

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

HELWEG & FARMER TRANSPORTATION CO., INC.

and

Case 28-CA-16377

CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL
UNION NO. 492, affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Lew Harris, Atty., Albuquerque, NM,
for the General Counsel.

Stephen P. Schuster and Kimberly Seten, Attys.,
Kansas City, MO, for the Respondent.

Gerald Bloomfield, Atty., Albuquerque, NM,
for the Charging Party.

SUPPLEMENTAL DECISION

Statement of the Case

WILLIAM L. SCHMIDT, Administrative Law Judge: On June 5, 2001, Judge Michael D. Stevenson issued his Decision and Recommended Order in the above matter. Judge Stevenson subsequently retired on June 3, 2002.

On June 10, 2003, the Board issued an Order Remanding To Administrative Law Judge (Order Remanding) in this matter. The Order Remanding directs the Chief Administrative Law Judge to ascertain Judge Stevenson's availability for the purpose of preparing a supplemental decision containing certain specified credibility resolutions, findings of fact, conclusions of law, required remedial action, and a recommended order. The Chief Administrative Law Judge referred this matter to me in my capacity as an Associate Chief Administrative Law Judge to ascertain Judge Stevenson's availability and, if necessary, designate another administrative law judge as provided at footnote 2 of the Order Remanding.

Following an administrative inquiry, and after efforts to reach an informal resolution of the issues in this case, I issued an order on October 31, 2003, finding Judge Stevenson unavailable and designating myself as the substitute administrative law judge to prepare the supplemental decision sought by the Order Remanding. My October 31 Order is hereby made a part of the record in this matter.

In that Order, I found that the Board's specific direction that the requested additional findings and conclusions be based on "the current record, without taking any additional evidence" also applied to the substitute judge. When I initially informed the parties of Judge Stevenson's unavailability and of my intention to prepare the supplemental decision during a telephone conference on October 30, counsel for Respondent inquired if the substitution would

5 result in a further hearing. I informed the parties then that I did not feel at liberty to reopen the hearing because of the Board’s specific direction about making the added findings without “taking any additional evidence” had been included in the Order Remanding even though it knew that Judge Stevenson might not be available. No party registered an objection to that interpretation nor has any party taken an interim appeal to my October 30 Order.

Having now carefully reviewed the entire record and the previously filed briefs in this matter, I make the following

10 Findings of Fact

I. Scope of the Order Remanding

15 Judge Stevenson concluded that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by “purporting to accept the resignation of [Violet Roskos] who was a leader of the union’s organizing drive . . . and [thereby] terminating said employee for her union activities.” JD(SF)–45–01 @ 17: 7-9. In his recommended remedial order, Judge Stevenson provided, without qualification, that Respondent must reinstate Roskos to her former position with backpay and interest, the standard remedy in discharge cases. 20 JD(SF)–45–01 @ 18: 26. However, at section III, B, 3, b of his decision Judge Stevenson concluded, in effect, that Roskos’s “fitness for reinstatement” should be determined in a compliance proceeding. JD(SF)–45–01 @ 14–15. He based this conclusion on “the undisputed threat made by Roskos, her patently false testimony with respect to the threat during the administrative hearing and other instances of [unspecified] odd behavior.” JD(SF)-45-01 @ 14: 25 8–10. The judge justified this separate consideration on the ground that a “school bus driver is, after all, a kind of fiduciary for the most treasured of all commodities, our children, particularly when the children have “special needs,” a job to which Roskos would be reinstated as part of the normal remedy.” JD(SF)–45–01 @ 14: 10–13.

30 Judge Stevenson further found that Respondent independently violated Section 8(a)(1) by removing a Union flyer from an employee bulletin board while permitting the posting of non-union material and by posting a notice containing a statement implying that Respondent engaged in the surveillance of employee union activity. He dismissed another 8(a)(1) and (3) allegation that alleged Respondent had reduced the work hours of employees who engaged in 35 protected concerted activity and union activity. In addition, he dismissed another 8(a)(1) allegation that alleged Respondent promulgated an overly broad and discriminatory rule barring employees from discussing their terms and conditions of employment among themselves. Respondent thereafter filed exceptions to the Judge Stevenson’s findings and conclusions.

40 In reaching the conclusion that Respondent unlawfully terminated Roskos, Judge Stevenson expressed considerable doubt about the credibility of Roskos as well as Minerva Morgan, the acting Rio Rancho facility manager who informed Roskos of her termination. Without resolving the conflicts presented by the testimony of Roskos and Morgan about the critical events that occurred on the morning of March 27, 2000, the judge relied on Morgan’s 45 account of those events to fashion his conclusions about Roskos’s termination because, as he put it, Morgan seemed “slightly less incredible and, in the final analysis, either version will ultimately lead me to the same conclusions.”

50 In the Order Remanding, the Board reported that it could not evaluate the sufficiency of the evidence in support of the General Counsel’s case in the absence of an affirmative finding identifying the credible testimony relevant to the issue of Roskos’s termination. For this reason, the Board directed that affirmative credibility findings be made concerning “what testimony was

credible, whether from Morgan or Roskos, in whole, in part, or in combination” together with “supporting rationale” and with due consideration concerning its “significance to the issue of whether Respondent lawfully terminated Roskos.”

5 As to Judge Stevenson’s observation that Roskos’ fitness for reinstatement should be
determined in a compliance proceeding, the Board requested that the supplemental decision
rationalize how the “finding that Roskos’s pre-discharge threat, which the judge found the
Respondent did not rely on in discharging her, could nevertheless be a factor in deciding
whether Roskos has forfeited her right to reinstatement from a discriminatory discharge.” The
10 Board requested that this rationalization take into account the affirmative credibility findings
discussed above as well as the principles found in *ABF Freight System, Inc. v. NLRB*, 510 U.S.
317 (1994); *Family Nursing Home & Rehabilitation Center*, 295 NLRB 923 (1989); and *Owens
Illinois, Inc.*, 290 NLRB 1193 (1988), enfd. 873 F.2d 413 (3d Cir. 1989). The Board’s Order
Remanding does not refer to prior findings related to other complaint allegations.

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II. The Roskos-Morgan Credibility Question

A. Remand Methodology

20 Because I did not observe the witnesses as they testified, I have relied on traditional
non-demeanor factors to analyze the record in preparing this supplemental decision. Although
the Board has expressed a reluctance to “disregard the demeanor component of credibility
resolutions by a trier of fact” (*Seattle Seahawks*, 292 NLRB 899 (1989)) and the original
decision contains a boilerplate reference to witness demeanor (JD(SF)–45–01, 2: 12-13), a
25 careful study of that decision discloses that Judge Stevenson essentially rested his credibility
resolutions on permissible inferences drawn from his analysis of the testimony and the
documentary evidence rather than witness demeanor.

30 My task here has been informed by a variety of cases where the Board itself chose to
independently analyze conflicting testimony to make findings in situations where the Board felt
the trial judge had made an erroneous credibility resolution or had failed to resolve important
testimonial conflicts, or where the trial judge was unavailable. See e.g. *Upper Great Lakes
Pilots, Inc.*, 311 NLRB 131, fn. 2 (1993) (Board relied on testimony of witnesses ALJ discredited
where (1) the judge implicitly credited some of the witnesses’ testimony; (2) their testimony is
35 consistent with that of credited witnesses or documentary evidence; (3) their testimony contains
an admission against interest; and (4) their testimony is relied upon by the party against whom
the Board is resolving a particular issue.); *U.S. Postal Service*, 301 NLRB 233, fn 3 (1991)
(Board based its own analysis on whether the witnesses’ testimony was un rebutted or
substantially consistent where the ALJ failed to resolve significant discrepancies by crediting or
40 discrediting conflicting testimony.); *Northridge Knitting Mills*, 223 NLRB 230, 235 (1976) (Board
observed that “the ultimate choice between conflicting testimony . . . rests on the weight of the
evidence, established or admitted facts, inherent probabilities, reasonable inferences drawn
from the record, and, in sum, all of the other variant factors which the trier of fact must consider
in resolving credibility.”); *W.T. Grant*, 214 NLRB 698 (1974) (Board rejected ALJ’s credibility
45 resolutions after finding the discredited testimony of an employer witness had been
corroborated by witnesses presented by the General Counsel and the Charging Party.).

B. Relevant Evidence

50 The seminal event giving rise to this case actually occurred on the Friday, March 24,
2000. I reach back to that pivotal event because, in my judgment, it sheds some light on the
credibility issues concerning the Board. The events of that day began with Roskos’s earlier

distribution of a notice about a union meeting she planned to hold at her home on Tuesday, March 28, 2000, containing a hand drawn map to her home. Although the notice states that “EVERYONE that wants to come is more than welcome,” she gave the notice to only five other employees she described as Union-committee members. Harry Reifschneider, an employee
 5 who vehemently opposed the Union’s efforts in the previous, unsuccessful organizing campaign, heard rumors from other drivers about the planned meeting.

According to both Roskos and Julie Sullivan, the attendant on the special needs bus driven by Roskos, Reifschneider approached Roskos twice on March 24 ostensibly to make
 10 inquiries about the rumored Union meeting. The first inquiry occurred early in the morning at the crowded drivers’ break room at the Company’s Rio Rancho facility when Roskos went there to retrieve Sullivan to start their morning run.¹ As they were leaving, “Harry started getting on” Roskos about the Union. He remarked to Roskos that he had heard she was having a union meeting at her house and that he wanted to come. Roskos responded by telling Reifschneider
 15 that he was welcome to come to the meeting. Reifschneider then called out to Roskos, “We don’t need that here,” as she continued walking out of the room.²

Sullivan confirmed that Reifschneider engaged Roskos in the break room on the morning of March 24. From what Sullivan saw and heard, Reifschneider “was really adamant
 20 about asking when the next union meeting was.” She felt from Reifschneider’s tone (she charged that Reifschneider was yelling at Roskos) that he was “harassing her about it.” Even after Roskos told Reifschneider that “she didn’t want to discuss it with him . . . he continued on . . . questioning [her].” On cross-examination, Sullivan said that when Roskos walked away from Reifschneider, he called out “Why don’t you want to talk about it” in a “very harassing manner.”
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The second exchange between Roskos and Reifschneider occurred shortly after 2 p.m. that day when Reifschneider noticed Roskos while they were both parked in the Cebola High School parking lot waiting for the students they transport. According to Reifschneider, he saw Roskos speaking with Peggy Harder, another company driver, so he approached and said:
 30 “Violet . . . I hear there’s going to be a union meeting. Do you know where and what time it is[?]” When Roskos responded that she did not, Reifschneider claims that he asked Harder if she knew and he received the same answer.³ Reifschneider, who admitted that he remained opposed to unionization, said that Roskos asked him why he wanted to know about a union meeting and he told her: “Well, I don’t know. Maybe I want to change my views and join.”
 35 Reifschneider claimed that nothing further happened.

Roskos presented a far different account about that afternoon encounter. Her testimony below describes, in effect, a confrontation with a menacing predator, which she estimated went on for five to seven minutes:
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Q And then was there another confrontation with Harry that day?

A Yes. I was at the high school picking up my high school kids, the special needs. I had the only small VM with wheelchair, so I was helping Julie with the wheel chair and Harry, who was parked in front of me, came over and proceeded
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¹ Other references to this break room indicate that drivers gather there in the morning because they obtain their keys from the adjacent dispatcher’s office. At times as many as 30 or so employees may be there.

² Reifschneider characterized himself as a loud speaking individual and very boisterous about his opinions. He denied that he spoke to Roskos in the morning.
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³ Harder did not testify in this proceeding.

to tell me that, "I'm coming to your house tonight". I said, "You're welcome, Harry. Don't bother me". And he kept yelling in my ear and I mean, he was yelling in my ear and I was trying to put a child on the bus in a wheelchair.

5 And after I put on the wheelchair he kept saying, "Well, you know, we don't need that union shit here". He says, "And I'm not" -- he says, "I'm going to come over there tonight and I'm going to tell everybody we don't need it". I says, "You do whatever you want". And I proceeded to put another child on the bus that couldn't walk and you have to grab him under the arms. As I'm putting him on the bus, Harry is on my right shoulder here and he's yelling in my ear, "We don't need that union crap here. I'm telling you again, we don't need it here. All the people don't want it".

10 I said, "It's only you that don't want it, Harry". I said, "If they didn't want it, they wouldn't come to me". And then he turned -- I turned around, I just got on the bus and I closed my door and he went back to his bus.

15 Q What was your attitude and state of mind at that point?

A I was upset but I tried to compose myself because I'm driving and I have to be a safe driver for those kids no matter what. T130: 20–T131: 22.

20 Reifschneider denied that he yelled at Roskos but he speculated that Sullivan, 15 or 20 feet away by his estimate, probably overheard what he said to Roskos. Roskos and Sullivan agree that they were together at their bus when Reifschneider approached. Sullivan testified:

And he actually did question us that afternoon. He actually came to our bus and questioned us again about it.

25 Q Did he say anything else about the union besides asking about a union meeting?

A He just said, you know, how -- he tried to make his point and why it wasn't good for the company, wasn't good for the employees. You know, he was definitely -- everybody knew he was against it.

30 Q And how did Ms. Roskos react to that?

A She didn't want to talk to him about it.

Q What was her demeanor like?

35 A She didn't like -- say it like as far as, you know, really loud or anything like that. She didn't want to talk to him about it and she just kind of like walked away from him. T72: 7–20.

40 When Roskos returned to the Company lot after completing her route, she waited for Morgan to complete her discussions with other drivers and then spoke to her about Reifschneider's conduct at the high school. Morgan recalled that Roskos "was very upset" when she approached. Morgan recalled the following:

45 She had told me, "Do you know -- do you remember the meeting that Dale [Bohn] had about harassment". I told her yes. I asked her what was going on. She said, "You'd better tell Harry to stop harassing me because if he doesn't I will bring my husband over here to beat the shit out of him". T33: 4-9.

50 Morgan reassured Roskos that she would speak to Reifschneider. She then went to her office where she reported Roskos's complaint about Reifschneider to Regional Manager Dale Bohn by telephone. Meanwhile, Roskos, who essentially agreed with Morgan's account quoted above, went home for the weekend. For her part, Morgan reported to Bohn that Roskos had

complained about Reifschneider harassing her about a union meeting she planned to hold the following Tuesday.⁴ Bohn instructed Morgan to get a written statement from both Roskos and Reifschneider setting forth their respective versions. When Morgan told him that Roskos had already left for the day, he reiterated that she should nonetheless speak with Reifschneider and get statements from both of them. T214: 8-10.

Thereafter, Morgan went back to the yard to await Reifschneider. When he arrived, Morgan asked him what had happened between Roskos and himself that afternoon. She testified as follows about his claim:

. . . I asked Harry what had happened. And he said, "Nothing". I said, "What happened with Violet"? He said, "Nothing". He said "All I did was ask her if there was going to be a union meeting, that was it".

Q And did you advise Mr. Reifschneider of the comment Ms. Roskos made about having her husband beat the shit out of him?

A Well, I let him know that she was pretty upset about it and I asked him, was that all that was said. He said, "That's all I did. All I did was ask if there was a union meeting". He also said that he asked Peggy Harder if she knew where the meeting was going to be at. T34: 7-18.

After speaking with Reifschneider, Morgan then returned to her office where she relayed his account to Bohn. Bohn asked Morgan if she had asked both employees for a statement, and she told him that "[she] had asked Harry for a statement, [and] that [she] would ask Violet for one on Monday morning." T 39: 19-20.

On Monday, March 27, Roskos arrived at work shortly after 6 a.m. She went to the dispatcher's window as usual to get her clipboard and keys from Sharon Neitzel, the special needs coordinator. When Morgan saw her, she summoned Roskos to her office. At that time, Morgan asked Roskos for a written statement about the incident with Reifschneider the previous Friday. Roskos claimed that she told Morgan that she would provide the statement after work that day and that Morgan consented to that arrangement.⁵ According to Roskos's testimony, their conversation then went as follows:

And I told her, I says, "You know, I was so mad on Friday", I said, "I could have quit". And she says, "Oh, we don't want that." And she kept talking to me about Harry, "Don't worry about Harry, I'll take care of Harry." And she was going on

⁴ Bohn knew about Roskos's significant involvement in the previous union campaign. The evidence shows that he first learned of a renewed organizing effort earlier in the week when Morgan faxed a Union flyer posted at the facility to him. No evidence shows his awareness of Roskos's plans for a Union meeting at her home on March 28 prior to Morgan's March 24 calls about her harassment claim. He specifically referred to the planned meeting in an employee notice dated Monday, March 27, pertaining to the renewed organizing effort. GC Exh. 6. Thus, the timing of Roskos's termination in relation to Bohn's knowledge of her involvement in the renewed organizing drive provides substantial support for inferring an unlawful motive.

⁵ Very clearly, Roskos became quite confused in her testimony as to when Morgan approached her for a written statement. Because Morgan's recollection appears consistent with the circumstances, i.e., Roskos left the yard on Friday before Bohn directed Morgan to get written statements, I credit Morgan's recollection about the timing of her request. But by doing so, I do not mean to imply that Roskos deliberately falsified her testimony about this minor issue. I perceive of nothing that Roskos stood to gain by changing her account on this issue.

and on and I told her, I says, "Minnie," I says, "I can't stay here and talk to you". I says, "I got to get out to my bus, I've got to pre-trip it and I have to be at my first stop by 6:20".

5 And she got up away from her chair and she came around the table and was still talking and me -- and at that time, Julie came to get me because we were going to be late. She came to get me and I was walking out of the office and I says, "I'll see you after work", and that's all I told her. T133: 11–23.

10 Morgan's account of her first exchange with Roskos on March 27 is in sharp conflict with Roskos's story. When she called Roskos into her office and asked her for a statement about "the situation that had happened on Friday afternoon," Morgan testified that she received this response:

15 She said no, I'm not giving you anything. She said I'm tired of this shit because Harry always gets his way, and I'm not giving you anything. I'm resigning today. Those were her words.

Q And what was her demeanor at that time?

A She was upset about Harry getting his way all the time. She walked out. I followed her. I asked her Violet I'm wanting a statement from you.

20 Q Did you try to talk her back into the office to discuss the matter further?

A Yes. I did.

Q And what did she do?

A She just kept going on.

25 Q And did you make any efforts to contact her after that?

A No. Not after that. T339: 3–17.

Morgan asserted that she "tried to reason with" Roskos and to "help her out" but that she was "so upset about the situation" that she (Morgan) "couldn't see any way of helping her out." Roskos denied telling Morgan that she was quitting because she was "tired of this shit."

30 Roskos and her attendant, Sullivan, set out on their morning run after Roskos finished speaking to Morgan. Although Sullivan felt that Roskos most likely would have told her if she planned to resign that day, Roskos said nothing to her about quitting during their morning run.

35 Meanwhile, Morgan called Bohn around 7 a.m. According to Morgan, she told Bohn that Roskos "wasn't willing to give me a statement and what she had stated about Harry always getting his way and she was tired of that shit and she was resigning today." T339: 25–T340: 3. Bohn told Morgan that he would call her back about the matter and did so about an hour later. Meanwhile, Bohn consulted with the Company's labor counsel and a couple of managers at Respondent's Kansas City headquarters office. After that, he called Morgan and directed her to prepare a letter accepting Roskos's resignation. When she finished the preparation of the letter, Morgan faxed it to Bohn for his approval. He approved her draft without revision. Morgan provided this explanation for the directive she received from Bohn:

45 Q And did he say why he wanted you to type out that letter?

A Yeah. He did. Because there was no way that she wanted any kind of help, and I couldn't see any way to help her.

Q And you couldn't see any way to help her because of what?

50 A Because she was angry.

Q Because of what she had said that morning?

A That she had said it. T340: 19–25.

Bohn, when questioned by Respondent's counsel, gave this explanation:

5 Q Now, in your affidavit on paragraph 5 you specifically stated: "I told Minnie that based on what Violet had said that morning we should accept her resignation."

What did you mean when you said "based on what Violet had said that morning"?

A Based on her saying that she resigned.

10 Q Okay. Based on anything else that she said that morning?

A I mean just based on the things that occurred. Trying to get the statements, that she wasn't going to provide the statements, that she was tired of this shit and you know just tired of it and she was just going to resign. And when Minnie -- when she left and Minnie walked out after her, just the uncooperation of trying to further our investigation of the Complaint she filed on the 24th, Friday the 24th harassment against Harry.

15 Q And later in your affidavit you stated: "We allowed Violet to finish out the work day but I felt it was best in the circumstances to go ahead and accept her resignation immediately."

20 Were part of those circumstances the fact that she had told Minnie that her husband was going to come to the yard and beat the shit out Harry?

A Yes. T238: 18–T239: 15.

25 Although Bohn asserted that the Company used the written resignation-acceptance device "all the time," he does not keep them with the standard separation report forms, he keeps no separate file containing these letters, and he had no recollection of its prior use.

30 When Roskos returned to Respondent's facility shortly after 10 a.m. to make her mid-day run, Sullivan awaited her in the drivers' break room. Roskos got her clipboard, obtained her keys from Neitzel, and then started to leave when Morgan called to her to step into her office. Sullivan started to accompany Roskos into the office, but Morgan told Sullivan that she only wanted to speak with Roskos. As Roskos went into Morgan's office, Neitzel followed.⁶ Morgan handed Roskos the resignation acceptance letter contained in a sealed envelope. Roskos, thinking the envelope contained a routine 401(k) statement, took the letter and started to leave, but Morgan insisted that she read it then and there. Roskos described what occurred after she read the letter:

40 I told her I was amazed. And I told her, I says, "What's this?" She says, "Well, I'm accepting your resignation". And I told her, I says, "I didn't resign". And she says, "Yes, you did resign. You told me this morning. I wrote it down".

45 I said, "I don't care what you wrote down, I told you that I did not resign. I'm telling you that, I did not resign. I didn't say anything that would lead you to that". She says, "Well, what did you mean when you said about Harry that -- you know, that he was, you know, harassing you and everything, that you were going

50 ⁶ Neitzel did not testify. Morgan admittedly arranged for Neitzel's presence to take notes. In addition, Roskos testified without contradiction that it was a "standard thing" for Neitzel to be present for note-taking purposes when Morgan counseled employees. Neitzel's status as a statutory supervisor is problematical. However, I find Neitzel acted as Respondent's agent within the meaning of Section 2(13) at this meeting.

to quit". And I says, "I told you that I was so mad on Friday that I could have quit". I said, "That's what I meant for it". And I said, "If I was going to quit", I says, "do you think I'm going to quit now", I says, "When I'm going to get my bonus and that's what I work for, when I get my bonus at the end of the year". I said, "I'm not going to quit now".

I said, "I come to work every day. I do my job and I think I'm a damn good driver. There's no reason that I should be let go like this". So she said, "I don't care, I'm accepting your resignation". T136: 6-23.

By Morgan's account, she called Roskos into her office where, in Neitzel's presence, she informed Roskos that they "had accepted her resignation." Roskos immediately protested by saying that she had not said she was resigning "today." Instead, Morgan claimed that Roskos asserted to her that she had said only that she was resigning "at the end of the year." To that Morgan responded: "Violet you told me today. And from the circumstances we're accepting your resignation." Regardless, Roskos kept insisting that she had not told Morgan she was resigning today but Morgan remained firm that her resignation had been accepted. Morgan denied that Roskos said anything about her year-end bonus and that, after their exchange, Roskos left to complete her runs for the remainder of the day.

Sullivan overheard at least portions of this exchange out in the drivers' lounge. She recalled hearing Morgan tell Roskos that "they were going to accept her resignation." When Roskos protested that she was not resigning, Sullivan overheard Morgan tell Roskos that they were accepting her resignation anyway. In addition, Sullivan overheard Roskos state, "Why would I leave this close to the end of the year and not get my bonus?"

After Roskos emerged from Morgan's office, she showed Sullivan the resignation-acceptance letter she had just been given and the two of them set out to complete their mid-day run. Roskos told Sullivan that she would not "accept" the resignation. When Sullivan opined that she would not finish out the day if forced to resign, Roskos told her, "But I'm not resigning, I'm going to finish the day out."

According to Bohn, Morgan called him later that day to discuss Roskos's reaction to the resignation-acceptance letter. He testified as follows about that discussion:

Q And in this second conversation you state that: "Minnie reported to me later that day that when she gave the letter to Violet, Violet first said she wasn't resigning that morning, that it was the end of the week, and then said she wasn't resigning until the end of the year and kept changing the time."

Do you recall stating that in your affidavit?

A Yes.

Q And is that what Minnie said to you in that second conversation?

A Yes.

A At that point Minnie and I talked a little bit and based on the actions of the occurrences that occurred on Friday with the Violet making the harassment complaint and the action that occurred on Monday we tried getting statements so we could investigate the complaint based on that and the threat of having her husband come and beat the shit out of Harry, we made the determination that we would not allow her to rescind her resignation and just accept it.

Q That was what you based your decision on; is that correct?

A Correct.

Q You never said that in your affidavit that you gave to the National Labor Relations Board. You said in fact, and I will read: "That Violet kept changing the time and you felt it was best in the circumstances to go ahead and accept her resignation immediately."

5 A And those were the circumstances; yes. T217: 10–T218: 11.

Although Morgan claims that Roskos responded to the letter by saying that she intended to resign at the end of the year rather than the end of the day, she made no claim that Roskos ever asserted her intent to resign at the end of the week.

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Roskos not only finished out that day, she returned the following morning for work. When she went to the dispatch office, Neitzel gave Roskos the keys to her regular special needs bus, and she commenced pre-tripping the bus in preparation for the day's runs. However, Morgan intercepted her before she left the yard and sent her home.

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C. Analysis and Conclusion

The crux of the initial remand issue is whether Violet Roskos voluntarily submitted a resignation or whether Respondent's agents deliberately misconstrued her statements in order to terminate a longstanding union activist who had only recently resumed her activities in support of another organizing campaign. I find Roskos's testimony at least as far as it concerns statements she did or did not make to Morgan during their first conversation shortly after 6 a.m. on March 27, to be more credible than Morgan's claims. In my judgment, Roskos's account concerning this critical conversation should be credited for the purpose of evaluating the alleged Section 8(a)(3) violation. The following considerations lead me to that conclusion:

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1. I find Roskos's veracity substantially enhanced by her more credible account of her March 24 exchange with Reifschneider at the high school. Even Morgan acknowledged that Roskos returned to the yard "very upset" that day. Additionally, Roskos's admitted conduct when she returned to the yard – lodging a harassment claim and warning that she would seek to have her husband deal with Reifschneider if the company did not – is far more consistent with her account of the high school incident than Reifschneider's. Further, Sullivan's description of what occurred at the high school parking lot, vague though it is, more closely corroborates Roskos's account than Reifschneider's. Nothing in this record remotely suggests that Roskos had a history of lodging frivolous complaints; on the contrary, she built a stellar employment record with this company over the years. For all these reasons, I credit Roskos's account about the events at the high school over Reifschneider's account.⁷ As discussed in more detail below, I also find that Reifschneider's behavior there amounted to unprotected misconduct.

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2. The corroboration Respondent provided in support of Morgan's account about her first discussion with Roskos on March 27 ranged from weak to nothing at all. With regard to the latter, the conflicting accounts provided by Morgan and Roskos about their second March 27 discussion closely mirror their respective accounts about their first conversation that morning. For this reason, Neitzel, present for the second exchange at Morgan's behest, obviously would have been an important corroborative link in unraveling the diverse accounts about both exchanges. As Respondent's acting manager, Morgan, specifically arranged for Neitzel's

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⁷ I suspect Respondent also doubted that Reifschneider merely asked Roskos an inert question about the time and location of the planned Union meeting. Even though Respondent obviously sought to impugn Roskos's credibility through Reifschneider's testimony, it failed to call Harder, the other driver Reifschneider identified as being present, to support his claims.

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presence as a witness and note taker for the second conference, Respondent's failure to produce Neitzel as a witness at the hearing, or explain her absence, merits the inference, which I have made, that Neitzel would not have corroborated Morgan's account of the second meeting. See *International Automated Machines*, 285 NLRB 1122, 1123 (1987).

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In addition, I accord Morgan's highly self-serving notes (Respondent's Exhibit 7(a)–(c)), admitted under Federal Rules of Evidence Rule 801(d)(1)(B), virtually no weight, particularly as to her first conversation with Roskos on March 27. Aside from the question about the weight they deserve, their receipt under FRE 801(d)(1)(B) appears at odds with the holding in *Tome v. United States*, 513 U.S. 150, 156 (1995). FRE 801(d)(1)(B) would permit the receipt of a prior consistent statement to rebut an implicit charge by the General Counsel that Morgan fabricated the claim that Roskos voluntarily resigned during their initial meeting on March 27. Counsel for the General Counsel objected to the receipt of Morgan's notes and questioned her about them at some length on voir dire. Morgan admitted that she did not take notes when she spoke with Roskos on the morning of March 27. Subsequently, no one adduced evidence showing precisely when Morgan actually prepared her note about the critical first exchange with Roskos that day apart from the fact that she did so sometime after their initial conversation.

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In *Tome*, the Supreme Court held that FRE 801(d)(1)(B) "embodies a temporal requirement." Presumably, the failure to show precisely when Morgan prepared the note about her initial meeting with Roskos on March 27 would be fatal for its receipt under that rule. Writing for the majority in *Tome*, Justice Kennedy stated that the rule "speaks of a party rebutting an alleged motive, not bolstering the veracity of the story told." *Id.* at 158. He then continued:

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This limitation is instructive, not only to establish the preconditions of admissibility but also to reinforce the significance of the requirement that the consistent statements must have been made before the alleged influence, or motive to fabricate, arose. That is to say, the forms of impeachment within the Rule's coverage are the ones in which the temporal requirement makes the most sense. Impeachment by charging that the testimony is a recent fabrication or results from an improper influence or motive is, as a general matter, capable of direct and forceful refutation through introduction of out- of-court consistent statements that predate the alleged fabrication, influence, or motive. A consistent statement that predates the motive is a square rebuttal of the charge that the testimony was contrived as a consequence of that motive.

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3. Roskos's conduct appears consistent with her version of the first exchange between Morgan and her on March 27. Nothing indicates that Roskos planned to resign her employment when she initially arrived for work that day. In fact, until Morgan summoned Roskos to her office that morning, Roskos appeared to have been going about her usual routine of collecting her clipboard and keys in preparation for the first morning run. Moreover, as Roskos and Sullivan worked essentially as a team, I find, in agreement with Sullivan, that Roskos in all probability would have told Sullivan during their initial run that morning about quitting her job at the end of the day, particularly if she had cast it in the angry terms described by Morgan. The fact that Roskos said nothing to Sullivan about an alleged resignation at that time detracts considerably from Morgan's claims about the first exchange on March 27.

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4. Likewise, Sullivan's perception about the treatment accorded Roskos does not appear consistent with the claims that Roskos resigned. Sullivan overheard at least a portion of the second exchange on March 27 between Morgan and Roskos. She also witnessed the high school confrontation giving rise to Roskos's harassment complaint. Following Roskos's termination, Sullivan confronted Neitzel and Morgan and charged that Roskos, her partner, had

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been treated unfairly. Neitzel declined to say anything beyond referring Sullivan to Morgan, and Morgan, in effect, told Sullivan to mind her own business.

5 5. Bohn and Morgan's assertions that they attempted to thoroughly investigate Roskos's
harassment claim lacks any convincing support. No serious investigation ever occurred. Apart
from obtaining a cursory statement from Reifschneider, Bohn and Morgan seemingly felt content
with dropping Roskos's harassment complaint following her termination. As noted, Morgan told
Sullivan, an obvious witness to the events at the high school on March 24, to mind her own
10 business when she complained about Roskos's unfair treatment and, insofar as is known, no
one ever spoke with Harder. I find this superficial inquiry wholly inconsistent with Morgan's
story that Roskos, in effect, arrived for work on March 27 still so upset over the incident that
gave rise to her harassment complaint that she resigned on the spot. Ordinary prudence and
common defensive caution would dictate a thorough investigation of Roskos's harassment
15 complaint especially if, as Morgan claims, she arrived for work on March 27 still so angry over
Friday's incident that she suddenly resigned effective that day.

20 6. Despite Bohn's unproven claims to the contrary, the resignation-acceptance letter to
memorialize Roskos's alleged voluntary departure appears to be extraordinary. This formalism
smacks of a trap that undermines Respondent's claim that Roskos resigned right off the bat on
the morning of March 27. In fact, the language of the resignation-acceptance letter itself ("[Y]ou
told me you were turning in your resignation . . . "[W]e have decided to accept your resignation
as of today, 3/27/00") implies that Respondent, not Roskos, determined the effective date of the
alleged resignation. Bohn's testimony also implies that he, rather than Roskos, determined her
25 separation date. Moreover, Respondent's refusal to withdraw its resignation-acceptance letter
in the wake of Roskos's vehement protests that she had not resigned strongly suggests the
presence of another malevolent motive. Bohn's explanation for steadfastly refusing to allow
Roskos to "rescind" her resignation based on the so-called threat she made the previous Friday
and her alleged refusal to cooperate with the investigation of her harassment claim is belied by
30 the fact that no one ever mentioned these reasons to Roskos at the time and the further fact
that Respondent never seriously pursued her harassment claim.

35 7. I find it highly improbable that Roskos would have returned to work only for a single
day, March 27, if, as Morgan claims Roskos stated, she was "tired of this shit." In addition,
when Sullivan questioned the logic of working out the rest of March 27 after Roskos had been
given the resignation-acceptance letter, Roskos forcefully denied that she had resigned and
continued with her regular work schedule. Likewise, I find Roskos's appearance for work the
40 following day, March 28, altogether illogical if she had honestly submitted her resignation the
day before. Further, the fact that Neitzel issued bus keys to Roskos on March 28 supports an
inference that she even harbored doubts about Roskos's alleged resignation.

45 8. The sympathetic posturing in Morgan's testimony to the effect that she sought to
"help" Roskos strikes me as particularly incredible and completely inconsistent with her
subsequent, wooden refusal to consider Roskos's assertion that she had not resigned. As with
Bohn, Morgan's claim that Roskos's alleged threat and her refusal to cooperate in the
investigation of her own harassment charge figured in the refusal to reconsider the action taken
against Roskos rings hollow especially where, as here, Morgan never once so much as
50 mentioned either of these matters to Roskos, let alone admonish her for these alleged misdeeds
as a manager might be expected to do.

9. Roskos's separation record reflecting that she had voluntarily quit and was not
eligible for rehire undermines the claim that Roskos left Respondent's employ of her own free
will. Read in its entirety, this record supports findings that Respondent suffered from a chronic

shortage of qualified drivers and that Violet Roskos compiled a record as an excellent employee throughout her career with Respondent.

10. At least some of Roskos’s testimonial inconsistencies appear to be the result of a
 5 faulty memory rather than a deliberate attempt to mislead. For example, her initial claim,
 retracted only after minor probing by Respondent’s counsel, that Reifschneider told her during
 their March 24th high school exchange that he would be at her house *that evening* to attend the
 union meeting strikes me as little more than an innocent misstep. Likewise, her contradictory
 10 testimony as to when Morgan told her to submit a written account about her encounter with
 Reifschneider (Friday evening or Monday morning), seems indicative of little other than an
 imperfect recollection about an incidental detail.⁸ To be sure, Roskos’s evasive responses
 when pressed on cross-examination about the meaning of her statement to Morgan concerning
 her husband if the Company failed to do something to stem Reifschneider’s harassment are
 15 what they are. For purposes of dealing with her fitness for reinstatement below, I have
 assumed her words that Friday mean what they say. Regardless, I find that her evasive
 responses about this subject insufficient to overcome the abundance of circumstances
 described above supporting her veracity concerning the substance of the two meetings she had
 with Morgan on March 27, and Reifschneider’s conduct on March 24 at the high school.

20 For these reasons, I credit Roskos’s accounts of her exchanges with Morgan on the
 morning of March 27. Based on that conclusion, I find that the credible evidence strongly
 supports Roskos’s claim that she merely told Morgan in their first meeting that day that she had
 been so angered by Reifschneider’s conduct the previous Friday that she “could have quit.”
 Morgan’s contrary testimony is not credited.

25 Having resolved the conflicting testimony in this manner, I find Respondent’s affirmative
 defense that Roskos voluntarily resigned her position on March 27 unsupported by the credible
 evidence and a pretext designed to rid itself of a strong union activist. It follows, therefore, that
 Respondent failed to meet its burden of persuasion under *Wright Line*, 251 NLRB 1083 (1980).
 30 See *Golden States Foods, Corp.*, 340 NLRB No. 56, at p. 4, (2003), citing *Limestone Apparel*,
 255 NLRB 722 (1981). Accordingly, I find in agreement with Judge Stevenson that Respondent
 violated Section 8(a)(1) and (3) by terminating Roskos on March 27.

35 II. The Reinstatement Question

I turn now to consider the Board’s directive that an explanation be provided for finding
 that Roskos’ pre-discharge threat, which Judge Stevenson found the Respondent did not rely on
 in discharging her, could nevertheless be a factor in deciding whether Roskos forfeited her right
 40 to reinstatement from a discriminatory discharge. The Board also directed that the question
 raised about Roskos’ fitness for reinstatement be considered “in light of the additional credibility
 resolutions” and according to the principles found in the cases mentioned at page 3, above.

45 Reinstatement with backpay plus interest constitutes the Board’s standard remedy in
 unlawful discharge cases. See Section 10(c). Ordinarily the Board will withhold this standard
 remedy from an unlawfully discharged employee who give false testimony at an unfair labor
 practice hearing only when the employee’s conduct “amounts to a malicious abuse of the

50 ⁸ On this point, Morgan’s account that she did not ask Roskos to provide a written statement
 until Monday morning appears consistent with the timing of her phone calls to Bohn who gave
 Morgan the instruction about obtaining written statements in the first place. For this reason, I
 find that Morgan first sought a written statement from Roskos at the early meeting on March 27.

Board’s processes under circumstances which require forfeiture of remedy to effectuate the purposes of the Act.” *Owens Illinois, Inc.*, 290 NLRB 1193 (1988), quoting *Service Garage*, 256 NLRB 931 (1981). In *ABF Freight System, Inc. v. NLRB*, 510 U.S. 317 (1994), the employer questioned the Board’s discretion to order the reinstatement and backpay remedy for an employee who clearly gave false testimony at the hearing before the administrative law judge. In that case, the Supreme Court held that the Board cannot be compelled to adopt a blanket rule disqualifying employees from the benefit of a reinstatement and backpay remedy even where they are found to have lied under oath. Justice Stevens, writing for the majority, began his opinion by noting that false testimony in a formal proceeding “is intolerable.” However, he stated that where Congress delegates to an administrative agency the authority to make specific policy determinations, the courts had to give those determinations controlling weight unless they were “arbitrary, capricious, or manifestly contrary to the statute.” Noting that Section 10(c) of the Act expressly authorized the Board to remedy unfair labor practices affecting commerce by means of the reinstatement and backpay remedies, Justice Stevens concluded that the Board did not “abuse its broad discretion” by ordering the reinstatement of an employee who lied under oath and that the Board need not “adopt a rigid rule that would foreclose relief in all comparable [discharge] cases.”

In evaluating the appropriateness of the reinstatement remedy where claims are made that the discriminatee has engaged in misconduct, the Board traditionally “looks at the nature of the misconduct and denies reinstatement in those flagrant cases in which misconduct is violent or of such character as to render the employee unfit for further service.” *Family Nursing Home & Rehabilitation Center, Inc.*, 295 NLRB 923, fn. 2 (1989), and the cases quoted and cited. In *Family Nursing Home*, the Board denied reinstatement and backpay to a registered nurse found to have been unlawfully terminated from a nursing home because she assaulted the nursing director immediately following her termination.

As noted above, the original decision in this case only suggested that Roskos’s fitness for reinstatement be determined at the compliance stage of this proceeding. However, I now find in light of the facts detailed above that Reifschneider’s unprotected conduct at the high school on March 24 provoked Roskos’s subsequent outburst to Morgan that she would have her husband “beat the shit” out of Reifschneider if the Company did nothing to contain his on-the-job harassment. For that reason, I find that no remedial forfeiture of any kind is warranted in this case. Put another way, I find Roskos should be entitled to an unqualified reinstatement remedy with backpay and interest because her so-called misconduct falls far short of being either violent in the moment or of such a character as to render her “unfit for further service.”

JD(SF)–45–01 contains no credibility findings concerning the Roskos-Reifschneider exchanges on March 24 in the drivers’ room or at the high school. I have done so here because, in my view, no rational conclusion can be made about Roskos’s so-called threat without that essential first step. Because I concluded in paragraph 1 at page 10, above, that Roskos’s versions concerning her March 24th exchanges with Reifschneider to be the more credible accounts about her encounters with with him that day, I find that Reifschneider engaged in serious misconduct at the high school that served to provoke Roskos’s outburst to Morgan back at the Company’s yard that afternoon.

Accounts concerning Reifschneider’s conduct on March 24 strongly indicate that he sought to bait and antagonize Roskos about a renewed union campaign and the Union meeting she planned to hold at her home. Usually, verbal jostling among employees harboring opposing views about union representation questions would fall within the bounds of activities protected by Section 7. But based on Roskos’s credited account of what occurred at the high school, I

find that Reifschneider clearly crossed over the boundary that separates “uninhibited, robust and wide-open debate” from abusive and opprobrious conduct unprotected under the Act.

5 The Board uses a “reasonable person” standard in determining whether an employee’s conduct, ostensibly protected under Section 7, amounts to harassment of another employee. *Consolidated Diesel Co.*, 332 NLRB 1019 (2000), at fn. 1. In *Atlantic Steel*, 245 NLRB 814, 816-817 (1979), the Board applied the following factors to analyze when an employee’s conduct loses the Act’s protection: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee’s outburst; and (4) whether the outburst was, in any way, provoked by an employer’s unfair labor practice. See also *Felix Industries, Inc. v. NLRB*, 251 F.3d 1051, 1053 (DC Cir. 2001).

15 Applying the *Atlantic Steel* tests to the incident at the high school merits the conclusion that Reifschneider’s conduct toward Roskos lacked any Section 7 protection. Clearly, his conduct, occurring as it did in the presence of disabled school children and other employees engaged in their regular work, warrants a finding that his unbridled remarks happened at a highly inappropriate place and time. Although Reifschneider’s venting stripped of its context might not merit, in and of itself, finding it unprotected, his unprovoked, screaming into Roskos’s ear that employees did not need this “union shit” and “union crap” as she attempted to assist a school child to board the bus demonstrates the opprobrious character of his conduct by the applicable reasonable person standard. His actions show unmistakably that Reifschneider sought to be as unpleasant and as disruptive as possible in this very sensitive work setting. Notwithstanding that the subject related to union representation, I find Reifschneider’s outlandish abuse of Roskos at the high school amounted to unprotected harassment. In my judgment, the character of Reifschneider’s conduct is not materially distinguishable from other cases of this nature. See e.g., *BJ’s Wholesale Club*, 318 NLRB 684 (1995); *UPS, Inc.*, 311 NLRB 974 (1993); and *Canadaigua Plastics*, 285 NLRB 278 (1987). I find the causal connection between this unprotected harassment of Roskos by Reifschneider and her subsequent remarks to Morgan on March 24 strong and unmistakable.

30 Nor do I find the testimony Roskos’s gave when questioned closely by Respondent’s counsel, whether false or not, as to the meaning of her beat-the-shit-out-of-Harry remark merits the forfeiture of a reinstatement remedy. Assuming as I do, that Roskos meant exactly what she said to Morgan that Friday afternoon and that her subsequent attempt to explain it away, minimize it, or speculate about what she had in mind at the time does not amount to “a malicious abuse of the Board’s processes” warranting the denial of reinstatement. *Owens Illinois, Inc.*, supra. Whatever else may be said of Roskos’s so-called threat, no one should lose sight of the fact that she plainly conditioned her husband’s protective intervention upon the failure by Respondent’s management to perform its legal duty to protect employees from work place harassment. Rather than honoring that duty, this Respondent fired the messenger and seemingly forgot about Reifschneider’s gross misconduct.

45 In my judgment, a further basis exists for rejecting any claim that Roskos should not receive an unqualified reinstatement remedy with backpay and interest. In this case, Respondent made no claims about Roskos’s unfitness for reinstatement. Where such a claim has been made, the employer has the burden of showing the employee’s unfitness for further employment, whether for false testimony or other misconduct. *Owens Illinois*, 290 NLRB 1193 (1988) @ fn 5. In that case, the Board observed that a judge’s speculation, based on no record evidence, that a discriminatee’s false testimony would negatively affect her/his performance if reinstated could not serve as a substitute for Respondent’s failure to meet this burden. Accordingly, as Respondent failed to meet the required burden, or even raise the issue in the first place, I find that no basis exists to withhold the Board’s standard remedy in Roskos’s case.

In view of the foregoing, I find no basis to make conclusions of law or enter a recommended order at variance with those contained in JD(SF)–45–01 other than to conform the recommended order and the notice to requirements set forth in Board cases that issued after JD(SF)–45–01, namely, *Ishikawa Gasket America*, 337 NLRB 175 (2001) and *Ferguson Electric Co.*, 335 NLRB 142 (2001). Based on the findings of fact and conclusions of law contained in JD(SF)–45–01 as supplemented herein, I issue the following recommended⁹

ORDER

The Respondent, Helweg & Farmer Transportation Co., Inc., Rio Rancho, New Mexico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Removing union flyers from the bulletin board while allowing non-union materials to remain undisturbed;

b. Posting notices at the work place implying to employees that their union activities had been placed under surveillance;

c. Discharging or otherwise discriminating against any employee for supporting the Chauffeurs, Teamsters & Helpers, Local Union No. 492, affiliated with International Brotherhood of Teamsters, AFL-CIO (Union) or for engaging in protected concerted activities;

d. 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 the Order, offer Violet Roskos full reinstatement to her former job or, if that job no longer exists, reinstatement to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

b. Make Violet Roskos whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of JD(SF)–45–01.

c. Within 14 days from the date of this Order, remove from its files any reference to Violet Roskos's unlawful discharge or purported resignation, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her 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

⁹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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.

5 e. Within 14 days after service by the Region, post at its facility in Rio Rancho, New Mexico, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 28, 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 take 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 March 7, 2000.

10 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.

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

25 Dated: February 27, 2004, at San Francisco, CA

Administrative Law Judge

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50 ¹⁰ 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 remove union flyers from the bulletin board while allowing non-union material to remain undisturbed.

WE WILL NOT post notices at the work place implying to employees that their union activities have been placed under surveillance.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting the Chauffeurs, Teamsters & Helpers, Local Union No. 492, affiliated with International Brotherhood of Teamsters, AFL-CIO (Union) or for engaging in protected concerted activities.

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

WE WILL offer immediate and full reinstatement to Violet Roskos to her former position, or to a substantially equivalent position if her former position is not available.

WE WILL make Violet Roskos whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to Violet Roskos's unlawful discharge, and within 3 days thereafter notify her in writing that this has been done and that the discharge will not be used against her in any way.

**HELWEG & FARMER
TRANSPORTATION CO., INC.**

Dated: _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.