

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ENGINEERED PLASTIC COMPONENTS, INC.

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL WORKERS OF
AMERICA – UAW

Cases 18-CA-17003
18-CA-17008
18-CA-17013
18-CA-17027
18-CA-17033
18-CA-17055
18-CA-17060
18-CA-17139
18-CA-17140
18-CA-17160

ENGINEERED PLASTIC COMPONENTS, INC.

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA – UAW

18-CA-17164

Florence I. Brammer, Esq., Counsel
for the General Counsel.

Reza Kargarzadeh, President, of Grinnell, Iowa,
(*John D. Meyer, Esq.*, and *Jay D. Isenberg, Esq.*,
of *Blankenship & Associates LLC*, Greenwood,
IN, on the brief), for Respondent.

Dennis C. Walker, International Representative,
of Des Moines, Iowa, for the Charging Party.

DECISION

Findings of Fact and Conclusions of Law

Benjamin Schlesinger, Administrative Law Judge. With the attempt of its employees to organize for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America – UAW (Union), Respondent Engineered Plastic Components, Inc. commenced, the complaint alleges, a campaign to rid itself of the Union's leaders. It succeeded in doing so, using unlawful, pretextual, and some blatantly false reasons to sustain its many discharges. Then it contracted for employees from an employment agency, in part because it needed workers to replace those it illegally discharged. Finally, it invoked an attendance and tardiness rule, long disregarded, to discharge numerous other employees. I conclude that

Respondent violated Section 8(a)(3), (5), and (1) of the Act in all the major respects as alleged in the three complaints.¹

At all material times, Respondent, an Iowa corporation, has been engaged in custom plastic injection molding for appliance, automotive, and agricultural companies at its facility located in Grinnell, Iowa; and during the year ending February 20, 2004, a representative period, Respondent purchased and received at its Grinnell facility products, goods, and services valued in excess of \$50,000 directly from points outside Iowa. I conclude, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude, as Respondent admits, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

On September 11, 2003,² the Union filed its petition for an election of employees, and Respondent stipulated to an election in the following unit:

All full-time and regular part-time maintenance employees, press operators, quality auditors, process technicians, mold technicians, mold setters, material handlers, auxiliary employees, janitors, and shipping and receiving employees employed by Respondent at its 1408 Zimmerman Drive South, Grinnell, Iowa facility: but excluding all office clerical employees, sales employees, subcontractors, independent contractors, casual employees, seasonal employees, temporary employees, professional employees, managerial employees, confidential employees, guards and supervisors as defined in the Act, and all other persons employed by Respondent.

The election was held on October 24, 2003, before which Respondent terminated six supporters of the Union. The Union won the election and was certified as the unit's representative on October 31.

The Termination of Two of the Principal Union Organizers

Reza Kargarzadeh, Respondent's president, terminated Danny Warndorf on September 10. Previously, Warndorf had never been warned, verbally counseled, or reprimanded. His work had never been criticized, but instead had been complimented by his lead operator, Jessica Enlow, an admitted supervisor. He had never missed a day of work and had never been tardy. Kargarzadeh, although admitting that he knew that there was union activity on September 9, denied that he was aware of any specific employees who were involved. What were his reasons for the discharge? He had gone into the facility and Enlow mentioned that Warndorf was making "several people [including herself] feel uncomfortable." Warndorf had "approached her with questions and requests and she has told him that she is not interested, that Danny has gone back to her several more times and so she felt very uncomfortable with that and that's – you

¹ The charges in these Cases were filed by the Union on the following dates: 18-CA-17003, September 11, 2003; 18-CA-17008, September 15, 2003; 18-CA-17013, September 23, 2003; 18-CA-17027, October 2, 2003; 18-CA-17033, October 3, 2003; 18-CA-17055, October 23, 2003; 18-CA-17060, October 28, 2003; 18-CA-17139, January 7, 2004, and amended on February 9, 2004; 18-CA-17140, January 7, 2004, and amended on February 9, 2004; 18-CA-17160, January 20, 2004, and amended on February 9, 2004; and 18-CA-17164, January 27, 2004. Complaints issued on December 16, 2003, and February 9 and 20, 2004. This case was tried in Grinnell, Iowa, on February 18-19 and March 22-24, 2004. The General Counsel's unopposed motion to withdraw paragraphs 5(a), (j), and (r) of the complaint in Case 18-CA-17003 is granted.

² All dates are in 2003, unless otherwise indicated.

know, our company policy that's very clear." She "felt very uncomfortable because of the repeated request on the production floor [to sign union cards] . . . he has approached her on the production floor repeatedly asking her against her will to do something. . . . [P]er our company policy we met with Danny and he was terminated because that is a form of harassment."

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Kargarzadeh's own explanation acknowledges that, at least when Enlow complained to him, he had to know that Warndorf was a Union supporter. After all, Warndorf was allegedly harassing her to sign a union authorization card, so he must have been a Union supporter. In fact, Enlow denied Kargarzadeh's testimony completely. Rather than complaining about him, she had just recommended him for a promotion on September 8, and the promotion was denied on September 9, the day before Kargarzadeh fired Warndorf. As to Warndorf's attitude, she categorically denied that she registered a complaint with management about Warndorf's behavior, and specifically denied that she was made to feel uncomfortable because of repeatedly being asked by Warndorf to join the Union. Rather, it is evident that Kargarzadeh's testimony was patently false, not only about her complaints but also about his knowledge. Indeed, on September 7 or 8, Kargarzadeh approached Enlow with the names of two employees, Warndorf and John Vileta, wanting to know "if they were part of the [U]nion," to which she replied, "You need to go ask them themselves." According to Enlow, Kargarzadeh was not "happy" with her response. "He didn't yell or anything. You could just tell by his facial expression."

In fact, Enlow, although her testimony was not favorable to Respondent, tried to shield herself from an even more devastating admission. Kargarzadeh asked Molly White, a lead operator, but not a supervisor, just before Warndorf was terminated, whether she had heard of any talk about the Union. When she replied that she had, he asked for the names of the people who were talking about it, to which she said that she was not comfortable telling him that. He asked for the reasons that the employees were promoting a union, and she gave him some. He then tried to pin down who the leaders were: in which section (not A,³ she replied), and whether male or female (male, she replied). Those answers were accurate for Warndorf. He then asked her to tell that person that he would like to talk to him. She said that she would do that; but then he said "No, never mind" and asked that she not repeat this conversation with anyone. Just before this interrogation, Kargarzadeh had talked to Enlow, who admitted to White later that morning that she had had the same conversation with Kargarzadeh that White had and had told him that Warndorf had started the Union drive. I find White's testimony credible and that Enlow was trying to shield her complicity in Warndorf's discharge.

I further find that Kargarzadeh's reason for terminating Warndorf was false and that his true reason for discharging Warndorf was that he opposed to the Union organizing campaign. Warndorf's credible testimony about his discharge demonstrates this unlawful motive. Kargarzadeh told him: "We've had employees approach us about the activity you're involved in. They are very uncomfortable with the activity you're involved in and we – they approached us, we did not approach them about the activity you're involved in." He ended by saying that he did not need that kind of trouble at Respondent and for this reason he was terminating Warndorf. The "activity" that Warndorf was engaged in was soliciting support for the Union, and that was the reason that he was terminated. Warndorf's denial that he ever persisted in approaching or talking to anyone after anyone had expressed a desire for him to stop and that no one ever expressed a desire for him not to talk to them about anything was entirely credible. I conclude that Respondent violated Section 8(a)(3) and (1) of the Act. I also conclude that Kargarzadeh's statement articulating that Warndorf's union and protected activity was the reason for his

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³ Respondent's manufacturing facility is divided into three sections: A, B, and C.

termination is, in itself, a violation of Section 8(a)(1), because of its likely chilling effect on Warndorf's exercise of his Section 7 rights, *Owens Corning Fiberglas Co.*, 236 NLRB 479, 480-481 (1978), as well as a demonstration of Kargarzadeh's union animus. *Mediplex of Danbury*, 314 NLRB 470, 472 fn. 8 (1994).

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I also find that, because of his patent fabrication of his conversation with Enlow, as well as Union animus and otherwise incredible testimony in an attempt to support Respondent's defense, Kargarzadeh is unworthy of belief. In making this and other credibility findings, I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have also taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; and the consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. Testimony inconsistent with or in contradiction to that upon which my factual findings are based has been carefully considered but discredited. See, generally, *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

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Where necessary, however, I have set forth the precise reasons for my credibility resolutions, bearing in mind the oft-quoted and valuable advice: "It is no reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all." *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950). That has been applied in this Decision, but not to Kargarzadeh, for obvious reasons. I thus have not credited him at all, except when he testified against the interests of Respondent or when his testimony was corroborated by unimpeachable sources or when an employee testifying against Respondent related alleged facts that were inherently improbable. There are some misstatements of fact that weigh more heavily in my consideration, being purposeful rather than merely reflecting a misunderstanding of events. In such instances, I have found the very opposite of what Kargarzadeh testified to, *NLRB v. Walton Mfg. Co.*, 369 U.S. at 408, disbelieving him utterly. I had no better impression of the credibility of most of Respondent's witnesses, as will be discussed below. In particular, I note that Kargarzadeh represented Respondent at the hearing and called as his witnesses principally his employees, who were beholden to him for their jobs. My sense is that they answered his questions, often leading, in the manner that he expected his employees to answer, and not because they were being truthful.

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On the other hand, contrary to the arguments raised in Respondent's brief, I found the witnesses called by the Counsel for the General Counsel to be honest, sincere, and credible. Admittedly, there were some dates that were not recalled with precision, and some other very minor inconsistencies, but not purposeful, and not enough to discredit them completely. In addition, Respondent makes several contentions that certain of her witnesses were not called to corroborate other testimony. I found none of those arguments persuasive, because the proof in the record was sufficient and did not require any corroboration from the General Counsel. To the contrary, Respondent's defense was weak, because many of its supervisors never testified, and those who did were not particularly compelling.

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Kargarzadeh's conversation with White demonstrates that he was aiming his sights on Vileta, as well as Warndorf, two of the three leaders of the Union campaign. (The third, Justin Conn, was caught smoking on the job and was fired on September 22.)⁴ And, in fact, once

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⁴ The Regional Office, apparently believing his investigatory affidavit that he was not smoking, alleged in the original complaint that he was unlawfully discharged. At the hearing, Conn admitted that he was smoking; and the General Counsel moved to remove his name as an alleged discriminatee. I granted

Continued

Warndorf was fired, Vileta was the next to go. Vileta, an employee with an “outstanding” evaluation, was terminated on Friday, September 12, for not calling in prior to his shift on September 11. His termination notice recited that he had called in at about 1 p.m., well after his shift had started. However, Vileta had a doctor’s slip, required by Respondent to excuse absences due to illness. On Sunday, September 7, Vileta started to feel some illness coming on; but on Monday, September 8, he got up at his usual time and left his home for work, but felt “really bad.” He turned around to return home. Because he lived a long distance away and used a calling card at home, he went to his father’s house and called Respondent at 5:15 a.m., which was as soon as he knew that he was not feeling well enough to report to work, to let Respondent know he would not be coming to work. He spoke to White, told her that he was sick and would not be coming to work that day, and asked her to tell Vileta’s supervisor, Jim Emerson, the shipping supervisor, because the Maytag products had to go out; and he was the only one handling Maytag and Mitsubishi products. White told Emerson.

The next morning, Vileta again attempted to go to work, but threw up all over himself in the car and turned around and returned home, but not before going to his father’s house, where he again called Respondent. He spoke with Nigel McGinnis, the process technician on the third shift, and told him that he was still sick and would not be coming in that day. McGinnis relayed the message to White, who told Emerson. At 9:24 a.m., Vileta called Fosnaught and told him that he was very sick and would be going to see a doctor. Fosnaught asked if he had called in, and Vileta told him that he had talked to White and McGinnis. Fosnaught said that he would check on it because he had heard nothing. Then he told Vileta that, when he got better, he had to make sure that he brought in his doctor’s excuse. Vileta saw his doctor, who did a throat culture and diagnosed Vileta with strep throat and the flu, said that strep throat was a virus and that he really did not want Vileta going through a plant and making everybody sick, and gave him a prescription for antibiotics. Vileta returned home and spent the rest of the day in bed.

The following day, Wednesday, Vileta remained home and did not call in. On Thursday, he returned to see his doctor, who said that he was better and asked whether he wanted to remain off work until Monday. Vileta replied that he needed to return to work, so the doctor released him to return on Friday and gave him a note. Around 12:30 p.m., Vileta called Fosnaught and told him that he had just seen the doctor again and was released to come back to work the next day. Fosnaught replied, “Okay”; and Vileta said that he had not been to the facility for a couple days and asked what he was supposed to do. Fosnaught responded: “That’s not my department. Go ahead and just do what you normally do.” When he arrived the following day, Kargarzadeh greeted him by asking who said that he could be there and escorted him back to see Fosnaught. Kargarzadeh asked him when he heard from Vileta about his absenteeism, to which Fosnaught said: “One o’clock Thursday afternoon is when I finally heard from him.” Kargarzadeh said that was a no-call, no-show, that would not be tolerated in his plant, and that Vileta was terminated.

These facts come directly from Vileta’s credited testimony, which was corroborated by White, who relayed Vileta’s message on Monday to Emerson and who received from McGinnis Vileta’s message on Tuesday and relayed that to Emerson. Vileta’s testimony was also corroborated by his father’s telephone bills, showing that Vileta made the calls to Respondent, just as he testified and contrary to Kargarzadeh’s position that Vileta “did not call or show on the day that he got terminated.” Even Fosnaught refused to corroborate that testimony (“I never said that he was a no call no show”), conceding that he had received word that Vileta had called in sick earlier that week and had spoken to him, telling him to bring in a doctor’s note when he

the motion.

returned. Clearly, there was an understanding that Vileta was very ill and that he would return to work when he recovered, as long as he brought a doctor's note.

5 Furthermore, I found Vileta to be credible. He had never had an unexcused absence from work and had received excuses to be absent for short periods to assist in a lawsuit and to get married. Other than that, and once, when he appeared to have been terminated unfairly by Abbas Razizadeh, Respondent's production manager, and was quickly reinstated by Kargarzadeh and Fosnaught, he missed no work and worked overtime when requested. He was otherwise an exemplary employee, receiving from his immediate supervisor, Lim Prim, only a
10 month before, an evaluation superior to any that he had given to any employee, Prim remarking that he was really proud that Vileta was working for him. As a result, I find that it is most probable that Vileta was telling the truth.

15 Vileta's termination notice, dated September 12, relies solely on his failure to call in before his shift started. I find that Vileta had given notice long before his shift that he was too sick to return to work. There was thus no factual basis for the discharge. Furthermore, I reject Kargarzadeh's attempt to expand the reason for the termination by alleging other incidents that occurred during Vileta's employment. The termination notice states nothing about them, and I find Kargarzadeh unworthy of belief. Rather, the timing of the discharge, particularly with
20 Kargarzadeh's suspicion that Vileta was a leader of the Union organizing campaign, indicates that the true reason for the discharge was Vileta's support of the Union.

25 Finally, Kargarzadeh's treatment of Vileta was inconsistent with Respondent's treatment of employees who did not appear for work. In July 2003, Richard Phillips was a no-call, no-show for 1-2 weeks, was fired, but reinstated upon his promise that he would not engage in that conduct again. Other employees did not show up for work both before and after the union organizing drive and were not fired, such as Dustin Baker, Russell Callison, Benjamin Doyle (three times within a month and one-half), Sugey Gallarzo, Bret Dattis, Jill Goodrich, Shawn Kicklighter, Dennis Kirby, Bill Platt, Suzanne Posekany (five times), Karen Singleton, Kim Smith,
30 Travis Smith, Becky Swan (two times), Kerry Sytsma (three times, including one no-show), Tonya Teeter, Carlos Jefferson, and Darren Yulek. Disciplinary warnings were also given to Tom Stevens, who missed a day and acknowledged that he had done that in the past and if he did it anymore he would be reprimanded or terminated, and Chris Mosa, who had numerous warnings for habitual no-call, no-show. Kargarzadeh attempted to explain away these disparities
35 by noting that "it depends how many write-up they have" and "on what - how many - what kind of doctor excuse they bring in and all that." And, having a doctor's excuse might excuse an employee's calling in late, but that depended on "how many times this has been repeated in the past twelve months of their, you know, work history." Thus, if an employee had never missed a day, but called in late and brought a doctor's note, Kargarzadeh testified that that would not
40 warrant a termination.

45 Here, Vileta suffered from strep throat and the flu. This was his first illness, and he had never missed any days before. He called in and brought a doctor's note. Even under Kargarzadeh's explanation, which, we will see, below, was unworthy of belief, Vileta should have been excused. The Board applies the test set out in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The General Counsel has established that Vileta's union activity, of which Kargarzadeh knew and opposed, was a "motivating factor" in Respondent's decision to terminate him. *Senior Citizens' Coordinating Council*, 330 NLRB
50 1100, 1105 (2000); *Regal Recycling, Inc.*, 329 NLRB 355 (1999). It then became incumbent on Respondent to prove that it would have discharged Vileta, even in the absence of his union activities. *Wright Line*; *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999); *Manno Electric*, 321

NLRB 278, 280 fn. 12 (1996). This, Respondent did not prove. I conclude that Respondent violated Section 8(a)(3) and (1) of the Act.

Violations of Section 8(a)(1)

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I divert momentarily from the consideration of the discharges of Union adherents to what happened following Warndorf's discharge, which included Respondent's attempts to find out who was backing the Union's campaign and various threatening statements. When Warndorf was discharged, he was asked to leave the building. He walked out of Fosnaught's office, turned in his cutters, punched out, and walked out to the parking lot, where he talked to some of the third-shift employees, who had asked what had happened. As he was explaining that he had been fired, Fosnaught walked out to the parking lot and asked him to leave the premises. He left, but not before talking to another employee who was in his car.

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The complaint alleges that Respondent's action violated Section 8(a)(1) of the Act, because, as the General Counsel's brief argues, it "has no published rule prohibiting off-duty employees or former employees from being in the parking lot, and has offered evidence of no unpublished rule in its defense." On the other hand, the General Counsel did not show that Warndorf was on public property and entitled to remain there. As a former employee, albeit unlawfully discharged, he had the same rights as a stranger. There is no contention here that Respondent could not ask a stranger to leave its premises, merely because there is no rule in an employee handbook. I find that the General Counsel had the burden of establishing Warndorf's rights to be where he was. Furthermore, there is no evidence here that Fosnaught knew what Warndorf was talking about with the other employees. As a result, I dismiss this allegation.⁵

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But I find a multitude of other Section 8(a)(1) violations. Kargarzadeh's questioning of White, discussed above, was an unlawful interrogation, coercive because, among other factors, Kargarzadeh, the owner of Respondent and a forceful personality, was doing it; and it occurred immediately preceding his discharges of two of the Union's principal organizers. *Medcare Associates, Inc.*, 330 NLRB 935, 939 (2000); *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). That interrogation was followed by numerous other unlawful interrogations and threats, all at a time when Respondent was continuing its otherwise unlawful activity.

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A few days after September 10, when press operator Alisa Fults signed a union authorization card, Kargarzadeh asked her if she had signed a union card. She lied, responding that she had not. He asked her if she knew the names of anybody else who had signed cards because, he explained, it was bad for the company. She said that she did not, another untruthful statement. About a week later, about September 18, Kargarzadeh asked her how she felt about the Union. Fults replied that she thought that it would strengthen the company. He said that it would not "if there were no company." Fults asked whether that meant that, if the Union came in, he would close the business. Kargarzadeh said: "I'm not supposed to talk about that but I will not work with the Union" and angrily walked away.

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Prim asked employee Greg Sumner in September what his thoughts were about the Union. Sumner replied that the employees had some safety problems that management did not want to prioritize and various employees were passed over for promotion. Prim countered with his concern that Respondent would price itself out of the market, should it increase wages, and

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⁵ Respondent did not brief this issue.

lose the business of Maytag, one of Respondent's principal customers. On September 25, Prim asked third shift press operator Tem Yom why he wanted a union at Respondent. Yom replied that he believed in a union and it would make a difference with Respondent. Prim added that, if the employees elected the Union, Maytag and Lennox would pull out as customers. Yom did not think so. Also in September, Prim asked employee Cynthia Olson what she thought about the Union. She answered that she thought the Union was a good thing because something needed to be done. Prim said that that was what John Oleson, Respondent's newly hired vice president of operations, had been hired for, but Olson thought differently: that Oleson had been hired to bust the union. Prim denied that that was so.

In mid-September, Kargarzadeh asked employee (and Fults's father-in-law) Toby Edwards how he felt about the Union. Edwards replied that he did not have any opinion. The day before the election, Kargarzadeh asked process technician Jeff Hautekeete what he thought about the vote for the Union and what he thought about unions. Hautekeete said that he had worked in union shops before and some of them were good and some were bad. Kargarzadeh, who had earlier praised Hautekeete's quick progress, quicker than he had expected, promised him a raise from \$9.50 an hour to \$11.00 and additional raises as long as his job performance remained the same. Kargarzadeh then asked whether he had heard the rumor that the Union was promising everybody \$2.00 an hour if it won the election. Hautekeete said that he had not heard it, and Kargarzadeh said that nobody could promise the employees a raise, not even a 2-cent raise, and he was the only one who could approve a raise. If he wanted to give somebody a raise he would; if he did not, then he would not. Nobody could tell him whom he was going to give a raise to or that he had to.

I conclude that all of these interrogations, none of which were denied by Respondent's supervisors, violated Section 8(a)(1) of the Act. In addition, Prim's threats to Sumner and Yom that Respondent would lose business from its customers if employees selected union representation violated Section 8(a)(1). These predictions of the adverse consequences of unionization, the loss of customers, outside Respondent's control, lacked any factual objective basis. *Wake Electric Membership Corp.*, 338 NLRB No. 32, slip op. at 2 (2002); *Tawas Industries*, 336 NLRB 318, 321 (2001). I reject Respondent's contention that Sumner's testimony ought to be rejected because it resulted from a leading question, to which, I note, there was no objection. The contention might have had a little more weight had Prim denied the allegation. Prim did not. Kargarzadeh's promise to Hautekeete of a \$1.50 per hour raise on the day before the election violated Section 8(a)(1), because it was unscheduled and previously unannounced and an obvious attempt to purchase his vote. Furthermore, Kargarzadeh unlawfully threatened that selection of the Union would be futile for employees because he gave the impression that only he would grant wage increases, and the Union's effort to bargain would be meaningless. Kargarzadeh's second interrogation of Fults implicitly threatened that he would close Respondent or, alternatively, would not negotiate with the Union should the employees select it as their collective-bargaining agent.

Respondent violated Section 8(a)(1) in other respects. On or about September 22, Oleson called the police when he saw, he testified, people "blocking traffic." Other than that, Oleson could not identify who the "people" were or what they were doing. On the other hand, Conn testified that about 7 a.m., on a day after September 22, the day he was terminated, two uniformed police officers pulled up to where he, Warndorf, and Vileta were handbilling and said that they had a complaint from Respondent that they had been blocking traffic. The officers said that they did not see the handbillers blocking traffic and thought they exercising their legal rights. The employees were standing on a ten foot city easement along the ditch next to the beginning of Respondent's driveway. Oleson's testimony lacked any specificity about where the people were standing and who was being blocked. The truth of what he was claiming was not

corroborated by a police officer or even a police report. I do not believe it. Although I recognize that Conn may have committed perjury in the investigatory affidavit that he gave to the Region, at least he told the truth at the hearing because “This is court.” I believe his testimony. I find that Oleson had no basis to call the police, other than to harass the employees and interfere with their right to handbill lawfully. I conclude that calling the police was intended to interfere with employees’ Section 7 rights and violated Section 8(a)(1) of the Act. *The Greenbrier*, 340 NLRB No. 92, slip op. at 4 (2003), enf. denied *F.3d* , 2004 WL 1657343 (4th Cir. 2004).

The Union held regular weekly meetings on Tuesdays at the Eagles Club in Grinnell, at different times for each shift. Once, on September 25, as the Union officers, Ted Johnson, Mike Krumholz, and Dennis Walker and Union adherents—Warndorf, Vileta, Travis Pagel, and Conn—were gathering outside, Kargarzadeh drove by in a vehicle occupied by project engineer Katie Lewis, with whom he has a “personal relationship,” and slowed down. Both looked out at the employees. The complaint alleges that this constituted surveillance. I agree. Despite the fact that September 25 was a Thursday and Kargarzadeh testified (as an adverse witness) that he was coming from a doctor’s appointment, there is nothing but his unsupported, uncorroborated testimony—not a hospital record, not a doctor’s bill, not even the testimony of Lewis. In these circumstances, and having already discussed my problems with his credibility, I do not believe him and find that he was at the Eagles Club, not by chance, but to watch over his employees’ union activities. I conclude that Respondent violated Section 8(a)(1) of the Act.

Respondent Discharges Four More Union Supporters

I return to the discharges of Union supporters. Prim knew that Yom was a Union supporter. He asked him on September 25 why he wanted a union at Respondent, and Kim told him. Prim never testified about that interrogation or about how he had learned of Yom’s support. It is likely that he knew on September 23, when Respondent conducted an antiunion meeting, which employees did not have to attend, and Yom did not. In fact, after that meeting, Kargarzadeh checked the sign-in sheet at the meeting and then went to the timecards of those employees who had not attended the meeting. He found that Yom, who had not attended, had nonetheless punched out late. (There is no indication in the record that Respondent paid for employees to attend the meeting.)

On September 26, two weeks after Vileta was terminated and the day after Prim interrogated Yom, Kargarzadeh fired Yom, allegedly for theft or cheating on his time card on September 23. Most of the facts are not in dispute; the critical issue is whether Kargarzadeh truly believed that Yom was, in effect, stealing from his company or whether Kargarzadeh used Yom’s late punching out, a 28-minute mistake costing Respondent at most \$6.94 of overtime pay, as a pretext for Yom’s Union support. I find that the discharge was based on pretext and conclude that Respondent violated Section 8(a)(3) and (1) of the Act.

Kargarzadeh manufactured the “theft,” because Respondent’s handbook provides that overtime will be paid only if approved by a supervisor. The provision reads:

An employee will be paid one and one-half times their regular hourly rate for hours worked in excess of forty (40) hours in a one week pay period AND if the overtime hours are approved by the supervisor (i.e. the supervisor must show approval by indicating the reason for the overtime and writing his/her initials on the timecard for the appropriate day).

Yom’s 28 minutes had never been approved as overtime by a supervisor. Under Respondent’s handbook, it should not have been paid; and Yom’s testimony makes clear that

he did not punch out late with the intention of being paid. Rather, his explanation for the timecard incident, which occurred on September 23, was that he normally clocked out at 7 a.m., the end of his shift. But he forgot, and left to meet with the Union representatives out on the road, outside the facility, where he talked to Walker and Johnson. Then he came back into the building and clocked out at 7:28 a.m. He knew that he had clocked out late: he had done so before but, with one minor exception, only when he had worked overtime. When asked what, if anything, he had done to correct it, he answered: "I some time just have the supervisor signed it – signed it or just leave it – leave it that way." He testified that he looked for White that day to sign his card, but she had left and he could not find her. So he put his card in the time slot. He never called this erroneous timecard to the attention of any supervisor during the next two days.

Kargarzadeh testified that his termination of Yom resulted from a combination of two wrongs. First, Yom took his time card out of the premises, but that was not cited by Kargarzadeh as a factor during Yom's termination meeting on September 26. In fact, one other employee took her time card home two weeks after Yom's termination, but was not terminated for doing so; so Kargarzadeh's attempt to uphold that discharge on this ground, wholly or partially, is flawed. Second, Kargarzadeh testified that, during Yom's termination meeting, Yom admitted that he had cheated on his time card. But process technician Paul Kelm, called by Respondent to corroborate its version of Yom's termination meeting, could not testify that Yom admitted to "cheating." Rather, his testimony corroborates Yom's testimony that he merely forgot to punch out, not that he was consciously "cheating." Prim, on the other hand, essentially supported Kargarzadeh's version, but his participation in many of the unfair labor practices makes me wary of his impartiality. Rather, Prim testified to facts that his employer wanted.⁶ Finally, even if Yom stated at the meeting that, if a supervisor had found an employee cheating, the employee should be fired, that was not an admission of cheating, but merely an answer to a speculative question.

Kargarzadeh's actions also demonstrate an antiunion motive. He was aware that Yom was no friend of Respondent's attempt to win its employees' support. Kargarzadeh had run an antiunion meeting on September 23, and the first question he had for Yom at the termination meeting on September 26 was why Yom was not at that meeting, an independent unlawful interrogation under Section 8(a)(1), to confirm his understanding of Yom's sympathies for the Union. Kargarzadeh offered no explanation of any reason that he, as Respondent's president, checked Yom's timecard. He even denied knowing where Yom was during the meeting, although Yom credibly testified that Kargarzadeh accused Yom of having left the plant to listen to music in his car, before returning to the plant to clock out, whereas actually Yom was talking with Union representatives. Kargarzadeh must have heard of that conversation, then checked Yom's timecard, and then used Yom's failure to punch out timely as a pretext to fire him. I reject Respondent's attempt to show that its termination of Yom conformed to its prior practice. The only prior incident is distinguishable, involving the fraud of other employees punching in and out for other, absent employees at another facility.

⁶ Prim testified, for example, that, during the termination meeting, Kargarzadeh asked Yom if he had cheated on his time card *again*, and Yom said that he had. When asked when Kargarzadeh first asked Yom, Prim answered "[p]robably from the beginning when he came into the room." Prim was then asked to repeat his recollection of the meeting, and Prim did so, and he was again asked whether Yom said twice that he had cheated. Prim responded: "I don't know how many times he said it." In addition, in answer to Kargarzadeh's leading question, Prim testified that Yom said that he was sorry, would not repeat his action, and would pay back the money. I find that testimony improbable, because Yom had, at that time, never received payment for the "overtime," so there was no "overtime" to pay back.

Furthermore, what makes Kargarzadeh's defense so improbable, in addition to my generally not believing him, is that Yom had been a trusted employee since June 28, 1999, which made him one of the more senior employees of Respondent. Yom had received no discipline of any kind during his four and one-quarter years of employment. His latest performance appraisal was "outstanding," the highest he could have received, and that included the highest rating for "observation of rules and regulation[s]." My impression of him, together with his employment record, is that he was anything but a thief; and I cannot believe that Kargarzadeh truly thought that he was. In fact, Kargarzadeh conceded that many times employees on the clock have left the plant without permission, forgetting to punch out, but their supervisors will excuse their actions on the ground that they forgot. Here, after hearing Yom's explanation, Kargarzadeh refused to do exactly that, considering Yom's actions not forgetfulness, but criminal conduct. That was disparate,⁷ further support for my finding under *Wright Line* that Kargarzadeh would not have terminated Yom in the absence of his union activity. I conclude that Respondent violated Section 8(a)(3) and (1).⁸

Respondent expanded on its reasons (as it did for many of the discriminatees in this proceeding) for terminating Travis Pagel on October 1, despite that fact that his termination slip noted only "attitude" and Kargarzadeh mentioned only "insubordination" when he terminated Pagel. According to Kargarzadeh, the only witness who testified about Pagel, and Kargarzadeh testified only as a witness called by the Counsel for the General Counsel under Section 611(c), Pagel failed to follow company instructions specifically on the pad printing machine. He "attacked" the machine by kicking it. He could not get along with people: more specifically, he threw parts at Lewis. Finally, when the lead operator or auxiliary tried to give him a break, he refused to permit her. All these claims of improper work conduct were unsupported by the testimony of any credible witness. Respondent's action was supported solely by the uncorroborated and generally discredited testimony of Kargarzadeh. I do not believe him and find that Pagel credibly testified that most of the allegations against him were not true. In the alternative, those incidents that had a grain of truth about them were simply used by Kargarzadeh as pretexts for Pagel's discharge.

Regarding Pagel's refusal to permit another employee to give him a break, Pagel reported on October 1 at his normal work hour at 7 a.m. and worked until his first break shortly after 9 a.m., when he was relieved by auxiliary Jeannie Van Helton. He returned from break and worked until lunch hour, 12:05 p.m., when she relieved him again. He returned from lunch at 12:20 p.m. (the employees get 15 minutes for lunch), found himself a little behind in his work, and was attempting to catch up, when she returned at about 12:55 p.m. or so to relieve him for his last break. Pagel told her that he was busy, he did not need a break, and he had just returned from lunch: and he told her to find someone else and give that employee a break. (According to Pagel, it was not typical to take his afternoon break 35 minutes after he had returned from lunch.) Van Helton said: "I'll go and tell Donna Lane [his lead operator] your attitude sucks" and walked away. About a half hour later, Lane came to relieve him for his last break. He returned from break, thanked her, and started working again, until about 2:50 p.m., when Lane returned to tell him that Fosnaught wanted to see him. He left his workplace and

⁷ Hautekeete clocked out late one night, and never had his timecard initialed. He was not warned, nor was he paid.

⁸ Respondent, in order to support its claim of criminal conduct, actually later issued a check to Yom which included an additional one-half hour of overtime, although never approved by a supervisor and known to not have been worked. Respondent offered no explanation for that erroneous check. Furthermore, as an aside, Respondent's check bounced for insufficient funds, costing Yom an \$8.00 bank fee, more than the \$6.94 amount that he allegedly cheated.

then met not only with Fosnaught, but also with Kargarzadeh, Razizadeh, and Lane, and was discharged.

5 In August, two months or so before the discharge, Dugan (this is the only name that
Pagel recalled; Kargarzadeh mentioned in his testimony “Dugan Michalet or Brendan Michalet”;
Fosnaught testified that the latter name was correct) had been training Pagel for about two
weeks on a pad printing machine, which picked up an image off a silk screen image and then
laid the image on the product. Pagel had been running the machine for a couple days but was
10 having trouble: the ink seemed to be bubbling, resulting in a fuzzy image. Dugan told him that
he had too much thinner in the ink. Pagel thought that there was too much humidity in the air.
Dugan got a bottle of thinner, squirted some in the ink, mixed it up, grabbed a part, ran it, said
that it worked “just fine,” and stacked it on the table. Pagel complained that it was funny that he
was being yelled at for putting too much thinner in the ink, and the first thing that Dugan did was
15 put thinner in the ink. Dugan selected a good piece off his table, squirted thinner on it, and noted
that the thinner “bubbles up the material.” For whatever reason, Dugan fired Pagel that day, but
the termination was reversed by Razizadeh and never implemented. Pagel was not written up
for this incident.

20 A second incident involving Dugan, also in August but later than the first, again involved
the operation of the pad printer. Pagel was working with a few people who are needed to keep
up with the machine at full speed and had to activate the machine by stepping on a covered foot
pedal. As Pagel described the pedal, “it was kinda loose, rumbly – it’d make a lot of click
noise.” Dugan told Razizadeh that Pagel was kicking and abusing the machine. Pagel denied
25 that he was doing anything different from what he had always done and denied that he abused
the machine in any way. There was no written warning, but Razizadeh talked to Pagel about it.

The incident with Lewis, also in August, involved Pagel’s attempt to make cup holders
for a car. The pieces were being produced with streak marks, and Lewis found them
unacceptable. Pagel continued to produce them, sorting out the good ones from the bad, but
30 even what he thought were good, she found were bad. Pagel then shoved or pushed the pieces
off the table into a bad parts box (large boxes, called “Gaylords,” are also used for finished
materials and parts) that was in front of him, where he placed bad parts, or even threw them into
the Gaylords, a couple of pieces missing and bouncing towards Lewis.

35 Throwing bad parts into Gaylords was not uncommon, certainly not for Pagel, who did so
all the time. Pagel never received a written warning for that conduct, or for the specific incident
allegedly involving Lewis, who, to reiterate, did not testify; nor was he ever talked to by
management at that time. In fact, he received an above standard evaluation and a
recommendation for a 50-cent raise on September 19, 12 days before he was discharged.
40 Respondent gave him the highest possible ratings in 14 of the 19 assessed components,
including every single item under the critical categories of “Quantity,” “Quality” and “Work
Habits.” With the exception of Pagel’s refusal to be relieved on October 1, there was nothing
remotely approaching insubordination; and there was nothing that Pagel did within two months
or so of his discharge that might give an inkling of any kind of justification for Respondent’s
45 action. Rather, Kargarzadeh saw Pagel at the Union meeting at the Eagles Club a week before
the discharge, and saw a “Vote Yes” sticker displayed on Pagel’s press during the past 3-4
days; and whatever happened on October 1 infuriated Kargarzadeh so much that he vented his
anger at the Union campaign by firing Pagel for his “attitude.” I find that Respondent has
concocted unpersuasive and false reasons for its termination of Pagel and that, under *Wright*
50 *Line*, it would not have terminated him but for his union activities. I conclude that Respondent
violated Section 8(a)(3) and (1) of the Act.

Gregory Cooper, a press operator since January, was terminated on October 22. Before that, on September 26, he was assigned press A14⁹ and was putting gaskets into the dryer doors. After a couple hours of running that press, James, the press technician, informed him that he was shutting down the press to do a mold change. Cooper finished up the parts that he had, filled out all his paperwork, and cleaned the area, everything that he was supposed to do when the presses were shut down. He waited around for about an hour and was bored, when he heard a call over the intercom system that A16 and A17 needed a forklift operator to remove Gaylords from the area because they could not get empties in to fill with the finished product. So, being licensed by Respondent to drive a forklift, he went to get a fork truck, did a safety inspection on it, and began removing parts from A16 and A17 to the warehouse. The person in charge of the warehouse told Cooper where he wanted the Gaylords stacked and Cooper followed his direction, putting them in the aisle, and went back and forth hauling from the presses and depositing the Gaylords in the warehouse. There was an accident: an employee had slipped on some oil and had fallen and twisted her knee. Because Cooper had trauma medicine training, he parked his fork truck and went to the employee to make sure that she was all right. Razizadeh was there and said that there was no need for Cooper, who should keep doing what he was doing. So, Cooper got back on the fork truck and continued hauling.

He had the last load and was driving to the warehouse, when he met Razizadeh and Fosnaught, who asked him whether he had done a safety inspection on the forklift, to which Cooper replied that he had. Then Razizadeh asked what he was doing, and Cooper explained that he had been hauling parts back to the warehouse. Razizadeh told him that he wanted him back on the presses. Cooper explained that his press had been down for an hour and a half and that he had done everything that he was supposed to do. Razizadeh said that he did not care; he wanted Cooper back on the presses. Cooper followed his instructions, returned to the presses, and stood there at his non-operating press for 20 minutes, until his shift ended. On October 1 he was written up. Razizadeh also threatened him that if he did not stop whistling [Beethoven], he would be written up for that, too. However, no warning issued.

Two days before the election, Cooper was discharged. He arrived that day at 6:45 a.m., somewhat later than he normally did (he arrived at about 6:30 a.m. three to four days each week, a fact not denied by his supervisor, Razizadeh), and went immediately to A4. He noticed that the same mold was in use as the day before and that the operators were behind on parts for trimming and sanding. He told auxiliary Trisha Bailey, who was the assistant to Teresa Flack, his lead operator, that, if she was willing to bring him a box of parts from A4 down to A14, he would trim and inspect as many parts as he could during the day. Bailey did not have a chance to answer, because at the same time Kargarzadeh approached and asked Cooper why he was in the line early and why Respondent was having so much trouble with him. Cooper answered that he was trying to do Respondent a favor, and Kargarzadeh asked him to go to the break room until the start of his shift. When Cooper did not leave immediately and instead asked why, adding that he was doing Respondent a favor by helping out on his own time, Kargarzadeh told him not to argue and to "get the fuck out of the plant."

According to Kargarzadeh, he terminated Cooper because of chronic problems, one of which was leaving his press and driving a forklift without authorization. The press operator's job is not to drive a forklift. Furthermore, he interrupted what his coworkers were doing. Finally, he was insubordinate by being "in the middle of the plant where the traffic for the forklifts are about

⁹ The "A" designation indicates a press or machine in the A Section of Respondent's facility. There is a reference, below, to a machine in the "C" section, which is a number preceded by the letter "C."

35 minutes before his shift.” He was asked to sit in the break room until his shift started. He started arguing, and that was insubordination, for which he was terminated.

5 Razizadeh did not testify about his reasons for giving Cooper a warning for driving the forklift, a task that Cooper often performed and a task that Cooper performed that day, at least for a while, with the apparent approval of Respondent’s representatives, including Fosnaught, and supervisors, including Razizadeh;¹⁰ nor did Razizadeh testify about his threat to Cooper for whistling, nor did Respondent call any witnesses to testify that Cooper’s whistling was in any way offensive or disruptive. I conclude that both the warning and the threat violated Section 8(a)(1) of the Act and that the October 1 warning violated Section 8(a)(3), especially in light of Cooper’s testimony that he overheard Kargarzadeh on September 23 telling Fosnaught, in effect, to “take care” of Cooper, evidence of animus rebutted by neither.¹¹

15 Regarding Kargarzadeh’s final reason, Respondent did not dispute that Cooper normally arrived early. According to Cooper, he would “start walking around the plant and see what was going on with the different presses and see if there was trouble or what I needed to do”; and Dugan, Razizadeh, Flack, and White knew that this was his practice. Respondent called none of these management representatives as witnesses. In light of that practice, Cooper’s reaction to Kargarzadeh’s request—asking him why—was a normal reaction and not argumentative. 20 Rather, Kargarzadeh seized on it to justify the discharge of one who reported early and was helping Respondent produce its product, engaging in the very conduct that Kargarzadeh was attempting to foster, rather than lateness and absenteeism, which Respondent claims was a constant and troublesome habit of its employees.¹² Respondent had never warned or otherwise disciplined or counseled Cooper about coming to work earlier than the 10 minutes early it 25 allowed for employees to punch in for work. In fact, because there is no shift overlap, operators routinely talked to each other regarding production issues before the shift change.

Insubordination was a mere pretext. There was no credible evidence that Cooper was blocking the aisles or interfering with the operation of the forklifts. Kargarzadeh was actually 30 objecting to the fact that Cooper was talking with Bailey, a conversation that Kargarzadeh must have assumed was about the Union and the election, just two days away. That was what caused Kargarzadeh to fire Cooper so hastily, on the spot. That was the reason that, in Kargarzadeh’s words, “the company [was] having so much trouble with” Cooper, who was a supporter of the Union well-known to Kargarzadeh, having “all kind[s] of stuff” on his vehicle 35 about the Union, including “vote yes.” I conclude that, under *Wright Line*, Respondent did not meet its burden of showing that it would have discharged Cooper even in the absence of his union activities and that its October 22 discharge of him violated Section 8(a)(3) and (1) of the Act.

40 Alisa Fults, another well-known Union adherent, was terminated the next day, October 23, the day before the election. She reported to work wearing a handmade T-shirt with the writing, “You screwed me once, shame on you. You screwed me twice, shame on me. Don’t get screwed again, vote yes UAW. It’s our only answer.” Proceeding past some Union

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¹⁰ Respondent evaluated Cooper’s work performance on August 11 and gave him its highest rating for “observance of work hours” and “application to duties.”

¹¹ The reference to Cooper might well, in the circumstances, have been a reference to another employee, Dustin Cooper. Dustin’s employment is documented in the record. Fosnaught testified that Respondent also employed Jacqueline Cooper, but I could find no record of her employment.

50 ¹² Kargarzadeh testified that he placed great value on timeliness and expected his employees to be at their workstations, ready to work, and not just en route to their workstations, when their shifts began.

representatives and some terminated employees who were handbilling, and after being interviewed by a reporter about her T-shirt, she went to her lead operator, Kevin Zimple, to be assigned to a press. For the past two months she had been running Maytag baffles (a piece in a washer that spins the clothes) which was either A9 or A10, except that the previous two days she had been assigned to A7, where Respondent had put a mold that it had not run for a while and Fults was the only one on the second shift who knew how to operate it properly, so she was assigned to A7 and Goodrich, who normally ran A7, to the press that Fults normally ran, A9 or A10. Zimple looked at her shirt, said, "Well, I don't know about that," and shook his head, as Fults again asked him what press she needed to go to. Zimple said that he did not need her and told her to report to Rachel Guthridge, who looked at her shirt and said that she did not need her, either.

Fults returned to Zimple, who this time was going to put her on an assembly job, but changed his mind and asked her to go to Angie Laird, another lead operator, who assigned her to C9, which made lint filters, a job that she had not performed before and a press she did not know how to operate. So, she stood around waiting for help, and auxiliary Danielle Bennett showed her how to operate it, but then the machine broke down. She then swept up and assembled for 15–20 minutes, when Mike Coomes, Respondent's second shift supervisor, and Fosnaught approached her about her T-shirt, said that the word "screw" was offensive to them, and wanted her to scratch out that word. Thinking that her T-shirt might offend management, she had brought with her a replacement sweatshirt: all it said was, "Vote yes UAW." She put it on. However, as she was doing her clean-up work, she saw one of Respondent's blank shipping labels, which she thought was intended as trash; and, thinking that all that Respondent was concerned about was the word "screw," she wrote on the label "He did me wrong, he'll do you too. Vote yes UAW" and had it attached to the back of her sweatshirt.

In the meantime, Bennett had advised her, while she was sweeping, that Zimple was coming to take her to her normal press. Instead, he took her to A16, which produced dryer doors with gaskets. A16 was a press that she had run only once before, and a press that she had told Zimple only the day before—she was complaining that she had not been selected as an auxiliary, which required the employee to be able to run all presses—was the only press in the A section that she could not run. That press proved to be her undoing. She complained that she could not run it, and he replied, somewhat angrily, that she wanted something new and he was going to put her on something new. He then told Adam Nowotny, who was running A16, to operate Fults's normal press, A9, which he had run only three or four times, and assigned her to A16, which she had complained that she could not run. Nowotny asked why he was being switched with Fults, but received no reply.

Her complaint was justified. As much as she tried to run it, she could not produce good parts. She had never been trained to run it; and, previously, she had run it once for about a minute or two on a weekend shift, and management took her off because she could not produce a good part. She could not clamp down the pieces quickly enough in the cooling fixture so that they would not warp when they cooled, and she could not insert the rubber gasket accurately or quickly enough to prepare herself for the next two pieces as they were molded and came off the conveyor belt. There was compelling testimony that A16 was the most difficult press in the A section to run, but it was not impossible. She was simply incapable of running it. In so finding, I reject what seems to Respondent's contention that Fosnaught deliberately avoided attempting to clamp the pieces. She was trying her best, which was not good enough.

On the other hand, there was evidence that Respondent deliberately speeded up the running of the machine, so as to make the operation of it, normally one that she could not do, even more difficult. (Nowotny described that the speed was "incredibly fast for someone that

has no experience on the press.”) After perhaps 10–15 bad parts, she asked Zimple for help from others to train her on the machine: “You need to either switch me presses with somebody or turn this thing down because I’m getting bad parts. It’s costing the company money. They’re expensive parts and they’re all bad.” He ignored her. She tried again, repeatedly failed and on numerous occasions pleaded again for training, for the press to be slowed down, or to be switched to another press. Auxiliary Tim Tourres and material handler Troy Baldaris came over to help her a few times during the night; but as soon as Zimple saw them, he sent them away, telling them to get back to their assigned work or to stay away from Fults’s press. Edwards also helped for a while, especially when Fults cut her hand while trimming the flash off the exterior of the dryer door. Zimple watched, and she thought that he was going to tell Edwards to get away. Instead, Zimple told Fults to get her things and follow him to the front office, where she was terminated for “Excessive bad parts and not trying to correct problem after being warned several times.”

This is a patently transparent unlawful discharge. It was devised by Respondent to create a reason to discharge her, an avid Union supporter, wearing a pro-Union sweatshirt, the day before the election; and Respondent did all that it could to ensure the success of its plan. Zimple knew that she could not operate the press. Nonetheless, he assigned her to the press, provided her with no meaningful training (I credit Fults in this respect; Zimple did not testify), and increased the machine’s speed to make it even harder for Fults. He relieved Nowotny, the person who had been assigned to that press for two months and assigned him to the very press that Fults had been adequately and successfully operating for the past two months. Respondent’s defense notably omitted any explanation for the switching of the assignments of Fults and Nowotny. If A16 was such a high priority press, as Coomes contended in his testimony, there was no reason at all that Respondent should have assigned to it an inexperienced operator such as Fults, leaving the fully experienced Nowotny at Fults’s machine. After Fults’s termination, Nowotny immediately returned to A16 and remained there every day, until the Union began a strike on January 25, 2004. Coomes’s testimony was false. He was not even in the A16 area when Fults was transferred there,¹³ and his testimony was directly contradicted by Nowotny, who had no reason to lie. Finally, after Fults took Respondent’s original termination notice from the plant on October 23, Respondent prepared a new notice which amplified the basis of her discharge to include both “verbal” and “written” warnings, matters that had occurred earlier. The new notice was written to bolster Respondent’s case and did not reflect what actually happened on October 23. I conclude that Respondent’s termination of Fults violated Section 8(a)(3) and (1) of the Act.

The complaint alleges two additional violations concerning Fults’s attire and prounion messages that day. Respondent’s handbook provides only that production employees must dress appropriate to safety considerations, that full-length shirts that cover the entire stomach area are appropriate, and that casual wear, such as shorts and jeans, are permitted on Fridays, except on days when customers are expected to visit. There is no limitation on what printing or messages may be contained on the clothing. Thus, Zimple wore a shirt from Hooter’s, and an employee wore a T-shirt that said “Ass Kicking for Fishing.” Another wore a T-shirt with words too vulgar to include in this Decision. Respondent offered no rebuttal either to these facts or to show that its supervisors never saw these shirts and never permitted the employees to wear them.

¹³ Coomes was sometimes evasive on cross-examination and added facts of which he had no personal knowledge.

5 The word “screw” on Fults’s T-shirt, although it can be interpreted in its most vulgar
sense, is also common slang, meaning, “to take advantage of” or “cheat.” American Heritage
Dictionary 1566 (4th ed. 2000). Section 7 protects employees’ rights to wear pronoun, or anti-
employer, statements designed to seek the support of other employees during an organizing
10 campaign. While the right is balanced against Respondent’s right to conduct its business and
maintain workplace safety and discipline, Respondent must show substantial evidence of
special circumstances, such as interference with production or safety, before it may restrict
Fults’s right to express her sentiments. *Pathmark Stores, Inc.*, 342 NLRB No. 31 (2004);
Government Employees, 278 NLRB 378, 385 (1986), cited with approval in *Escanaba Paper*
15 *Co.*, 314 NLRB 732, 733 fn. 4 (1994), *enfd.* 73 F.3d 74 (6th Cir. 1996). Respondent showed no
special circumstances. (Razizadeh did not even testify.) When firing Cooper, Kargarzadeh told
him to “get the fuck out of the plant.” During the day that Fults was discharged, Kargarzadeh
called her a “dumb bitch” and harangued her with comments like: “It’s fucking people like you
who make fucking companies go fucking bankrupt.” When firing Albert Bregar Jr., discussed
below, Fosnaught told him to “get the fuck out of the plant.” I find that, in the circumstances of
shoptalk such as these examples, Respondent was not offended by Fults’s choice of words. I
conclude that Respondent did not find the word offensive and that Respondent violated Section
8(a)(1) of the Act by making her revise her message.

20 The same day, about an hour after Fults started to operate A16, Zimple and Razizadeh
walked over to her, the latter asking why she used the company tag that was on her back. She
explained that it was intended to be garbage and, if he wanted, he could take it off her back or
she would pay him the penny that it cost Respondent. He refused to touch her, so she pulled off
her sweatshirt to remove the label and gave it to Razizadeh, who immediately tore it up. Becky
25 Swan had used the same labels a few days before for “Vote No” stickers, which she wore at
work. Although Respondent’s brief contends that there is no evidence that any supervisor saw
Swan’s pro-Respondent labels, Respondent offered no rebuttal to show that its supervisors
never saw her labels and never permitted her to wear them. Respondent’s interference with
Fults’s wearing of a pro-Union message, especially when permitting another employee to wear
30 an antiunion message, violated Section 8(a)(1).

The complaint also alleges that, a month before, on September 23, Respondent verbally
warned Fults for packing bad parts in the lower layers of a box, in violation of Section 8(a)(3)
and (1) of the Act. The General Counsel’s theory rests not on the fact that Fults had packed bad
35 parts, although he attempts to excuse her production on the ground that the press was
producing extra flash or excess material on the Maytag baffles, but on the fact that Respondent
went out of its way to examine her box. Thus, Fults testified that on September 23 she
overheard Zimple tell quality control auditor Becky Swan to “check every piece” in Fults’s box;
and Swan did so, uncovering the badly produced pieces. Before then, Fults testified, the quality
40 control auditor would direct the press operator to check her own box. Swan testified that Fults,
whose testimony was corroborated by two of the General Counsel’s witnesses, was not
accurate, that Swan had checked complete boxes in the past. I believe that she is probably
accurate, finding it difficult to believe that someone who is entrusted with the function of
ensuring a good product would never check through whole boxes of product, even when some
45 products at the top of the box were defective.

Here, I believe Fults’s testimony and the testimony of the two other witnesses that Swan
had never inspected all of their finished products. More importantly, Fults’s testimony about
Zimple’s direction to Swan was never rebutted—Zimple did not testify—and, in this
50 circumstance, I find probable that he, who had just recently interrogated Fults about her union
activities, as did Kargarzadeh, was attempting to find something in her work product that he
could use as a pretext to discipline her. Under *Wright Line*, it was incumbent on Respondent to

5 prove that it would have disciplined Fults for her bad parts, even in the absence of her union activities. Because Respondent would have never known of any bad parts had it not been for the inspection that Zimple unlawfully ordered, Respondent did not meet its burden. *Anheuser-Busch, Inc.*, 342 NLRB No. 49 (2004), is distinguishable. The sole relief for this violation is the expunction of the warning, not the specific remedial restriction on reinstatement and payment of backpay contained in Section 10(c) of the Act. I conclude that Respondent violated Section 8(a)(3) and (1).

10 Post-Election Unfair Labor Practices

10 Contracting of Employees from Manpower

15 As noted above, the election took place on October 24; and the Union won the election and was certified a week later. Respondent's actions against the Union and its supporters did not abate, but instead took a different tack and indeed resulted in even more harsh treatment of Union supporters and the employees generally. The first occurred when, on October 24, in answer to an inquiry from Fosnaught, Manpower, Inc. wrote him a proposal to supply employees, specifically press operators. Eighteen Manpower-supplied machine operators started working for Respondent on October 27, three days after the election and four days before the Union was certified, and 13 were still working as regular full-time employees of Respondent at the time of the hearing. That was the first time in Fosnaught's experience (he was hired on May 19) that Respondent used temporary employees. At no time did Respondent notify the Union about its intention to use contracted employees to perform bargaining-unit work, nor was the Union given any opportunity to bargain about that. The Union never waived any bargaining obligation over that, nor did it indicate in any way that the proposal to utilize employees of Manpower would be acceptable to it.

30 The General Counsel contends that Respondent's use of these contracted employees violated Sections 8(a)(3) and (5) of the Act. I agree. First, I note that Respondent's answer stated that "[t]his practice [of subcontracting has] been used by respondent several times in the past." That assertion, certified by Oleson as correct, was false. This was the first time that Respondent had used such staffing. In addition, Respondent started utilizing subcontracted workers immediately after the Union had won the election,¹⁴ thus threatening the employees that they, too, could easily be replaced. I agree with the contention of the General Counsel that the timing of Respondent's unprecedented use of contracted workers and the pretextual and false assertion that it had done so in the past point toward union animus as a motivation for starting this new practice. They were hired to avoid the Union as a bargaining agent and to diminish the effect of the Union by reducing the number of employees it represented, particularly after Respondent had terminated five Union supporters whom these contracted workers replaced. I conclude that Respondent violated Section 8(a)(3) and (1) of the Act. *Continental Winding Co.*, 305 NLRB 122, 125 (1991).

45 In addition, Respondent was obligated to refrain from making unilateral changes in working conditions commencing on October 24, when the Union won the election. *Tri-Tech Services, Inc.*, 340 NLRB No. 97, slip op. at 2 (2003). Respondent made such a unilateral change when it contracted with Manpower for 18 press operators, and violated Section 8(a)(5) and (1) by failing to give the Union notice and an opportunity to bargain before implementing the use of contracted employees to perform bargaining-unit work. *Clark United Corp.*, 319 NLRB

50 ¹⁴ The fact that the unilateral change occurred prior to the certification is of no consequence. *Overnite Transportation Co.*, 335 NLRB 372 (2001).

328, 328–329 (1995), enfd. mem. 95 F.3d 1147 (5th Cir. 1996). In addition, its relationship with Manpower is a subcontracting relationship, a mandatory subject of bargaining over which Respondent has a duty to bargain. *Fibreboard Paper Products Corp.*, 379 U.S. 203 (1964); *St. George Warehouse, Inc.*, 341 NLRB No. 120 (2004). On this second ground, Respondent also
5 violated Section 8(a)(5) and (1) of the Act. I reject Respondent's contention that *Fibreboard* does not apply because Respondent was not permanently contracting out bargaining-unit work, but was hiring only to fill a temporary need. The fact that almost five months later, at the time of second hearing, Respondent still employed 13 of these "temporary" employees belies Respondent's argument.

10 I also reject Respondent's reliance on *Bottom Line Enterprises*, 302 NLRB 373 (1991), enfd. mem. sub nom. *Master Window Cleaning, Inc. v. NLRB*, 15 F.3d 1087 (9th Cir. 1994), and *RBE Electronics of S.D.*, 320 NLRB 80 (1995). *Bottom Line* holds, at 374, that:

15 [W]hen, as here, parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter; rather it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as
20 a whole. [Footnote omitted.]

In *Bottom Line*, the Board noted two exceptions to this general rule: when a Union engages in tactics designed to delay bargaining and "when economic exigencies compel prompt action." *Id.* at 374. Respondent must prove exigency by demonstrating the existence of
25 circumstances that required the hiring of contracted employees, as opposed to employees on its own payroll, at the time that it retained them or an economic business emergency that required prompt action. *RBE Electronics*, 320 NLRB at 81. The gist of Oleson's testimony was that Lennox had just advised Respondent that it was no longer going to have Respondent make its products. Lennox owned the molds that Respondent used. When the molds were removed from
30 Respondent, there would be down time to transfer them to some other producer. Thus, Lennox asked Respondent to build a bank of inventory, so that it would have enough material when the molds were unavailable.

Oleson's testimony is unpersuasive. On October 30, three days after Respondent began
35 using Manpower-supplied workers, Oleson telephoned Walker, advising that, in the words of a letter he sent later that day, because "we are losing one of our major customers and we have to reduce our staff accordingly," he foresaw a possible layoff of 50–70 employees. He wanted the Union's input about how to accomplish the layoff and, in the letter, apologized for the "short notice, but we were just recently notified by our customer." In the letter, he advised that the
40 layoff would begin on November 3 and last through March 2004 and would affect approximately 65 positions. He committed Respondent to use attrition (no replacement of voluntary quits and terminations) as a first method of reducing its staff and the cancellation (termination) of all temporary employees as the second.

45 There has been no showing that economic exigencies compelled Respondent's prompt action. The contracting for the Manpower employees was antithetical to the notice of layoff. Either Respondent needed employees or it did not. Furthermore, there is nothing here that shows that employees were not available, just Oleson's word, which is not very good. There was no attempt to hire employees, other than its letter to Manpower. Third, as will be seen
50 below, Respondent changed its attendance policies, resulting in its termination of as many employees as it obtained from Manpower. Fourth, there is nothing here that proves that Respondent's decision to contract with Manpower was made prior to the results of the election,

removing its decision from the obligation to bargain under *Sivalls, Inc.*, 307 NLRB 986 (1992), as Respondent contends. Although Lynne Conley, Manpower's branch manager, testified that Fosnaught ordered 18 operators in mid-October, the date of Manpower's letter offering its services to Fosnaught was the day of the election. It recited: "If this offer is acceptable please let us know and we will begin looking for candidates for you." The press operators started on the following Monday. In the face of the date of Conley's letter offering Manpower's services, I find her recollection in error and that Respondent accepted her offer after receiving her letter, at a time that could have been after the results of the election were known.

Respondent's need for additional workers, even if accurate, does not serve as an excuse for Respondent's substantial increase in the use of employees outside the unit to perform unit work as a substitute for unit employees. This represented a significant change from the way Respondent operated before the Union was certified; and, in light of the fact that, but for the use of temporary employees, Respondent would have had to hire additional unit employees, the Union had a right to be consulted on these staffing matters. I conclude that Respondent violated Section 8(a)(5) and (1) of the Act.

Respondent Changed Its Attendance and Tardiness Policies

Another change Respondent adopted shortly after the Union was certified was the enforcement of its attendance and tardiness policies, which resulted in a mass of warnings and terminations. The General Counsel contends that these violated both Sections 8(a)(5) and (3). Respondent admitted in its answer that it began updating its attendance and tardiness records on or about November 1, a date more accurate than Fosnaught's attempts to date that action earlier, first, shortly after he began his employment on May 19, and, second, in July, on orders from Oleson (which could not be true, because Oleson's employment began on September 15), and, third, three weeks before the election,¹⁵ all in order to supply the defense that Respondent enforced its attendance and lateness policies before the employees selected the Union as their representative and thus could not have been required by law to bargain. Respondent's answer is closer to the truth. Had Respondent prepared its updates earlier than November, it would have had attendance records for all the Union supporters it terminated prior to the election. It had none.¹⁶ Accordingly, it must have updated the records later, including all employees then employed and not preparing forms for persons who were no longer on the payroll. I find that Fosnaught is generally unworthy of belief and find that all the records, almost all of which are wholly in Fosnaught's handwriting, were prepared by him after Fults was discharged; and she was discharged the day before the election.¹⁷

Respondent's handbook contained the following "7-point SYSTEM":

****ALL EMPLOYEES START AT ZERO POINTS****

¹⁵ Fosnaught testified that he began to update the record in the "beginning of October when the vice president [Oleson] was hired on he had come to my office and said 'Hey, we need to start looking at attendance because that is very important to the company as far as, you know, lost moneys and things.'"

¹⁶ There was one possible exception. There was a form prepared for Pagel, but it was barely filled out. It did not even contain his original date of hire, nor were any points, either positive or negative, filled in. It is likely that someone began to prepare the form and then realized that Pagel had already been terminated, thus making the completion of the form unnecessary.

¹⁷ I discredit Fosnaught's testimony that the attendance summary for Janet Anderson had been started prior to his employment. The handwriting could well have been that of his assistant, Fawn Brawdy.

- | | | |
|----|---|---|
| 5 | <ol style="list-style-type: none"> 1. Add 1 point 2. Subtract 1 point 3. Subtract ½ point 4. Subtract ½ point 5. Subtract 2 points | <p>for 30 consecutive calendar days not missed for each unexcused day absent for ½ day missed or goes home sick for failure to clock in/out – late/early for failure to report absence within 4 hrs elapsed of scheduled start time</p> |
| 10 | <ol style="list-style-type: none"> 6. At -3 points 7. At -5 points 8. At 7-points | <p>A verbal warning is issued
A written warning is issued
Employee may be / is suspended without pay pending discharge</p> |

NOTES:

- | | |
|----|--|
| 15 | <ol style="list-style-type: none"> 1. ALL POINTS ARE ACCUMULATIVE OVER A 12 MONTH PERIOD |
| 20 | <ol style="list-style-type: none"> 2. POINTS ARE TABULATED WEEKLY AND ARE AVAILABLE TO ANY EMPLOYEE UPON THEIR REQUEST TO THEIR SUPERVISOR OR MOLDING MANAGER. |
| 25 | <ol style="list-style-type: none"> 3. IF AN EMPLOYEE IS AT -7-pointS OR BELOW AND IS STILL EMPLOYED WITH EPC BY THE END OF HIS/HER PROBATIONARY PERIOD, THEN HIS/HER PROBATIONARY PERIOD WILL START OVER. |

The handbook also provided that certain attendance deviations had to be documented with a green slip, which

will be completed by the employee and reviewed by the shift supervisor when any of the following instances occur:

- | | |
|----|--|
| 30 | <ul style="list-style-type: none"> • The employee is absent; • The employee punches in too early (10 minutes or more prior to the shift); • The employee punches in late (5 minutes or more after the shift starts); • The employee punches out too early (10 minutes or more prior to the end of the shift); or • The employee punches out late (10 minutes or more after the end of the shift). |
| 35 | |

In each of these instances a reason must be noted on the green slip. The employee's supervisor will indicate if the instance is "Excused" or "Unexcused" (following company policy). The employee will sign the green slip indicating he/she is aware the instance is being documented.

The handbook also contained the following attendance/tardiness policy:

Your reliability is an important part of your total work performance. When you accepted a position with EPC, you made a commitment to the company to be at work on time when you are scheduled. We cannot retain people who are unable or unwilling to function as a regular fulltime employee on an ongoing basis. Excessive absences and lateness will not be tolerated and may lead to disciplinary action up to and including dismissal. Employees' attendance records will be kept as part of the Employee Personnel file.

- A seven (7) point system [above] will be used for all hourly personnel.
- Excused absences are as follows: Jury duty with written verification, subpoenaed court appearances with written verification, approved leave of absence, and sick time with doctor's written excuse.
- 5 • You are expected to notify the company (the office or your supervisor) 4 hours or more in advance if you are going to be absent during your shift and you must give a reason for your absence.
- 10 • An employee who fails to call is for three successive days to report his/her absence will be considered to have voluntarily terminated employment with the company.
- 15 • If an absence is planned or known in advance, please refer to . . . Time Off Policy.
- Allow 4 "excused" personal days per calendar year. These are days an employee may use for unplanned absences for instances such as an illness that doesn't require a doctor's care, caring for a sick child, personal business, etc. At the end of each calendar year, an employee receives 1 point for each unused personal day.

20 In each of these instances a reason must be noted on the green slip. The employee's supervisor will indicate if the instance is "Excused" or "Unexcused" (following company policy). The employee will sign the green slip indicating he/she is aware the instance is being documented.

25 Respondent's handbook also provided for the following time off policy:

REQUEST FOR TIME OFF:

30 An employee needs to notify his/her supervisor two (2) weeks (or more) in advance of the day(s) that he/she requests off. To do this, the employee needs to complete an "Employee Time Off Request Form" . . . and get his/her supervisor's approval. Once approval is given, the form will be forwarded to the Human Resources Representative.

SICK DAY POLICY:

35 EPC's company policy allows for an employee to have five (5) excused sick days per anniversary year without pay.

40 "Excused" means that a written doctor's excuse must be presented upon return to work and/or the day(s) approved as 'excused' by company management.

LEAVE OF ABSENCE POLICY:

45 A leave of absence may be granted for good and proper cause. A leave of absence without pay may be granted to maintain continuity of service in instances where unusual or unavoidable circumstances require an employee's absence. Leaves are granted on the assumption that the employee will be able to return to regular employment at the expiration of the leave or earlier, if the condition necessitating the leave no longer exists. EPC will adhere to existing legislation at the time of the request.

50

DEFINITION:

5 Leave of absence is defined as time off from work with permission, but without pay, with the right to reinstatement and, upon return, without loss of rights earned in service prior to the leave.

REQUESTS AND APPROVALS:

- 10
- Requests for leaves should be made in writing using the Employee Time Off Request Form The employee should indicate the reason a leave of absence is desired and the approximate length of time the employee expects the leave to last. A copy of all documentation concerning the reason for the leave is also required to be submitted with the form (i.e. doctor's recommendation, notice to appear for civil or military duty, etc.). The employee should present the form to his/her supervisor for approval.
- 15
- A leave of absence up to one week may be granted by the supervisor with the concurrence of the appropriate EPC management official. Leaves longer than one week will require approval of the President. Leaves and approved extensions (except medical and military leaves) may not exceed three (3) months in duration.
- 20
- Reviews for requests for a leave of absence will take into consideration the following: length of leave, its purpose, employee's attendance record, length of service, and the needs of the company at the time the leave is required.
- 25
- 30

TYPES OF LEAVES:

35 1. Medical leave (includes Family leave).

An employee absent more than ten (10) working days due to sickness or accident are [sic] placed on Medical Leave of Absence status, provided a doctor's statement describing the conditions and the need for the leave of absence is submitted. The length of leave is to be based on individual circumstances.

40

2. Family leave.

45 Leave for the birth or arrival of children into the family, or other approved family hardship, will be for the amount needed for the individual up to a maximum of six (6) weeks.

3. Personal Leave.

50 Personal leave includes emergency, hardship, or military. Generally, requests for leave of absence for recreational and/or self-gain purposes will be denied.

4. Illness in immediate family.

5. Jury duty.

5 The General Counsel subpoenaed from Respondent all of its attendance-related
discipline issued in 2003–2004. Those records show that, prior to the election, although
Respondent may have well had a culture of pervasive poor attendance and tardiness, as the
General Counsel concedes, it only sporadically and haphazardly disciplined employees with
10 verbal warnings, written warnings, and terminations for being late, leaving work early, taking
excessive breaks, using too much sick leave, being absent without calling in (no-call, no-show),
calling in late to report an absence (i.e., less than four hours before the start of shift), and all
other forms of absence, whether excused or unexcused. Respondent did not produce in its own
defense any records prior to 2003 to show that its manner of discipline was any different from
what it did in early 2003, and I infer that its discipline was equally sporadic throughout its history.

15 Based on the records it produced, I find that Respondent disciplined no one in January
and February and the following number of employees in the following months: March, 1; April, 4;
May, 1; June, 3; July, 5; and August, 4. Before September 7 or 8, the first indication in the
20 record that Respondent had knowledge that union organizing was going on, Respondent issued
1 warning for an abuse of a break period. Four more disciplines issued before Respondent
discharged Vileta. After his discharge, Respondent issued 3 more that month; but in October,
the number increased to 17 and in November, when Respondent for the very first time applied
its 7-point system, Respondent issued 35 warnings, and an additional 18 in December and 17 in
25 January 2004, many based on Fosnaught's newly constructed (and somewhat faulty) analyses
of each employee's attendance and lateness records.

 There is no indication in the record that Respondent had ever before, in 2003 or in any
earlier year, enforced the 7-point system or even kept any records. Points were never tabulated
30 weekly and a summary was never made available to employees, as the handbook dictated. The
7-point system was thoroughly ignored. For example, on April 2, long before the Union
campaign began, a warning was issued to Kris Simoncie that she had missed 8 days of
unexcused absences since January 12, which should have added up to –8 points. But she was
not warned on account of the negative points, nor had she ever been warned before when she
reached –3 points, after three days' absence, or –5 points, after 5 days' absence, as the system
35 dictated.

 Furthermore, Fosnaught testified that, despite points being “accumulative over a 12-
month period,” any reference to the 12-month period was meaningless, because points
40 continued to accumulate from year to year and accrued negative points were never erased. So,
the negative points should have increased, unless one happily had no latenesses or absences,
in which event one was able to obtain a credit of a point each month, or did not utilize the
personal days, in which event one was able to get a credit of a point every three months.¹⁸
However, Fosnaught's interpretation could not have been accurate, because, contrary to his
testimony, there was no accumulation at all. Each of his employee summaries starts the year
45

18 Fosnaught testified that Respondent implemented changes to its handbook language on personal
days in November or December, so that an employee is entitled to a personal day for each quarter
worked and a point would be credited for each unused personal day. This was computed yearly,
50 presumably in December, despite Fosnaught's earlier testimony that the 12 months' computation would
be computed from the employee's anniversary date. How Respondent interpreted its handbook before, or
whether it even credited its employees for unused personal days is not reflected in this record.

2003 with a “zero” entry, as if the employee had never worked for Respondent before. But Paul Kelm worked as early as November 15, 1999; Carol DeVilder, June 12, 1996; Dennis Kirby, April 22, 2001; and Ronald Duncan, September 28, 1998; yet each strangely began the year 2003 with no credited balance and no debits. I find obvious that the 7-point system was never used.

The complaint alleges that its tightening up and enforcement of its attendance policies after the Union’s certification violated both Section 8(a)(3) and (5). Respondent first utilized its 7-point system on November 7. Various supervisors on that date and the following dates distributed warning notices based specifically on the 7-point system to the following employees: November 7, Chris Corcoran, Tara Thompson, Jonathan Johnson, Harold Brueklender, Joshua Clark, Deb Huntington, Dawn Hughes, Deb Gulling, Karen Singleton, Richard Phillips, Dustin Byers, Shawn Stevens, and Joanna Sartor; November 10, Scott Clark, Olson, Joshua Stogdill, and Dennis Kirby; November 11, Janet Leuze; November 13, Michael Brown; November 21, Jeff Van Tomme and Corcoran (again); November 22, Brett Gatiss; November 24, Olson (again) and Crystal Cady (not only a warning but also a second document terminating her); November 25, Goodrich and Stogdill (again); November 26, Greg Kicklighter and Jason Vernier; December 8, Darrin Yilek; December 15, Vernier (again) and Rhett Purser; December 16, Thol Toeun, Brenda Atkinson, and Susan Hopper; December 31, Adam Nowotny, Phil Mercer, Hopper (again), Tanya Burtlow, Atkinson (again), and Penny Stevens; January 6, 2004, Mercer (again), Penny Stevens (again), Russell Callison, Michelle Benson, and Rebecca Bradley; and January 7, Dustin Baker, William Gragg, and Benjamin Doyle.

In addition, Fosnaught started to time the breaks taken by employees, resulting in warnings on November 3 to Corcoran (the day he first wore a Union T-shirt) and Lisa Bossard and Shawn Stevens on November 5. This began what was a concerted effort by supervisors to time employees’ breaks, resulting in a warnings on December 2, to Antoinette Wallace; on December 2 and 5, to Purser; on December 11 to Antonio Viramontes; and on January 14, 2004, to Jason Jolley.

Richard Phillips was terminated on November 24 “for being late excessively,” the termination notice stating, “your attendance has been tracked up to 11/6/03,” thus demonstrating Respondent’s new use of its 7-point system.¹⁹ Cady was terminated on November 24 for having –12 points, essentially without warning, because the other warning earlier that day was for –6 points through November 5, a point figure that was then brought up to date in the later termination. Dan Davis was terminated on December 5, without prior warning, for being “beyond the allowed points set up in our handbook.” The termination of Brown on November 21 was based in part on Respondent’s unlawful utilization of its warning under the 7-point system of November 13. Similarly, Respondent relied on its unlawful warning of November 24 when it terminated Olson on December 1.²⁰ Other employees who fall into the same category, terminated as a result of earlier warnings under the 7-point system, are Johnson

¹⁹ Respondent contends that Fosnaught noticed that Phillips had not lived up to his agreement not to be a no-call, no-show. There is no such testimony.

²⁰ Respondent correctly contends that it had warned her on October 6 that she had used all her sick days and that further missed days or tardinesses were punishable up to and including termination. Olson missed two shifts the Sunday and Monday following Thanksgiving to care for her daughter, who suffered first, second, and third degree burns in a household fire, for which Olson was terminated. However, Respondent did not present witnesses credibly testifying that she was fired because she had not complied with the earlier warning. Instead, Respondent terminated her based solely on its newly enforced attendance policy, to wit, a warning on November 24.

(November 10),²¹ Byers (terminated on December 4), Stogdill (December 11), Vernier (December 18), Atkinson (January 5, 2004), Van Tomme (January 6), Scott Clark (January 7), Doyle (January 8), and Bradley (January 8)

5 Rather than the continued enforcement of its handbook rules, Respondent's utilization of its 7-point system after the Union was certified was completely new, the same as if there were nothing written in its handbook. Thus, its adoption of this system, being a substantial change in the employees' terms and conditions of employment, required notice to the Union and an opportunity for the Union to bargain about the new rules. *Roll & Hold Warehouse & Distribution Corp.*, 325 NLRB 41, 42 (1997), *enfd.* 162 F.3d 513 (7th Cir. 1998). When the Union heard about Respondent's conduct, it wrote Respondent on November 10 complaining about its implementation of a retroactive absentee policy and requesting bargaining. At the following day's negotiations, Respondent stated that it was reviewing its absentee record [which included latenesses] back to the beginning of the year "and catch everybody up and start disciplining." Walker said that Respondent could not do that—"You just can't go back and whack 'em."—noting that there was a progressive discipline procedure.

20 Walker's plea was unavailing. Respondent not only implemented its 7-point system but also began to warn its employees for each and every absence and each and every lateness, even the slightest of one minute,²² with a vigor and intensity never seen before, picking up violations that had been regularly and routinely ignored or tolerated, with sporadic and minor exceptions, throughout the previous 10 months and, for all that this record suggests, had never been enforced. I conclude that Respondent's overall enforcement of its 7-point system and of the amount of time that its employees could take their breaks was a changed term and condition of employment, as to which Respondent was bound to give notice to the Union and bargain with it before effectuating. By not giving the Union an opportunity to bargain, Respondent violated Section 8(a)(5) and (1) of the Act.

30 I also conclude that its greater scrutiny and stricter enforcement arose from its Union animus and its desire to retaliate against all its employees, in violation of Section 8(a)(3) and (1) of the Act. *Schrock Cabinet Co.*, 339 NLRB No. 29, slip at 2-3 (2003). This is evidenced by the timing of the warnings, beginning on November 7, one week after the Union was certified. (At the very earliest, assuming the truth of Fosnaught's assertion that he did not begin working on the employees' attendance charts until directed to do so by Oleson, Fosnaught began after the commencement of the employees' union activities, because Oleson was not first employed until September 15 and the Union filed its petition for an election on September 11.) The timing of Respondent's new scrutiny is sufficient to support a finding of a Section 8(a)(3) violation. *Toll Mfg. Co.*, 341 NLRB No. 115, slip op. at 2 (2004); *La Gloria Oil and Gas Co.*, 337 NLRB 1120, 1123 (2002), *enfd. mem.* 71 Fed. Appx. 441 (5th Cir. 2003).

40 That finding is also supported by Respondent's utterly vindictive actions, so disparate from its conduct before the Union was elected as the employees' bargaining representative. The

45 ²¹ Johnson was rehired after the Union struck on January 25, 2004. He was warned for absenteeism and lateness on February 27 and March 8, 2004, respectively, but the record does not reveal that he was terminated again.

50 ²² Under Respondent's own handbook, a tardiness of less than five minutes is not even classified as an attendance deviation requiring documentation by a green slip. I credit the testimony of many of the employees who blamed their latenesses of a minute or two on the facts that the time cards were haphazardly shelved, sometimes five deep, and that there was a crowd of employees clocking in and out at the same time. Fosnaught guessed that in perhaps September or October, Respondent added a time clock and a new rack for time cards.

new warning notices spelled out for the employees their standing on the 7-point scale and warned, with two exceptions, that any more attendance issues might result in the termination of the employee. One warned Vernier, even though he had only $-5\frac{1}{2}$ points. Two warned employees Goodrich and Stogdill that they had no more chances: they would be terminated if they were one minute late. As found above, Cady was first warned on November 24 that as of November 5 she had -6 points. Apparently, Fosnaught continued his review of her records and, updating her records, found later that day that she had -12 points, for which she was immediately fired, despite the fact that she had not been guilty of any additional conduct for which she had been warned earlier that day. The warning in the first notice was thus meaningless. Similarly, Richard Phillips heeded the written warning that was originally given to him on November 7. He also heeded the oral warning from Prim, who told him that, if he was late to work again, he would be terminated. Phillips was terminated on November 24 for "being late excessively," despite the fact that he was not late again, nor was he absent from work, after the initial warning. Respondent had merely reviewed his records from October 22 and found that he had been late (3–9 minutes) five additional times.

Tony Stevens, an open Union supporter, was terminated on or about January 7, 2004, for using "too many sick days" as a result of neck surgery, despite his submitting a written doctor's excuse that, under Respondent's attendance policy, should have excused him, with no points assessed. (Instead, Respondent assessed him at least six negative points.) It is true that Respondent's handbook states that an employee is entitled to a maximum of five days of sick leave per year. However, as noted above, Respondent also provides for medical leave when employees working at least 1250 hours the preceding 12 months have missed 10 or more days due to sickness, as long as a doctor's statement is submitted. Stevens did not have enough past employment to take advantage of a medical leave, but neither did Sumner, whom Fosnaught offered to cover under the medical leave provisions. There is no record of Respondent ever having terminated an employee for exceeding its sick-day rule prior to the Union's certification. In fact, the record uniformly demonstrates that Respondent did not enforce its handbook. For example, Kathy Williams was sick at least 23 days and was not terminated. Russell Callison, Dustin Cooper, and Ron Duncan were not terminated, despite at least 8 days' absence. Karen Singleton was sick at least 6 days early in her employment, yet was not disciplined. Sumner, however, was unlawfully terminated on November 20 for absences relating to his ongoing illness.

These incidents of disparity are the norm, not the exception. Fosnaught's computation of Williams's absentee record resulted in an astounding -31 points by October 27 (it was -32 the next day), for which she was given a written warning with the threat that further absences could result in her being terminated. Johnson was similarly warned on November 7 for having -18 points. On the very same day, Respondent issued similar warnings to, among others, Tara Thompson, who had only -6 points, and Deb Huntington and Dawn Hughes, both of whom had $-6\frac{1}{2}$ points.

Prior to the Union organizing drive, as stated above, Respondent sporadically warned and otherwise disciplined employees for, among other things, tardiness, absence, and taking too long breaks and leaving work early. But, as also noted above, Respondent never issued so many warnings and terminated so many of its employees, within such a short period, as it did immediately after the Union won the election. The General Counsel has made a sufficient prima facie case under *Wright Line* of a violation of Section 8(a)(3), by his demonstration of the timing of Respondent's actions, as well as by showing how disparate its discipline was. Respondent argues that, in light of the fact that the Union had just won the election and gained a one-year protection from any challenge to its majority status, it made no sense that Respondent would attempt to discourage union activity. To the contrary, Kargarzadeh meant to show the

employees exactly who was the boss. He would no longer permit Respondent's rules to be violated. All employees had to comply, even though some neutral or antiunion employees were also disciplined in the process. *Davis Supermarkets, Inc. v. NLRB*, 2 F.3d 1162, 1168-1169 (D.C. Cir 1993), cert. denied 511 U.S. 1003 (1994). In this circumstance, it was not necessary
5 that the General Counsel show that Respondent was aware of the pro-union sentiments of each disciplined employee in order to establish a Section 8(a)(3) violation, as long as he showed that the increased discipline was part of a mass discipline, as here, "for the purpose of discouraging union activity." *Birch Run Welding & Fabricating, Inc. v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985); *Merchants Truck Line, Inc. v. NLRB*, 577 F.2d 1011, 1016 (5th Cir. 1978); *M.S.P. Industries v. NLRB*, 568 F.2d 166, 176 (10th Cir. 1977).
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Because the General Counsel made such a showing of unlawful motive, it then behooved Respondent to show, by a preponderance of the evidence, that it would have taken the same action as it did, even in the absence of the employees' Union activities. Oleson
15 testified that two to three weeks after he was first employed, which would place the event at the end of September or the beginning of October, he noticed that Respondent had a serious problem with having enough employees running the presses. He questioned Fosnaught about whether there were not enough employees to work or whether employees were simply not showing up for work. Fosnaught and all the supervisors told Oleson that not enough people
20 were showing up, so Oleson asked Fosnaught why and he answered that he had not updated the attendance records, that there were employees who continually did not show up, and that nothing was done about them. As a result, Oleson asked Fosnaught to update all the attendance records.

25 However, my review of this time period indicates no abnormal absenteeism that might have prompted Oleson's concern. Indeed, the generality of his testimony, unsupported by specifics as to which machines has been left unattended, as well as the lack of corroboration from any of the supervisors, and finally the discrepancy between his testimony and the actual dates of the preparation of the attendance sheets, leads me to the conclusion that his testimony
30 is not credible. I refuse to believe or credit it. It is well settled that, when the asserted reason for an action fails to withstand scrutiny, the Board may infer that there is another reason—an unlawful one which the employer seeks to conceal—for the discipline. *Shattuck Denn Mining Corp.*, 362 F.2d 466, 470 (9th Cir. 1966); *Painting Co.*, 330 NLRB 1000, 1001 fn. 8 (2000), enfd. 298 F.3d 492 (6th Cir. 2002). I so infer. In any event, Respondent has not met its burden of showing under *Wright Line* that it would have enforced its absenteeism and lateness policies,
35 including its 7-point system applying to the entire unit, in the absence of the election results. Accordingly, I conclude that Respondent violated Section 8(a)(3) and (1) of the Act.

I specifically include in this conclusion of law the discharges of Corcoran and
40 Hautekeete. On November 3, Fosnaught watched employee Corcoran, a known Union supporter who wore a pro-Union T-shirt to work, as he took and while he was taking his break and then issued a written warning to him for returning from break three minutes late. Then Respondent gave him his 7-point system warning on November 7, followed by a warning on November 16 for clocking in two or three minutes late, despite Prim's consent to Corcoran's
45 taking a 15-minute lunch instead of a 30-minute lunch to make up for the tardiness and despite the fact that Corcoran actually took 15 minutes less for lunch. A week later, he was disciplined for a broken dye meter, for which he was not trained and, in any event, Fosnaught conceded was not Corcoran's fault. Finally, he was discharged on December 1 for failing to find a die for a press, which he could not find although he looked for it, and failing to tell Razizadeh that he
50 could not find it. That was the only reason of the entire bunch that might have had any validity, had Respondent produced any credible proof. But Fosnaught commented, in support of the discharge, that Corcoran had had numerous write-ups and had just been written up the prior

week because of the broken dye meter, that this was his second write-up for job performance and he was going to be terminated. From the word "numerous," I find that Fosnaught included the discipline which resulted from its newly enforced attendance policy and that he would not have terminated Corcoran but for that unlawful discipline.

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Another open Union supporter, Hautekeete, was a process technician on the third shift, a high paying position involving increased responsibilities and skills. He overslept twice in four days, December 6 and 10 and was a no-call, no-show, but received no warning or even criticism from his supervisor, Jeff Slagle, who did not testify. He did, however, receive a written warning on December 9 for leaving a soda bottle with water in it on his press, even though that was permissible according to Respondent's handbook ("Drinks such as water and soft drinks in securely covered containers are allowed.")

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His downfall occurred the next Saturday, December 13. During that week, Slagle had asked him to work that Saturday, and Hautekeete declined to do so, as he had also declined Kargarzadeh's request the prior Saturday, because that would have been the seventh day in a row of work (false, because of his no-show that week and, inaccurate, because Slagle offered him Friday off instead) and he had a previous commitment. Nonetheless, Slagle put his name on Saturday's schedule, and Hautekeete again advised Respondent, through Coomes and a first shift process technician, that he would not work. And he did not. On Sunday, he was going to work; but his ride to work did not show up. Hautekeete did not own a car, and so he walked to a pay phone, told supervisor Nigel McGinnis what had happened, and said that he would walk the mile and one-half to work and was on his way. McGinnis said that he would pick him up at the gas station from which he was calling. McGinnis arrived, but instead of taking Hautekeete to work, he took him to Hautekeete's apartment, telling him that Razizadeh said that Hautekeete was not needed that night, but should report to Fosnaught's office the next morning.

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As Hautekeete was waiting to see Fosnaught the next day, Slagle told him that he thought Razizadeh was firing Hautekeete for "something to do with your attendance." When Fosnaught appeared, he said "If you woulda come in last night . . . we had a warning for you about your attendance." Hautekeete explained how he had been told not to come in. Fosnaught said that he knew nothing about that. They waited for Razizadeh to arrive, and Hautekeete explained that he had been working six days a week for months (I note, however, only five days, because of his two unexcused absences), one time even seven. Razizadeh joined the meeting and questioned Hautekeete about his absence on Saturday night. After Hautekeete explained the situation, that he did not want to work a seventh day in a row, Razizadeh stated that he did not want Hautekeete to work there anymore and left.

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Hautekeete's testimony reveals that he was terminated because of Respondent's dissatisfaction that he refused to work on Saturday night, as he was assigned to do. Testified Hautekeete, "I was pretty much told that I was being terminated because I didn't come in that Saturday night." That smacks more of deliberate insubordination, rather than a mere failure to show up when assigned. On the other hand, after Razizadeh left the meeting, Fosnaught, by Hautekeete's request, clarified that the attendance issues for which Hautekeete was being terminated encompassed the two weeks immediately prior to the termination, to wit, his two no-shows and then his conduct on Saturday night, calling in at 10:45 p.m., which was "too late to call in." In fact, Hautekeete had made clear that he was not willing to work that night the day before and so told Coomes and the technician, neither of whom rebutted that testimony.

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Accordingly, I conclude that Respondent was merely enforcing its new attendance policy. By doing so, it violated Section 8(a)(3).²³

Transfers of Employees

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As of early December 2003, Kargarzadeh also owned and operated a plastics company, Pella Plastics, in Pella, Iowa, which was nonunion and which Kargarzadeh had an agreement to sell to another company, Clarion Technologies. Nonetheless, at that time, Respondent transferred to Pella Plastics Melinda Davis, Bennett, Randall Emery, Richard Miller, Kristal Miller, and Kathy Miller, without any notice to the Union, giving it an opportunity to bargain. Oleson's defense to the Section 8(a)(5) allegation is that the employees asked for the transfer, which was correct regarding Emery and the Millers, but not Davis and Bennett. More importantly, the Union never indicated to Respondent that it was acceptable that bargaining-unit employees be transferred out of the unit to a different company, nor did the Union waive its right to bargain on behalf of these employees. The General Counsel cites no legal authority for his position, and I have found no decisions directly on point. Respondent looks at the issue as one of relocation of bargaining-unit work, to be decided with the guidance of *Dubuque Packing Co.*, 303 NLRB 386, 391 (1991), *enfd.* in relevant part sub nom. *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993); but, here, unit work was not transferred. Unit employees were transferred, to another unit; so *Dubuque Packing* is inapposite.

The issue here is whether, with the transfer of these employees, the Union has some interest, that is, whether there is something that the Union can bargain about or, put another way, whether the transfer is amenable to bargaining. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 210-211 (1964). I conclude that it is. For example, the Union, in representing all the bargaining-unit employees, might have believed that different employees should have been given the chance to move to Pella Plastics. Perhaps some lived closer to Pella than the Millers and had wanted to move, expressing their desires at an earlier date. Or perhaps the choice of a move should have been made on the basis of seniority, particularly regarding Davis and Bennett, as to whom there is no credible evidence that either wanted to move but were forced to move. In fact, as to them, the transfer was more in the form of a layoff, which, as held below, cannot be effected by Respondent's unilateral action. *Westinghouse Electric Corp.*, 206 NLRB 812, 822 (1973), *enf. denied* on other grounds 506 F.2d 668 (4th Cir. 1974). I conclude that Respondent, by not giving the Union notice and an opportunity to bargain, violated Section 8(a)(5) and (1).

I also conclude that Respondent transferred Davis, a Union stewardess, and Bennett in violation of Section 8(a)(3) and (1) of the Act. How Bennett arrived at Pella Plastics, from Respondent's viewpoint, is unconvincing. Coomes testified that he had heard from Oleson (who did not testify about this) that she wished to be transferred. He added that Bennett had told him that she wanted to go back to Pella Plastics, where she had previously been employed, and that would mean a shorter drive and reduced gas costs. That is totally improbable. Bennett had recently moved to Newton, Iowa, which was a 20-30 minute drive to Respondent's facility,

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²³ In so doing, I find that Fosnaught's records of Hautekeete's attendance probably were inaccurate, charging him for missing two holidays for which work was not scheduled (Memorial Day and Labor Day); two dates for which Respondent had no indication of their excused or unexcused status (April 17 and 21); and a Saturday for which Hautekeete was not scheduled (August 30). I also specifically do not credit Fosnaught's testimony that he showed Hautekeete his record of absences. Hautekeete denied that, and most employees denied, contrary to Fosnaught's testimony of his general practice, that they were ever shown those records to check them for their accuracy.

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whereas Pella Plastics was about 45 minutes to an hour away. She testified that she was “a little mad,” when told about her transfer; and I have no reason to doubt her. Furthermore, in addition to crediting her, it follows that Coomes lied.

5 The reason that Coomes lied was that he was intricately bound up in the story of her transfer and Davis’s. On about December 2 or 3, Coomes complained to Marvin Burkett, a Union committeeperson, that Davis was talking to Emery about signing a union card at his press and that Respondent did not condone that during working hours. (Davis’s lead operator, Rachel Guthridge, also observed the same incident.) Burkett said that he had already talked to her
10 about that, telling her that she was not supposed to do it during working hours. Within a day or two, on Thursday, December 4, Coomes, mimicking conduct he used in his unlawful attempt to get rid of Fults, assigned Davis to a console press, which she had not worked on for about two months and which, when she did work on it, she was able to do so for only an hour before being removed because she could not keep up with it. Davis complained to Fosnaught, without
15 success,²⁴ and continued to work on the same press on Friday, through tears, because she could not keep up with the machine.²⁵

 On Monday, December 8, Razizadeh told her that she was being transferred to Pella Plastics. She said that she could not be transferred because she did not drive to work, that
20 Bennett was her driver, and that she was happy in Grinnell. Nonetheless, ten minutes later, Kargarzadeh repeated that she was being transferred. Davis repeated that she did not want to be transferred because Bennett was her driver and she was happy where she was. He asked who was Bennett, and she pointed at her. He said that she would be transferred, too. At no time did Razizadeh or Kargarzadeh counter Davis’s objections with a comment that they had thought
25 that she had requested to be transferred. In fact, the circumstances surrounding her alleged request were never set forth directly by Oleson or any witness to the request. I find that there was no such request.

 Without there being a request for a transfer, the record is barren of any reason for the
30 transfer. Once again, *Shattuck Denn Mining Corp.*, 362 F.2d at 470, authorizes an inference that the reason for the transfer was an unlawful one which Respondent attempted to conceal, an inference particularly appropriate in light of the statement made on December 10 by Karen, Clarion’s human resources representative, who asked Davis if she was “going to try and
35 organize a union in there also,” a clear indication that Respondent had told Clarion that Davis had been a Union stewardess or that she was attempting to get a Union authorization card from Emery. Furthermore, both Davis and Bennett were good press operators (Coomes testified that they were worthy of rehire); and, from mid-November 2003 to March 2004, Respondent had been running its Grinnell plant six days a week, and sometimes seven, just to meet daily shipments and customer demands and had been hiring press operators off the street.
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 Finally, despite Fosnaught’s untruthful testimony that these two employees were merely transferred, Bennett’s personnel file indicates that she was terminated. In fact, they were sent to Pella Plastics with the knowledge that it was going to be sold to Clarion, as it was on December 10 (Kargarzadeh knew of the pending sale at least a month before), thus putting these two
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²⁴ Davis testified that she was so upset that she “spouted off” that she would like to be transferred, but there is no evidence that anyone heard her.

²⁵ Fosnaught did not deny this testimony. Instead, he alleged that he traveled to Pella Plastics on
50 December 10, and Davis “came running up” to and “grabbed ahold” of him, pronouncing that she transferred to Pella Plastics and that, if she did not like it, she was going to run to the Union and get her job back in Grinnell. I find his testimony improbable and discredit it.

employees out of Respondent's control, a de facto termination. Furthermore, at the time of the sale, Respondent transferred Dan Jones and maybe three or four other machine operators from Clarion to it. Davis's termination clearly resulted from her union activities. Bennett, only a Union card signer, became ensnared in Davis's unlawful termination. I conclude that both were transferred and lost their jobs with Respondent in violation of Section 8(a)(3) and (1) of the Act.²⁶

Layoffs of Employees

The complaint alleges that Respondent unlawfully laid off other employees. Respondent notified Robert Waddell on November 28 that his position was "eliminated." His termination notice, signed by him, indicated that Respondent offered him an operator's position. The record is silent about his response to that offer. Respondent laid off Vernon Vanderleest on December 5 due to, according to its answer, "loss of business." Respondent laid off Burkett, a strong Union supporter, the Union's observer at the election; and a member of the Union's negotiating committee, on December 7, for loss of business. Although the General Counsel complained that he should not have been laid off, because two other employees, Kenny Garnett and Jeremy Dohse, had less experience as a mold setter and others had less seniority than he, only the latter was correct. In fact, all the mold setters had more experience than Burkett as a mold setter, albeit crediting their experience at other companies; and Respondent persuasively showed that they performed their jobs more capably than Burkett.

Respondent laid off Bryan Keegan in late December because he was a carpenter hired to work with contractors to add restrooms, a new office, and a break room, and his work was completed. John Thompson worked in maintenance and was laid off on January 2, 2004, according to Fosnaught, because Respondent was downsizing and he was no longer needed (Fosnaught said that Thompson might be called back if things picked up) or terminated for insubordination, according to Respondent's answer. This occurred shortly after he had questioned why he had not received holiday pay for Christmas and why he had not yet received his promised 90-day evaluation and raise.²⁷

Layoffs are mandatory subjects of bargaining. *Tri-Tech Services, Inc.*, 340 NLRB No. 97, slip op. at 2 (2003); *Falcon Wheel Division LLC*, 338 NLRB No. 70, slip op. at 1 (2002). Except for Keegan, Respondent had a duty to notify and bargain with the Union as to whether there should be a layoff, who should be selected, and what the effects of the layoff should be. *Ladies' Garment Workers Local 512 v. NLRB*, 795 F.2d 705, 710-711 (9th Cir. 1986); *Tim Foley Plumbing Service*, 332 NLRB 1432 fn. 1 (2000), citing *Garrett Flexible Products*, 276 NLRB 704,

²⁶ On December 11, Clarion assigned Davis to work at its cement plant, heavy labor that Davis felt she could not handle. She quit, and Bennett had to take her home, accruing a point under Clarion's attendance policy. The next day, before reporting to Clarion, Bennett telephoned Fosnaught but was unable to reach him. She was told, however, by the person answering the phone that Fosnaught was busy and that it was Kargarzadeh's position that "anybody from Pella is not allowed on the property or he will call the cops." Bennett stayed at Clarion for a few more days. On Tuesday, December 16, she complained to Karen that she was assessed a whole point, rather than one-half, when she took Davis home on December 11. In turn, Karen said that Bennett had an "attitude" since Davis quit, to which Bennett responded that she thought that Clarion's assignment of Davis to the cement plant was "crap." Karen stated that either Bennett's attitude had to change or she could clock out and never come back. Bennett refused to promise that her attitude would change, and she was terminated.

²⁷ Contrary to Respondent's brief, Thompson was not hired as a temporary employee. He was told that his employment "might be short term might not be short term." After he passed his probationary period of 90 days, he could be hired full time.

706 fn. 4 (1985). As to them, Respondent did not fulfill its duty. All these layoffs were without notice to the Union and without giving the Union an opportunity to bargain.

5 The only evidence of some kind of notice and bargaining was that, a month before, on October 30, the day after the Union was certified, Oleson telephoned Walker, advising that, because of the loss of work for Lennox, he foresaw a possible layoff of 50–70 employees. He wanted the Union’s input about how to accomplish the layoff. Walker said that temporary employees would go first, then probationary employees, and then employees would be selected by seniority, junior people being laid off first. Walker then mentioned recall rights, that 10 customarily the Union had provisions for recall during the next three to five years. On the same day, Oleson sent Walker a letter detailing his method of implementing the layoff. Walker called him two days later to complain about specifics contained in the letter; but Oleson interrupted that he thought, because of attrition, there would be no need for a layoff after all.

15 Because the possibility of a layoff became moot, there was no further discussion of this matter. Thus, there was no agreement about the procedure for a layoff,²⁸ nor did the Union waive bargaining, as Respondent contends. Contrary to Kargarzadeh’s assertion in answer to my questions, there is no evidence that the Union had been given notice of the layoffs or 20 eliminations of the positions of these five employees and that the Union had indicated that it “had no problem” with each of them. Regarding Keegan, however, there is no proof that he was not hired as a temporary employee; and his job functions were completed. Respondent had no duty under the Act to bargain with the Union about his term of employment. Temporary employees were specifically excluded from the unit. I dismiss the Section 8(a)(5) allegation regarding him. As to the four other laid off employees, who were either told that if business 25 remained good Respondent would bring them into the department, and thus were not temporary employees, or were laid off for reasons unrelated to their alleged status of being temporary employees, such as “loss of business,” I conclude that Respondent violated Section 8(a)(5) and (1) of the Act.

30 The Section 8(a)(3) violations are grounded on the fact that, in part, at the time of the layoffs, Respondent was running advertisements through the Iowa state website for the Iowa Work Force Development office for press operators (the original order was placed on November 24), had contracted with Manpower for the 18 press operators and, between October 31, 2003 and March 22, 2004, hired 50–60 people off the street, with about 25 of these new hires still on 35 the payroll as of March 22. From at least November 2003 through March 2004, Respondent was operating six days a week, sometimes seven, just to meet its daily production demands. Regarding Burkett, he complained to the Union, which complained to Oleson, resulting in Respondent’s offer and Burkett’s acceptance of a position as a third-shift press operator at substantially less than he was previously earning, which he accepted and performed until the 40 strike began on January 25, 2004. After Burkett returned to work as a press operator, he saw for the first time Rachel Guthridge (who was not classified as a mold setter) doing mold setting.

45 As to all these laid off employees, the Counsel for the General Counsel cogently contends that, even if Respondent accurately asserted that its layoffs (or terminations) of Waddell, Vanderleest, Keegan, Burkett, and Thompson were motivated by legitimate business concerns, the fact that these employees were not offered the unskilled positions being

50 ²⁸ The General Counsel correctly contends that, even if the Union were found to have agreed to Respondent’s proposed terms for staff reduction, Respondent did not even follow its own proposed terms because it never terminated its Manpower employees, whom Respondent claims were temporary, and disregarded the skills and seniority of its employees.

simultaneously meted out daily to people off-the-street and inexperienced temporary employees provides a basis for a finding that the terminations were motivated by animus toward the bargaining unit's union activities. I agree, except for Waddell, who was offered such employment. Certainly, the General Counsel has presented a prima facie case of discrimination against the other four employees for electing the Union as their bargaining representative, particularly with the testimony that Guthridge was performing Burkett's work and Respondent hired a new maintenance employee, Don Phillips, after it had laid off Vanderleest, Keegan, and Thompson, without having given the laid-off maintenance employees an opportunity to return. Nothing that Respondent introduced explained that it would have laid off or terminated these four employees, but for the activities of all the employees in electing the Union. In fact, in later February or early March, Respondent laid off another maintenance employee and gave him a job as a press operator. Respondent has not met its burden of proof or persuasion under *Wright Line*. I conclude that Respondent violated Section 8(a)(3) and (1) of the Act as to all of the laid off employees.

The Union's Request for a Tour and Demand for Information

The complaint in Case 18-CA-17139 alleges that Respondent also violated Section 8(a)(5) by failing to permit the Union to tour its facility and failing to supply to the Union requested information. Prior to December 2, at negotiations, the Union asked for a plant tour. It reiterated its request in letters, dated December 19 and January 23, 2004. Walker explained:

[W]e've had some safety concerns. We'd like to see the general layout and also when we are negotiating we like to have a feel for what we're negotiating so we'd like to be in the plant so we can kind of see how it works. It makes it difficult to negotiate an agreement without, you know, realizing exactly how they do things. Our primary concern is our responsibility to the membership and safety to start with.

In fact, on November 14, the Union complained to OSHA of various safety problems, including a gas line break, exposed high voltage wire, and fire hazards, resulting in a visit to the facility in December by Union Vice-President Johnson and an agent of OSHA. Kargarzadeh refused them admittance. The Union's request for a tour was repeated at each and every bargaining session. Respondent's consistent response was: "Not at this time. We know you are entitled to it."

In *Holyoke Water Power Co.*, 273 NLRB 1369, 1370 (1985), enfd. 778 F.2d 49 (1st Cir. 1985), cert. denied 477 U.S. 905 (1986), the Board reaffirmed that "health and safety conditions are a term and condition of employment about which an employer is required to bargain on request" and that "Clearly, health and safety data is relevant to [a union's] representation obligation," citing *Minnesota Mining Co.*, 261 NLRB 27 (1982). But the Board also ruled that "an employer's right to control its property is a factor that must be weighed in analyzing whether an outside union representative should be afforded access to an employer's property," citing *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956). 273 NLRB at 1370.

The Board held that the union had to make more than a mere showing that the information sought was relevant to its proper performance of its representational duties. That alone does not obligate an employer "to open its doors." *Id.* Instead, each of the two conflicting rights—the right of the employees to be responsibly represented and the right of the employer to control its property and ensure that its operations will not be interfered with—must be accommodated. The Board then established the following balancing test for determining whether an employer's denial of a union's access to its premises violated Section 8(a)(5) of the Act:

5 Where it is found that responsible representation of employees can be achieved only by the union's having access to the employer's premises, the employer's property rights must yield to the extent necessary to achieve this end. However, the access ordered must be limited to reasonable periods so that the union can fulfill its representation duties without unwarranted interruption of the employer's operations. On the other hand, where it is found that a union can effectively represent employees through some alternative means other than by entering on the employer's premises, the employer's property rights will predominate, and the union may properly be denied access. [Id.]

10 Here, there has been a showing that the safety and health concerns can be addressed only by an examination of the plant. *Hercules, Inc.*, 281 NLRB 961, 961 (1986), enf. 833 F.2d 426 (2d Cir. 1987). Furthermore, there was a need for the inspection based on the Union's recent assumption of the representation of the employees. See generally *C.C.E., Inc.*, 318 NLRB 977, 978 (1995). I note that at no time has Respondent contended that the Union is not entitled to the inspection it requested. To the contrary, Respondent conceded that the Union was entitled to it. I conclude that Respondent violated Section 8(a)(5) and (1) of the Act in this respect.

20 On December 2, the Union requested "any and all evidence the Company used in terminating" employees who were terminated since the election, with particular emphasis on those who were terminated for violating of Respondent's newly enforced absenteeism policy. In its letter of December 19, the Union also charged that Respondent "may be unfairly administrating their attendance policy." The Union demanded "a copy of every employee's record showing how and when they are charged points, and how and when points are taken off." Respondent supplied some records on January 5, 2004, but the Union complained on January 9, with a follow-up letter on January 23, that the records did not include the green slips, which were supposed to be signed by supervisors, either excusing or not excusing tardinesses. The General Counsel subpoenaed them, and several batches were produced at the hearing and referred to in the Official Transcript, although the slips were not offered in evidence. Thus, it is clear that Respondent withheld from the Union material, which was relevant, and material to the discipline that Respondent was meting out. I conclude that Respondent violated Section 8(a)(5) and (1) of the Act.

35 Discharge of Union Shop Steward Bregar

40 Bregar, a Union shop steward, was discharged on January 25, 2004, for "sabotage" ("conduct which seriously jeopardizes the welfare of the company or another person," according to Respondent's handbook) for telling employees "not to work overtime." Fosnaught represented that Respondent had statements from a person, but refused to show them. As a result of Bregar's discharge, the third shift employees struck Respondent, a strike that was still going on at the time of the hearing.

45 The General Counsel's case is premised on the fact that Bregar never told employees not to work overtime; rather, he told them not to volunteer for overtime. Overtime was voluntary. When overtime was available, an employee had the right to volunteer. Volunteers would work overtime, unless Respondent could get no volunteers. In that event, Respondent then designated employees to work overtime. The employees so designated had to work the overtime that they were assigned. Bregar did not tell those assigned employees not to work overtime, nor did he tell employees that they were not to work mandatory overtime.

Specifically, Bregar testified that he told Angela Laird the week before he was terminated, in reply to her question about how the contract was going and about the possibility of a strike, that, if the employees were going to go on strike, they would not want to volunteer for any overtime. If the employees volunteered for overtime, that would help prolong the strike (because Respondent would build up its stock of inventory). The written statement that Laird, who appeared very antagonistic to the Union, gave to Fosnaught, although not precisely in accord with Bregar's recollections, is clear on one item: Bregar said only "Do not volunteer for any overtime at EPC." Her testimony similarly confirmed that Bregar did not threaten her, nor did he suggest that she not work mandatory overtime.

The distinction between mandatory and voluntary overtime is particularly meaningful.²⁹ Board law holds that employees who engage in partial strikes lose their Section 7 protection. A partial strike is a concerted attempt by employees, while remaining at work, to bring economic pressure on their employer by, among other actions, refusing to work mandatory overtime. E.g., *C.G. Conn, Ltd. v. NLRB*, 108 F.2d 390 (7th Cir. 1939); *Valley City Furniture Co.*, 110 NLRB 1589 (1954), enfd. 230 F.2d 947 (5th Cir. 1956). To the contrary, refusal to work voluntary overtime is not an unprotected partial strike. *St. Barnabas Hospital*, 334 NLRB 1000 (2001), enfd. mem. 46 Fed. Appx. 32 (2d Cir. 2002); *Jasta Mfg. Co.*, 246 NLRB 48, 49 (1979), enfd. mem. 634 F.2d 623 (4th Cir. 1980); *Dow Chemical Co.*, 152 NLRB 1150, 1151-1152 (1965). See also *Riverside Cement Co.*, 296 NLRB 840, 841 (1989). Thus, while an employee may not ask other employees to refuse to work mandatory overtime, the request to decline voluntary overtime is protected and concerted activity. Respondent's termination of Bregar for this request violated Section 8(a)(1) of the Act. In light of this conclusion of law and the fact that the remedy would be the same, I find it unnecessary to consider whether Respondent also violated Section 8(a)(3), as the complaint alleges.

Remedy

Having found that 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. Respondent having discriminatorily discharged or otherwise terminated or laid off or transferred employees Danny Warndorf, John Vileta, Gregory Cooper, Tem Yom, Alisa Fults, Travis Pagel, Albert Bregar Jr., Marvin Burkett, Brenda Atkinson, Rebecca Bradley, Michael Brown, Dustin Byers, Crystal Cady, Scott Clark, Chris Corcoran, Dan Davis, Benjamin Doyle, Jonathan Johnson, Cynthia Olson, Richard Phillips, Tony Stevens, Joshua Stogdill, Jeff Hautekeete, Greg Sumner, Jeff Van Tomme, Jason Vernier, Danielle Bennett, Melinda Davis, Randall Emery, Richard Miller, Kristal Miller, Kathy Miller, John Thompson,³⁰ Bryan Keegan, Vernon Vanderleest, and Robert Waddell, 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 the date of Respondent's 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).

²⁹ Respondent's brief attempts to obliterate this distinction by arguing that, if employees refuse to work voluntary overtime, Respondent could have simply required mandatory overtime. So, if Bregar's intention was to prevent Respondent from building an inventory, his request had to mean that he was asking employees not to work any overtime, voluntary or mandatory. That was not the fact. That is not the law.

³⁰ Respondent's brief contends that it would not have rehired Thompson, because he threatened at his termination that he hoped that he did not catch Fosnaught and Dale Puls, Respondent's maintenance manager, out of the plant. Thompson denied that he made this threat, and I credit that denial, based on my general distrust of Respondent's witnesses.

5 In addition, I shall order Respondent to make the same remedy to all employees who are not among those named above but who were terminated since November 1, 2003 because of attendance or tardiness-related conduct applied as a result of Respondent's newly enforced 7-point system; because of a transfer from its Grinnell facility after December 1, 2003; because of a layoff on or after November 1, 2003; or because of a separation due to the elimination of a position on or after November 1, 2003. I shall order that Respondent remove from any and all files references to the unlawful discharges, transfers, layoffs, or eliminations of positions of the above named and as-yet-unidentified employees and that Respondent notify them, in writing, that this has been done and that their discharges will not be used against them in any way.

10 I shall order that Respondent remove from its files any references to discipline issued to the following employees for attendance and tardiness-related conduct since November 1, 2003: Brenda Atkinson, Justin Baker, Michelle Benson, Lisa Bossard, Rebecca Bradley, Michael Brown, Harold Brueklender, Tanya Burtlow, Dustin Byers, Crystal Cady, Russell Callison, 15 Joshua Clark, Scott Clark, Chris Corcoran, Benjamin Doyle, Brett Gatis, Jill Goodrich, William Gragg, Deb Gulling, Sue Hopper, Dawn Hughes, Deb Huntington, Jonathan Johnson, Jason Jolley, Greg Kicklighter, Dennis Kirby, Janet Leuze, Phil Mercer, Adam Nowotny, Cynthia Olson, Richard Phillips, Rhett Purser, Joanna Sartor, Shawn Stevens, Karen Singleton, Penny Stevens, Joshua Stogdill, Tara Thompson, Tol Toeun, Jeff Van Tomme, Jason Vernier, Anotnio 20 Viramontes, Antoinette Wallace, and Darrin Yilek. I shall order that Respondent remove from the files of all employees who are not among those named above but who were disciplined since November 1, 2003, because of attendance or tardiness-related conduct, or who received more harsh discipline for other conduct because of the cumulative effect of attendance or tardiness-related conduct any references to discipline. I shall order that Respondent notify all 25 employees, both named and as-yet-unidentified, for whom attendance and tardiness-related discipline is being removed that this has been done and that evidence of the discipline will not be used against them. I shall order that Respondent remove from all files for Alisa Fults any and all references to her warning of September 23, 2003, and remove from all files for Gregory Cooper any and all references to his warning of October 1, 2003 and notify them in writing that 30 this has been done and that evidence of these warnings will not be used against them in any way.

35 I shall order that Respondent notify and, on request, bargain in good faith with the Union as its employees' exclusive collective-bargaining representative before implementing any changes in wages, hours, or other terms and conditions of employment of its unit employees. I shall order that Respondent cease using temporary employees for the performance of bargaining-unit work and make its bargaining-unit employees whole for any loss of wages or benefits they may have incurred as a result of its employment of temporary employees to perform bargaining-unit work since October 27, 2003, as computed above. I shall order that 40 Respondent provide to the Union the information that it has requested in writing that is necessary and relevant to its performance of its duties and by scheduling a tour of the plant, as requested. I shall order that Respondent rescind any and all unilateral changes that it has implemented in attendance and tardiness policies since October 24, 2003, and notify its employees in writing that this has been done. Finally, because Respondent's failure and refusal 45 to bargain in good faith precluded the Union from engaging in the collective-bargaining process during the Union's initial certification year, I find that a one-year extension of the certification year, running from the date Respondent begins to bargain in good faith, is necessary to effectuate the purposes of the Act and to allow the Union a reasonable period of time for good-faith bargaining, free from the influences of the unfair labor practices committed by Respondent. 50 See, e.g., *Wanex Electrical Services*, 338 NLRB No. 16, slip op. at 3 (2003); *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

Because of Respondent's egregious, widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). In so recommending, I note that there is evidence of additional independent violations of Section 8(a)(1), including Kargarzadeh's threat to White shortly before the election that, if the Union got in, he would close Respondent's doors, that he would lose a lot of business, and that he was not going to see that happen. Zimple repeatedly interrogated Fults between mid-September and that day that she was terminated, adding that unionization would have adverse effects on employee-manager relationships. Fosnaught also interrogated Edwards, adding the same predictions of adverse effects. Sumner was also interrogated.

On these findings of fact and conclusions of law and on the entire record, including the briefs submitted by the General Counsel and Respondent,³¹ and my observation of the witnesses as they testified, I issue the following recommended³²

ORDER

Respondent Engineered Plastic Components, Inc., Grinnell, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Questioning its employees about their union activities and sympathies, or about the union activities and sympathies of its other employees.

(b) Asking its employees if they or its other employees have signed union authorization cards.

(c) Telling its employees that they are causing trouble by engaging in union activities or suggesting that union activity is incompatible with continued employment at its facility.

(d) Calling the police and having the police come to its facility for the purpose of prohibiting its employees from distributing union handbills on public property.

(e) Engaging in surveillance of union organizing meetings and its employees who attend these meetings.

³¹ Respondent moved during and at the end of the hearing to dismiss the complaints on the ground that the Region inappropriately provided to the Union a document produced by Respondent during the course of the investigation, and then the Union used that document to prepare an amended unfair labor practice charge. I denied the motion, in a portion of the hearing that was not transcribed, but requested the parties to brief this issue. Respondent did not. I maintain my earlier ruling that the contention should have been raised as an affirmative defense in the answer, but was not. In addition, there is no cogent reason that any impropriety at the Regional level should relieve Respondent of its obligation to comply with the Act.

³² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Threatening its employees with plant closure or telling them that its customers will cease doing business with it if its employees select a union as their exclusive collective-bargaining representative.

5 (g) Questioning its employees about why they have not attended its optional campaign meetings against the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW) (Union).

10 (h) Requiring its employees to remove prounion labels or prounion language from their clothing.

(i) Disciplining or terminating its employees because of their union activities and support for the Union.

15 (j) Giving its employees more difficult work assignments and refusing to provide meaningful training and assistance to them, but instead, making the assignments more difficult, in retaliation for their engaging in union activities and their support for the Union.

20 (k) Threatening its employees with unspecified reprisals if they engage in union activities.

(l) Threatening its employees that they will receive warnings in retaliation for their engaging in union activities.

25 (m) Telling its employees that their support for the Union would be futile or suggesting that it would not bargain in good faith with the Union about its employees' wages, hours, and other terms and conditions of employment.

30 (n) Promising its employees wage increases to try to discourage them from supporting the Union.

35 (o) Using workers contracted from another company to perform bargaining-unit work in retaliation against its employees' selection of the Union as their exclusive collective-bargaining representative.

(p) Enforcing its attendance and tardiness policies more strictly to retaliate against its employees because they selected the Union to be their exclusive collective-bargaining representative.

40 (q) Laying off or transferring its employees because of their union activities and support for the Union.

45 (r) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees by refusing to give to the Union information and a plant tour, as the Union has requested and which is necessary and relevant to the Union's performance of its collective-bargaining functions.

50 (s) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees by making unilateral changes in its employees' working conditions, including its attendance and tardiness policies, without first providing to the Union notice and an opportunity to bargain.

(t) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees by unilaterally transferring or laying off its employees, without first providing to the Union notice and an opportunity to bargain.

5 (u) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees by unilaterally making the decision to use contracted employees to perform bargaining-unit work, without first providing to the Union notice and an opportunity to bargain.

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

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

15 (a) Within 14 days from the date of the Board's Order, offer the following employees 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:

20	Danny Warndorf John Vileta Gregory Cooper Tem Yom Alisa Fults Travis Pagel	Cynthia Olson Richard Phillips Tony Stevens Joshua Stogdill Jeff Hautekeete Greg Sumner
25	Albert Bregar Jr. Marvin Burkett Brenda Atkinson Rebecca Bradley Michael Brown	Jeff Van Tomme Jason Vernier Danielle Bennett Melinda Davis Randall Emery
30	Dustin Byers Crystal Cady Scott Clark Chris Corcoran Dan Davis	Richard Miller Kristal Miller Kathy Miller John Thompson Bryan Keegan
35	Benjamin Doyle Jonathan Johnson	Vernon Vanderleest Robert Waddell

40 (b) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, transfers, layoffs, or eliminations of the jobs of the above named, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges, transfers, layoffs, or eliminations of positions will not be used against them in any way.

45 (c) Offer to all its employees who are not among those named above but who were terminated since November 1, 2003, because of attendance or tardiness-related conduct; because of the cumulative effect of attendance or tardiness-related conduct; because of a transfer from its Grinnell facility after December 1, 2003; because of a layoff on or after November 1, 2003; or because of an elimination of a position on or after November 1, 2003,
50 immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent employment, without prejudice to their rights and privileges enjoyed.

(d) Remove from its files any reference to the unlawful discharges, transfers, layoffs, or eliminations of the jobs of its as-yet-unidentified employees, and notify the employees in writing that this has been done and that the discharges, transfers, layoffs, or eliminations of positions will not be used against them in any way.

5

(e) Make its above-named and as-yet-unidentified employees whole for any loss of earnings and other benefits suffered as a result of their discharges, transfers, layoffs, or eliminations of their jobs, in the manner set forth in the remedy section of the Decision:

10

(f) Within 14 days from the date of the Board's Order, rescind and remove from its files any references to discipline issued to the following employees for attendance and tardiness-related conduct since November 1, 2003, and within 3 days thereafter notify the employees in writing that this has been done and that evidence of the discipline will not be used against them in any way:

15

Brenda Atkinson	Jonathan Johnson
Dustin Baker	Jason Jolley
Michelle Benson	Greg Kicklighter
Lisa Bossard	Dennis Kirby
20 Rebecca Bradley	Janet Leuze
Michael Brown	Phil Mercer
Harold Brueklandler	Adam Nowotny
Tanya Burtlow	Cynthia Olson
Dustin Byers	Richard Phillips
25 Crystal Cady	Rhett Purser
Russell Callison	Joanna Sartor
Joshua Clark	Shawn Stevens
Scott Clark	Karen Singleton
Chris Corcoran	Penny Stevens
30 Benjamin Doyle	Joshua Stogdill
Brett Gatiss	Tara Thompson
Jill Goodrich	Thol Toeun
William Gragg	Jeff Van Tomme
Deb Gulling	Jason Vernier
35 Sue Hopper	Antonio Viramontes
Dawn Hughes	Antoinette Wallace
Deb Huntington	Darrin Yilek

40

(g) Rescind and remove from the files of all its employees who are not among those named above but who were disciplined since November 1, 2003, because of attendance or tardiness-related conduct or who received more harsh discipline for other conduct because of the cumulative effect of attendance or tardiness-related conduct any reference to such conduct.

45

(h) Notify all its as-yet-unidentified employees for whom attendance and tardiness-related discipline is being removed that this has been done and that evidence of the discipline will not be used against them.

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(i) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful warnings of Alicia Fults on September 23, 2003, and of Gregory Cooper on October 1, 2003, and within 3 days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

(j) Cease using contracted employees for the performance of bargaining-unit work and make its bargaining-unit employees whole for any loss of wages or benefits they may have incurred as a result of its employment of contracted employees to perform bargaining-unit work since October 27, 2003.

5 (k) On request, bargain with the Union as the exclusive representative of its employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

10 All full-time and regular part-time maintenance employees, press operators, quality auditors, process technicians, mold technicians, mold setters, material handlers, auxiliary employees, janitors, and shipping and receiving employees employed by Respondent at its 1408 Zimmerman Drive South, Grinnell, Iowa facility: but excluding all office clerical employees, sales employees,
 15 subcontractors, independent contractors, casual employees, seasonal employees, temporary employees, professional employees, managerial employees, confidential employees, guards and supervisors as defined in the Act, and all other persons employed by Respondent.

20 The Union's certification year shall be extended for one year from the date on which Respondent commences to bargain in good faith.

(l) Before implementing any changes in wages, hours, or other terms and conditions of employment of its employees, notify and, on request, bargain collectively and in good faith with
 25 the Union as the exclusive representative of its employees in the above appropriate unit.

(m) Bargain in good faith with the Union as its employees' exclusive collective-bargaining representative by providing to the Union the information that it has requested in its letters of January 9 and 23, 2004, that is necessary and relevant to its performance of its duties
 30 and by scheduling a tour of the plant, as requested.

(n) Rescind any and all unilateral changes that it has implemented in its attendance and tardiness policies since October 24, 2003.

35 (o) 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
 40 Order.

(p) Within 14 days after service by the Region, post at its facility in Grinnell, Iowa, copies of the attached Notice marked "Appendix."³³ Copies of the Notice, on forms provided by the Regional Director for Region 18, after being signed by Respondent's authorized representative,
 45 shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall

50 ³³ 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."

5 be taken by 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, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by Respondent at any time since September 9, 2003.

10 (q) 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 Respondent has taken to comply.

15 IT IS FURTHER ORDERED that the complaints in Cases 18-CA-17003 and 18-CA-17139 are dismissed insofar as they allege violations of the Act not specifically found.

20 Dated, Washington, D.C. August 10, 2004

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Benjamin Schlesinger
Administrative Law Judge

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 question our employees about their union activities and sympathies, or about the union activities and sympathies of our other employees.

WE WILL NOT ask our employees if they or our other employees have signed union authorization cards.

WE WILL NOT tell our employees that they are causing trouble by engaging in union activities or suggesting that union activity is incompatible with continued employment at our facility.

WE WILL NOT call the police and have the police come to our facility for the purpose of prohibiting our employees from distributing union handbills on public property.

WE WILL NOT engage in surveillance of union organizing meetings and our employees who attend these meetings.

WE WILL NOT threaten our employees with plant closure or tell them that our customers will cease doing business with us if our employees select a union as their exclusive collective-bargaining representative.

WE WILL NOT question our employees about why they have not attended our optional campaign meetings against the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW) (Union).

WE WILL NOT require our employees to remove prounion labels or prounion language from their clothing.

WE WILL NOT discipline or terminate our employees because of their union activities and support for the Union.

WE WILL NOT give our employees more difficult work assignments and refuse to provide meaningful training and assistance to them, but instead, make the assignments more difficult, in retaliation for their engaging in union activities and their support for the Union.

WE WILL NOT threaten our employees with unspecified reprisals if they engage in union activities.

WE WILL NOT threaten our employees that they will receive warnings in retaliation for their engaging in union activities.

WE WILL NOT tell our employees that their support for the Union would be futile or suggest that we would not bargain in good faith with the Union about our employees' wages, hours, and other terms and conditions of employment.

WE WILL NOT promise our employees wage increases to try to discourage them from supporting the Union.

WE WILL NOT use workers contracted from another company to perform bargaining-unit work in retaliation against our employees' selection of the Union as their exclusive collective-bargaining representative.

WE WILL NOT enforce our attendance and tardiness policies more strictly to retaliate against our employees because they selected the Union to be their exclusive collective-bargaining representative.

WE WILL NOT lay off or transfer our employees because of their union activities and support for the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees by refusing to give to the Union information and a plant tour, as the Union has requested and which is necessary and relevant to the Union's performance of its collective-bargaining functions.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees by making unilateral changes in our employees' working conditions, including our attendance and tardiness policies, without first providing to the Union notice and an opportunity to bargain.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees by unilaterally transferring or laying off our employees, without first providing to the Union notice and an opportunity to bargain.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees by unilaterally making the decision to use contracted employees to perform bargaining-unit work, without first providing to the Union notice and an opportunity to bargain.

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

WE WILL within 14 days from the date of the Board's Order, offer the following employees 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:

Danny Warndorf
John Vileta
Gregory Cooper
Tem Yom
Alisa Fults
Travis Pagel
Albert Bregar Jr.
Marvin Burkett
Brenda Atkinson
Rebecca Bradley
Michael Brown
Dustin Byers
Crystal Cady
Scott Clark
Chris Corcoran
Dan Davis
Benjamin Doyle
Jonathan Johnson

Cynthia Olson
Richard Phillips
Tony Stevens
Joshua Stogdill
Jeff Hautekeete
Greg Sumner
Jeff Van Tomme
Jason Vernier
Danielle Bennett
Melinda Davis
Randall Emery
Richard Miller
Kristal Miller
Kathy Miller
John Thompson
Bryan Keegan
Vernon Vanderleest
Robert Waddell

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges, transfers, layoffs, or eliminations of the jobs of the above named, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges, transfers, layoffs, or eliminations of positions will not be used against them in any way.

WE WILL offer to all our employees who are not among those named above but who were terminated since November 1, 2003, because of attendance or tardiness-related conduct; because of the cumulative effect of attendance or tardiness-related conduct; because of a transfer from our Grinnell facility after December 1, 2003; because of a layoff on or after November 1, 2003; or because of an elimination of a position on or after November 1, 2003, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent employment, without prejudice to their rights and privileges enjoyed.

WE WILL remove from our files any reference to the unlawful discharges, transfers, layoffs, or eliminations of the jobs of our as-yet-unidentified employees, and notify the employees in writing that this has been done and that the discharges, transfers, layoffs, or eliminations of positions will not be used against them in any way.

WE WILL make its above-named and as-yet-unidentified employees whole for any loss of earnings and other benefits suffered as a result of their discharges, transfers, layoffs, or eliminations of their jobs, with interest:

WE WILL within 14 days from the date of the Board's Order, rescind and remove from our files any references to discipline issued to the following employees for attendance and tardiness-related conduct since November 1, 2003, and within 3 days thereafter notify the employees in writing that this has been done and that evidence of the discipline will not be used against them in any way:

Brenda Atkinson
Dustin Baker
Michelle Benson
Lisa Bossard
Rebecca Bradley
Michael Brown
Harold Brueklandler
Tanya Burtlow
Dustin Byers
Crystal Cady
Russell Callison
Joshua Clark
Scott Clark
Chris Corcoran
Benjamin Doyle
Brett Gatiss
Jill Goodrich
William Gragg
Deb Gulling
Sue Hopper
Dawn Hughes
Deb Huntington

Jonathan Johnson
Jason Jolley
Greg Kicklighter
Dennis Kirby
Janet Leuze
Phil Mercer
Adam Nowotny
Cynthia Olson
Richard Phillips
Rhett Purser
Joanna Sartor
Shawn Stevens
Karen Singleton
Penny Stevens
Joshua Stogdill
Tara Thompson
Thol Toeun
Jeff Van Tomme
Jason Vernier
Antonio Viramontes
Antoinette Wallace
Darrin Yilek

WE WILL rescind and remove from the files of all our employees who are not among those named above but who were disciplined since November 1, 2003, because of attendance or tardiness-related conduct or who received more harsh discipline for other conduct because of the cumulative effect of attendance or tardiness-related conduct any reference to such conduct.

WE WILL notify all our as-yet-unidentified employees for whom attendance and tardiness-related discipline is being removed that this has been done and that evidence of the discipline will not be used against them.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings of Alicia Fults on September 23, 2003, and of Gregory Cooper on October 1, 2003, and within 3 days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL cease using contracted employees for the performance of bargaining-unit work and make its bargaining-unit employees whole for any loss of wages or benefits they may have incurred as a result of its employment of contracted employees to perform bargaining-unit work since October 27, 2003, with interest.

WE WILL on request, bargain with the Union as the exclusive representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time maintenance employees, press operators, quality auditors, process technicians, mold technicians, mold setters, material handlers, auxiliary employees, janitors, and shipping and receiving employees employed by Engineered Plastic Components, Inc. at its 1408 Zimmerman Drive South, Grinnell, Iowa facility: but excluding all office clerical employees, sales employees, subcontractors, independent contractors, casual employees, seasonal employees, temporary employees, professional employees, managerial employees, confidential employees, guards and supervisors as defined in the Act, and all other persons employed by Engineered Plastic Components, Inc.

The Union's certification year shall be extended for one year from the date on which we commence to bargain in good faith.

WE WILL before implementing any changes in wages, hours, or other terms and conditions of employment of our employees, notify and, on request, bargain collectively and in good faith with the Union as the exclusive representative of our employees in the above appropriate unit.

WE WILL bargain in good faith with the Union as our employees' exclusive collective-bargaining representative by providing to the Union the information that it has requested in its letters of January 9 and 23, 2004, that is necessary and relevant to its performance of its duties and by scheduling a tour of the plant, as requested.

WE WILL rescind any and all unilateral changes that we have implemented in our attendance and tardiness policies since October 24, 2003.

ENGINEERED PLASTIC COMPONENTS, INC.

(Employer)

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.

330 South Second Avenue, Towle Building, Suite 790, Minneapolis, MN 55401-2221

(612) 348-1757, Hours: 8 a.m. to 4:30 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, (612) 348-1770.