that allowed a discharge for an employee who was absent without calling in.

Viewing the evidence as a whole, I cannot say that I disbelieve Carbonaro regarding her reason for applying the "no show, no call" rule to Bullen and I cannot say that she was acting with a retaliatory motive when she decided to discharge Bullen who was still on probation. Because the discharge did not occur until after the election, it is possible, but less probable that Carbonaro's motivation was to retaliate against Bullen (who did not vote), because she supported the Union.

For some of the same reasons, I also think that is unlikely that the Respondent discharged Stephens because she supported the Union. The Respondent produced two of the housekeeping supervisors who testified that they were unimpressed with Stephens cleaning ability and her attitude toward instruction. Mary Passley testified that on August 16, she discovered that two rooms that Stephens had claimed to have cleaned had not been adequately done.

Based on the record as a whole and on demeanor grounds, I am going to resolve the credibility issues in favor of Passley and Carmen Hernandez in the sense that given the respective burdens of proof, the defendant is entitled to a marginal benefit of the doubt. *National Telephone Directory,* 319 NLRB 420, 422 (1995).

Accordingly, I am going to conclude that the Respondent's reasons for discharging Stephens and Bullen were unrelated to their union activities. I therefore shall recommend that the allegations regarding Stephens and Bullen be dismissed as not being supported by a preponderance of the credible evidence. In short, I conclude that the Respondent has shown that it would have discharged these two employees notwithstanding their union activities, even if Carbonaro was aware of them. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

D. Miscellaneous Violations

In the previous sections of this decision, I have already concluded that the Respondent has violated the Act in certain respects. To summarize, I make the following conclusions.

For the reasons stated in my decision in JD(NY)–27–05, I conclude that the Respondent violated Section 8(a)(1) by promising wage increases and other benefits on May 25, 2004.

That the Respondent violated Section 8(a)(1) by threatening employees with job loss and the closing of the hotel if they selected the Union as their bargaining representative.

That the Respondent violated Section 8(a)(1) by promising its employee, Pedro Lebron, a promotion and a raise if he voted against the Union.

That the Respondent violated Section 8(a)(1) by telling employees in January 2005 that it would never sign a contract with the Union.

CONCLUSIONS OF LAW

1. The Respondent, Field Hotel Associates, LP, Holiday Inn-JFK Airport, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. New York Hotel and Motel Trades Council, is a labor organization within the meaning of Section 2(5) of the Act.

3. By promising wage increases and other benefits with the intention of dissuading employees from voting for or supporting the Union, the Respondent violated Section 8(a)(1) of the Act.

4. By discharging Angela Vasquez and Maria Pineros for wearing union insignia in nonpublic areas of the hotel, the Respondent violated Section 8(a)(1) & (3) of the Act.

5. By suspending Dawlat Sookram for wearing union insignia in a nonpublic area of the hotel, the Respondent violated Section 8(a)(1) and (3) of the Act.

6. By directing employees to remove union insignia when they are in nonpublic areas of the hotel, the Respondent violated Section 8(a)(1) of the Act.

7. By threatening employees with job loss and the closing of the hotel if they selected the Union as their bargaining representative, the Respondent violated Section 8(a)(1) of the Act.

8. By promising an employee a promotion and a raise if he voted against the Union, the Respondent violated Section 8(a)(1) of the Act.

9. By telling employees in January 2005 that it would never sign a contract with the Union, the Respondent violated Section 8(a)(1) of the Act.

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

11. Except to the extent found herein, the Respondent has not violated the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because many of the employees speak Spanish, I shall recommend that the notice be in English and Spanish.

The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I further recommend that the Respondent be required to expunge from its records any reference to the unlawful discharges and the suspension of Dawlat Sookram.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

[11] 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

ORDER

The Respondent, Field Hotel Associates, LP d/b/a Holiday Inn-JFK Airport, New York, New York, its officers, agents, successor, and assigns, shall

1. Cease and desist from

(a) Promising wage increases and other benefits with the intention of dissuading employees from voting for or supporting the New York Hotel & Motel Trades Council, AFL–CIO.

(b) Discharging or suspending employees for wearing union insignia in nonpublic areas of the hotel.

(c) Directing employees to remove union insignia when they are in nonpublic areas of the hotel.

(d) Threatening employees with job loss and the closing of the hotel if they selected the Union as their bargaining representative.

(e) Promising employees promotions and raises if they vote against the Union.

(f) Telling employees that it would never sign a contract with the Union.

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

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

(a) Within 14 days from the date of this Order, offer Angela Vasquez and Maria Pineros full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(b) Make whole, with interest, Angela Vasquez, Maria Pineros, and Dawlat Sookram, for the loss of earnings they suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against the above named employees and within 3 days thereafter, notify them in writing, that this has been done and that the discharges and the suspension will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York, copies of the attached notice in English and Spanish, marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 29, 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 facility involved in these proceedings, or sold the business or the facilities involved herein, 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 Respondents at any time since May 25, 2004.

(f) 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.

Dated Washington D.C. August 4, 2005

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT discharge or otherwise retaliate against our employees because of their union membership, activities or support for the New York Hotel & Motel Trades Council, AFL–CIO.

WE WILL NOT promise wage increases and other benefits with the intention of dissuading our employees from voting for or supporting the Union.

WE WILL NOT discharge or suspend our employees for wearing union insignia in nonpublic areas of the hotel.

WE WILL NOT direct employees to remove union insignia when they are in nonpublic areas of the hotel.

WE WILL NOT threaten our employees with job loss or the closing of the hotel if they select the Union as their collective-bargaining representative.

WE WILL NOT promise employees promotions and raises if they vote against the Union.

WE WILL NOT tell our employees that we would never sign a contract with the Union.

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adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] 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."

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

WE WILL offer Angela Vasquez and Maria Pineros, who have been found to have been illegally discharged, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL make whole Angela Vasquez, Maria Pineros, and Dawlat Sookram, for the loss of earnings they suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful suspension and discharges which have been concluded to be unlawful and notify the employees in writing that this has been done and that these actions will not be used against them in any way.

FIELD HOTEL ASSOCIATES, LP D/B/A HOLIDAY INN, NY-JFK AIRPORT