

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

MOUNTAIRE FARMS OF DELAWARE, INC.

and

Case 5-CA-31689

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 27, AFL-CIO

Karen Itkin-Roe, Esq., for the General Counsel.
Linda D. McKeegan, Esq., of Baltimore, MD, for
the Charging Party.
Arthur M. Brewer, Esq., of Baltimore, MD, for
the Respondent.

DECISION

Statement of the Case

Richard A. Scully, Administrative Law Judge. Upon a charge and amended charge filed on January 15 and March 18, 2004, respectively, by United Food and Commercial Workers Union, Local 27, AFL-CIO (the Union), the Regional Director, Region 5, National Labor Relations Board (the Board), issued a complaint on March 30, 2004, alleging that Mountaire Farms of Delaware, Inc. (the Respondent) had committed certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Georgetown, Delaware, on July 14 through 16, 2004, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

Findings of Fact

I. The Business of the Respondent

At all times material, the Respondent was a Delaware corporation with an office and place of business in Millsboro, Delaware, engaged in the business of processing poultry products. During the 12-month period preceding March 30, 2004, in conducting its business operations, the Respondent purchased and received at its Millsboro, Delaware facility, goods and supplies valued in excess of \$50,000 directly from points outside the State of Delaware. The Respondent admits, and I find, that at all times material it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Labor Organization Involved

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

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III. The Alleged Unfair Labor Practices

A. Background Facts

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The Respondent's Millsboro processing plant employs approximately 1,600 workers. These employees are not represented by a labor organization. All of the events involved in this matter concern what is known as "the cone debone" department. In that department, there are a number of processing lines which debone chickens. Before they reach those lines, the chickens have been killed, had feathers removed, been eviscerated, inspected, chilled, and cut

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into pieces. On the cone debone lines, the front half of a chicken is placed on a cone which moves along a table approximately 40 feet long where 18 workers perform a total of 13 operations using their hands, knives, and scissors, to remove breast meat from the carcass. The workers on the lines are periodically rotated from one operation to another.

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B. Alleged Coercive Interrogation and Creation of the Impression of Surveillance

The complaint alleges that in October 2003,¹ the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees and by creating the impression that the employees' protected activities had been under surveillance.

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Mainor Deleon was employed by the Respondent from the time it took over the Millsboro plant until November 2003. Deleon, who worked on one of the cone debone lines, testified that prior to August 2003 workers were rotated to different positions on the line every hour. In August, it was announced that the rotation schedule would be changed to every 2 hours. Fearing that working on the same job would cause them problems, Deleon and a group of about 60 night-shift workers left their lines and went to speak to supervisor Julio Herrera about their concerns. Herrera told them that he did not make the changes but they were made by "higher-ups." A week later, the company called a meeting at which about 20 employees met with Herrera and the plant manager. Herrera informed them that the company had decided that the change in rotation would remain in effect but that no one would be required to work 2 consecutive periods using a knife. The employees agreed to give the new rotation a try and see how it went.

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Two weeks later, the company introduced a new method of cutting the chickens which was designed to increase the amount of meat removed in the deboning process. The employees felt that this made their work harder and were upset that they had not yet adjusted to the new rotation and now had to do a different cut. As a result, approximately 100 workers went on strike. They went to see Herrera, who told them he could not do anything about it and that they would receive training to do the new cut. After about an hour, the workers returned to work. Deleon subsequently transferred to the day shift and sometime thereafter a group of approximately 100 day-shift workers also went on strike for the same reasons. The strike began at the beginning of the shift and lasted about an hour and a half. While the employees were choosing a spokesperson, the new plant manager, Greg Cutts, who knew Deleon, asked him what was happening. Deleon told him they were striking because of the new cut they were

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¹ Hereinafter, all dates are in 2003.

being asked to do. Cutts asked him to talk to the strikers, to tell them that there was a new plant manager, and that changes would be made. Deleon agreed to do so and the workers eventually returned to work.

5 On the following day, after he had been at work for about 15 minutes, Deleon was sent to the office of assistant plant manager James Hollingsworth where supervisor Katie Bennett and an interpreter were also present. Hollingsworth said that Bennett had told him that Deleon had organized the strike on the previous day. Deleon asked Bennett how she knew this and she replied that she had seen him talking to the people during the strike. Deleon was asked
10 what he had been telling the people. He explained that Cutts had asked him as a favor to speak to the people and asked them to call Cutts and confirm this but they did not call him. He was told that there would be an investigation. He asked if he was going to be fired, but they did not answer him. He then went back to work and “everything was normal.”

15 James Hollingsworth has been employed at the Millsboro plant since February 2003. He testified that, prior to his arrival, the deboning process referred to as the “new cut,” had been instituted and that there has been no change in this process since he has been there. He testified that in June 2003, the rotation schedule for employees in the deboning department was changed from every hour to every 2 hours. This resulted in the workers performing only 4
20 operations per shift and meant that they would always move from what was considered a stressful job to a non-stressful job.²

Hollingsworth testified that one day during the second week of June, after the new rotation schedule was instituted, the deboning employees refused to return to work after lunch to protest the new rotation. He said that he, Cutts, and all of the deboning department
25 supervisors were present when they talked with the employees. They asked them to return to work and told them they would meet with every individual to listen to their problems and resolve them. During this incident he had asked Mainor Deleon to help persuade the employees to return to work and explain to them what would be done because Deleon was looked upon as a leader of the Hispanic employees. Over the next 2 weeks, Hollingsworth met with
30 approximately 100 deboning department employees in his office for from 2 minutes to an hour, with Bennett serving as a translator. In the meetings, he explained what he considered the benefits of the new rotation schedule to be to the employees and to the company. Deleon was one of the first employees with whom he met within a day or two after the refusal to return to
35 work. Hollingsworth said that he wanted to be sure that Deleon “understood what we were trying to do, what those benefits were, and to get him to buy in and help us to make this change” Their meeting lasted approximately an hour and Hollingsworth felt that Deleon understood why the company was making the change and that he would help communicate the reasons to the other employees. Hollingsworth testified that had only one other meeting in his
40 office with Deleon. It was in July or August when Deleon came in with supervisor Antonio Soto to discuss the possibility of Deleon’s becoming a supervisor.

Hollingsworth denied that, during their meeting in June, he said that he knew Deleon

45 ² Hollingsworth testified that the change in the rotation schedule was instituted after it was successfully tested in another of the company’s plants and had reduced the number of reportable accidents at that plant. He said that it is beneficial to the company and the employees because it reduces the number of jobs the employees must learn from 13 to 4, it allows them to become more proficient in the jobs they do which reduces the effort needed to
50 perform the job, and moving from a stress job to a non-stress job allows employees to relax the muscles used in performing the stress job.

was the one who caused the strike, that he said there would be an investigation of the strike, or that Bennett had said that she knew that Deleon was the one who organized the strike. He also denied that Deleon had asked him to call Cutts or asked if he was going to be fired during the meeting.

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Katie Bennett was formerly employed by the Respondent as a supervisor in the debone department from December 2002 until March 2004. She is fluent in Spanish. She testified that the change in the rotation from 1 hour to 2 hours took place in June 2003 and that some employees protested the change by refusing to return to work. Shortly thereafter, she was present in Hollingsworth's office and served as a translator during a meeting on June 13 or 14 when Hollingsworth met with Deleon for over 30 minutes. Hollingsworth felt that the employees looked up to Deleon and that he could assist in getting them to understand why the rotation was being changed. Hollingsworth explained that it would be less stressful and that the employees would only be doing 4 jobs per day. Deleon was receptive and said that he was willing to help out. Bennett denied that Hollingsworth told Deleon that he knew that Deleon organized the strike the day before and denied that she told Deleon that she knew he was the one who organized the strike. She also denied that Deleon asked that the plant manager be called or that Deleon asked if he would be fired.

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Analysis and Conclusions

The evidence fails to establish that there was a meeting in Hollingsworth's office in or about October, at which the unlawful interrogation alleged in the complaint took place. Deleon testified that there was such a meeting on an unspecified date in October. However, his testimony as to how this meeting came about cannot be credited. According to Deleon, the rotation schedule was changed from 1 hour to 2 hours sometime in August. Approximately 3 weeks later, the new cut was introduced. This precipitated a brief strike by night shift employees in the debone department protesting these changes. After Deleon moved to the day shift in October, day shift employees also went on strike for the same reasons and he was called to Hollingsworth's office the next day. However, I find that the that the change in the rotation schedule, which Deleon says was one of the reasons that precipitated the employee strike and led to the meeting, occurred in June, not August. I base this finding on the credible testimony of Hollingsworth and Bennett that it was in June, the credible testimony of supervisor Antonio Soto, who began working in the debone department in July 2003, that the 2-hour rotation was already in effect when he started there, and the testimony of the General Counsel's own witness Gladis Gomes, a former employee in the debone department, that the rotation change occurred in June. No other witness supported Deleon's claim that it happened in August. I also credit Hollingsworth's testimony that the introduction of the new cut, which Deleon said was another of the reasons for the strike that led to the meeting, occurred sometime prior to February and not after the change in the rotation schedule, as Deleon maintained.³

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The only credible evidence concerning the timing of a meeting in Hollingsworth's office, attended by Deleon, Hollingsworth, and Bennett following a strike by debone employees on the day shift, is that of Hollingsworth and Bennett and it establishes there was such a meeting on June 13 or 14, the day after day shift employees refused to return to their lines after lunch to protest the change in the rotation schedule.⁴ Consequently, I find that there was no meeting in

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³ Soto also testified that the new cut was being used when he started in July.

⁴ Gomes also testified that there was a strike in June to protest the new rotation schedule.

October.⁵

Regardless of when it occurred, I also find that nothing that happened in the meeting involving Deleon, Hollingsworth, and Bennett violated Section 8(a)(1).⁶ Again, I do not credit Deleon because of his obvious fabrications concerning the timing of the changes in the debone department which led to the brief strike that resulted in the meeting. The credible testimony of Hollingsworth establishes that Deleon was only one of about 100 employees of the debone department with whom Hollingsworth met after the protest over the change in the rotation schedule in order to explain why the change would be beneficial to everyone. Both Hollingsworth and Bennett credibly denied accusing Deleon of leading the strike, asking him what he said to the employees during the strike, and telling him there would be an investigation. Given Hollingsworth's testimony that he was particularly interested in convincing Deleon, whom he considered to be a leader among the Hispanic employees, of the merit in the rotation change, it would have made little sense to threaten or antagonize him.⁷ I shall recommend that this allegation be dismissed.

C. Alleged Unlawful Discharges

On November 12, 7 debone department employees were terminated by the Respondent after they and others gathered at the Human Resources (HR) office. The complaint alleges that these employees were engaged in concerted activity protected by the Act, i.e., they were asking why another debone department employee had been disciplined, they were requesting that assignments on the debone line be rotated every hour, and they were complaining about the policy of rotating every 2 hours and how it injured employees' hands. The Respondent asserts that throughout the entire time they were at the HR office the employees asked only why another employee had been disciplined, that they were repeatedly told that this was confidential information that could not be disclosed to them, that they raised no other issues concerning their working conditions despite being repeatedly asked if they wished to do so, and that they were terminated only after they ignored several requests that they return to work.

It is well-settled that when an in-plant work stoppage is peaceful, is focused on specific job-related complaints, and causes little disruption of production by those employees who continue to work, employees are entitled to persist in their protest for a reasonable period of

⁵ I find no merit in the General Counsel's argument that the fact that the Respondent did not raise a Section 10(b) defense with respect to this complaint allegation somehow undermines Hollingsworth's credibility. He testified that the only meeting in his office involving Deleon and Bennett took place in June. Since there was no allegation in the complaint that any violation of the Act took place during a June meeting, there was no basis for raising a Section 10(b) defense.

⁶ Even under Deleon's version of the meeting, the Respondent did not unlawfully create the impression that protected activity was under surveillance. He said that Bennett told him she knew he had organized the strike because she saw him talking to the people during the strike. The strike was carried on openly at the plant in the plain view of anyone who was present. There is no suggestion that Bennett's observation of Deleon's activity during the strike, if any, resulted from suspicious behavior or untoward conduct; consequently, there would be no violation of the Act. *Hoyt Water Heater Co.*, 282 NLRB 1348, 1357 (1987); *Goosen Co.*, 254 NLRB 339, 353 (1981).

⁷ Although much of the testimony of Deleon and Hollingsworth about the work stoppage that led to their meeting cannot be reconciled, the one common element is that management recognized and sought Deleon's assistance in convincing the workers to go back to work.

time. E.g., *TPA, Inc.*, 337 NLRB 282 (2001); *Cambro Manufacturing Co.*, 312 NLRB 634, 636 (1993). There is no real dispute that the employees' activity in the present case was concerted, was peaceful, and did not disrupt production by other employees who continued to work. The issues are whether this work stoppage involved job-related complaints, was engaged in for a
5 reasonable period, and was protected by the Act.

Mainor Deleon testified that when he began working on the morning of November 12, a debone department employee, named Jose Alvarez,⁸ was working to his left, cutting wings off with a knife. After 2 hours, Alvarez was assigned to cut tenders which also involved using a
10 knife. At the next rotation, Alvarez was assigned to cutting breasts which also involved using a knife. Alvarez refused to do this and asked supervisor Diann Morris to put him on a job that did not require him to use a knife. Morris replaced Alvarez with another worker and took him to the office. Alvarez did not return to the line and at lunch time Deleon saw him in the cafeteria without his equipment. Alvarez said that he had been fired. Deleon and the 3 other employees
15 he was sitting with decided that Alvarez's problem had to do with the rotation, that he should not have had to use a knife on two consecutive rotations, and that since they had the same problem involving their hands hurting they would go to the HR office and discuss it.

As the 4 of them started off, several other workers joined them in going to the office to talk about the rotation. Superintendent Antonio Soto saw them and went ahead of them to the HR office. The group arrived at the door and a while later HR Manager Laverne Griffin came out and said that she did not have to explain anything to them. Soto was there and the workers asked him to be their interpreter but he refused. Soto told them that if they did not want to work to give him their ID badges and they were fired. Deleon told Griffin in English several times that
20 they did not want to fight but were there to discuss the problem of the rotation and consideration for Alvarez. Griffin said she was not going to tell them anything about the problem with Alvarez and kept asking for their ID badges and saying if they did not go to work they would be fired.

Director of Human Resources Glenn Anderson came out and said that everybody should return to work and one of the group should stay and talk with him as their spokesman. As they were deciding who should be the spokesman, Hollingsworth arrived and told the employees 2 or 3 times that, if they did not return to work immediately, they would be fired. The employees decided that one of the group named Lionel would stay behind as the spokesman and they turned to go back to work but when they reached the corridor plant security was there and
30 would not allow them through. They were told that they were fired. Deleon asked Griffin why and she said, "this is the way you wanted it." The group was at the HR office for approximately 15 minutes. Thereafter, the workers were taken to the security office and told by an interpreter to return the company equipment they had. This was the first time an interpreter was provided by the company. At that point, 2 police officers arrived and told the workers they had
35 seconds to leave the premises or they would be arrested. They left the plant and went to the Union office to see if it could help them get their jobs back. The workers returned to the plant on the following Monday and met with Anderson. They were told that they no longer had jobs and they were escorted to their cars by security. Deleon was not given anything in writing after he was fired.⁹
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⁸ This employee was referred to by various names by different witnesses. There is no dispute about who the individual is. I will refer to him as Alvarez in this decision.

⁹ Former debone department employees and alleged discriminatees Orville Agron and Geronimo Yzaguirre gave somewhat similar testimony about why the employees went to the HR office.
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Anderson testified that he was in his office on November 12 when a group of debone department employees came to the HR office at about 12:30 or 12:35. He was informed of this by Griffin while involved in another matter. He went out after a few minutes and saw a group of 15 to 18 employees just outside the door. Griffin and Deleon were conversing and when Deleon spoke to the group or to Griffin in Spanish, HR clerk LaSandra Hernandez translated for Griffin. Deleon said that he wanted to know why Alvarez had been fired. Griffin responded that such information was confidential and she could discuss it with them and had Hernandez translate her answer to the group. This went on for about 10 minutes with the same question being asked and Griffin giving the same answer. At that point, Anderson became involved and, using Soto to translate for him, he asked the group to listen to what he had to say. He told them that Alvarez had not been terminated, but that what Griffin had told them was correct and they could not discuss confidential information about another employee. Soto advised him that the group still wanted to know why Alvarez was fired. Anderson told Soto to tell them that Alvarez was not fired and that he would not discuss it but if they had any other issues they wanted to talk about he would be happy to talk with them. After this was translated, there was no direct response but from time-to-time Deleon, as spokesman, would say that they wanted to know why Alvarez was fired. Anderson asked them to return to work and they responded that they were not going back to work until he told them what happened to Alvarez. He offered to meet one-on-one with anyone who had a personal issue to discuss and said that no disciplinary action would be taken against anyone if they would return to work. They responded that they would not return to work until he told them why Alvarez was fired.

At that point Hollingsworth arrived, asked what was going on, and how long these employees had been off the line and was told that it was then about 16 or 17 minutes beyond the end of the lunch period. Hollingsworth told the group the same thing Griffin and Anderson had, that they could not disclose the information they wanted, and that they needed to return to work. The group gave him the same response, that they were not going back to work until they were told why Alvarez was fired. Anderson conferred with Hollingsworth and they concluded that they needed to bring the matter to an end. Hollingsworth told the group that he was going to count to three and, if they had not made some move to return to work, they would be considered to have resigned their jobs. Anderson asked Soto to explain this to the group once more before Hollingsworth started counting and he did so. As Hollingsworth began to count, approximately half of the group left the area and went back to work. This occurred at approximately 1:45 p.m. When Hollingsworth reached the count of three, he told those employees who had remained that they had to move outside the security doors and surrender their ID badges. Anderson estimated that while at the HR office the group repeated the question about why Alvarez had been fired approximately a dozen times and he denied that they had asked any questions concerning the rotation in the debone department or mentioned the rotation in their questions about Alvarez.

Hollingsworth, Soto, and Bennett also testified concerning their observations at the HR office on November 12. Although there were some minor differences in details, their testimony corroborated that of Anderson. All three testified that that Deleon, on behalf of the group of employees, repeatedly asked why Alvarez had been fired and was repeatedly told that the information was confidential and could not be disclosed to them. The workers were asked to return to work and were offered the opportunity to discuss any other issues they had, as a group or individually, but Deleon said they would not return to work until their question about Alvarez was answered. Neither Deleon nor anyone else in the group raised any issues concerning the rotation process. When they were told they had to return to work or would be considered to have forfeited their jobs, about half the group went back to work. Hollingsworth testified that after the remaining employees were asked to turn over their ID badges they said they wanted to return to work but were told they could not. They were sent to the locker room one-by-one to

get their belongings and they left the plant at approximately 2:20 p.m.

Analysis and Conclusions

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This a matter of credibility. The General Counsel's witnesses claim that the employees who went to the HR office on November 12 raised the issue of the 2-hour rotation and its adverse effect on them, while the Respondent's witnesses who were present that day say the employees asked only to be told the reason why Alvarez was fired and said nothing about the rotation. I find the detailed and mutually corroborative testimony of Anderson and Hollingsworth about what happened at the HR office that day to be more credible than that of Deleon, whom I have already indicated I did not find to be a credible witness.¹⁰ I find that the evidence fails to establish that the employees raised questions concerning the rotation or any other working conditions.

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It is undisputed that what gave rise to the work stoppage on November 12 was the fact that the Respondent took disciplinary action against Jose Alvarez, an employee in the debone department. Although the employees who gathered at the HR office apparently believed that Alvarez had been fired, the evidence indicates that he had been suspended and that they were told this while at the HR office. Soto, who was in charge of the debone department, credibly testified that Alvarez was suspended because he repeatedly refused to perform an assignment to cut shoulders on the production line. Soto said that Alvarez gave no reason for his refusal other than he did not want to do that job and that he did not complain that his hands hurt or that he had been working jobs that required him to use a knife for several rotations. Alvarez was not called as a witness and the only evidence to the contrary is the hearsay testimony of Deleon, Agron, and Yzaguirre as to what Alvarez allegedly told them, which I find has no probative value. I also do not credit Agron's testimony that he observed that Alvarez's hand was swollen. The credible and uncontradicted testimony of Anderson establishes that the Respondent has in place at the plant an ergonomic program that includes a therapy component. Under that program, if an employee shows any sign of an injury to a hand or wrist, the employee is taken for medical evaluation and, if warranted, taken off the line and put in a therapy program. In the absence of testimony by Alvarez, there is no reasonable basis to conclude that he was injured or that he was not only denied treatment for his injury but was suspended because of it. I find this casts doubt on the alleged discriminatees' testimony that they related the disciplinary action taken against Alvarez to the rotation schedule.

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While it is true that employees' complaints need not be "earth shattering" in order to be protected by the Act, they must arise from their conditions of employment. *Fair Mercantile Co.*, 271 NLRB 1159, 1162 (1984). Here, their only stated demand was directed at compelling the Respondent to disclose the reasons underlying Alvarez's discipline in violation of its confidentiality policy, information they presumably could have obtained by asking Alvarez. I find that the discharged employees' attempts to ascertain the reason why Alvarez had been disciplined did not constitute protected activity on their part since there has been no showing that his discipline affected their wages, hours, or working conditions in a way that might have to

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¹⁰ The testimony of alleged discriminatees Agron and Yzaguirre was consistent with that of Deleon, at least to the extent that one reason they went to the HR office to discuss the rotation. However, even allowing for the difficulties involved in expressing themselves through an interpreter, their testimony about what transpired when they got there lacked specificity and detail and was not convincing. Moreover, it is contradicted by the credible testimony of the Respondent's witnesses describing the event.

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led protected concerted activity on their part. *Lockheed Martin Astronautics*, 330 NLRB 422, 423 (2000).

5 Had the group of debone department employees stopped work and gone to the HR office, at least in part, to protest the rotation process, as the General Counsel contends, there would be little doubt that such concerted action directed at this significant aspect of their working conditions would be protected activity. However, there is no credible evidence that unhappiness with the rotation was a reason for this work stoppage or that it was even mentioned during the employees' visit to the HR office. I do not credit the self-serving testimony of Deleon that the rotation change was one of the reasons they went to the HR office on 10 November 12 or that they sought to discuss it while they were there. As discussed above, the change in the rotation from 1 hour to 2 hours occurred in June and was immediately followed by a work stoppage to protest it. At that time, the Respondent undertook to explain its reasons for the change to each individual employee, to convince them it was beneficial to them, and to get them to accept it. There is no evidence that during the period between June and November, 15 when this work stoppage occurred, the rotation change was a continuing issue. There also has been no showing that these employees had discussed problems or complaints about the rotation among themselves before November 12. As noted, the work stoppage that day was a spontaneous reaction following the employees' learning about disciplinary action being taken 20 against a co-worker.¹¹

The credible and consistent testimony of Anderson, Hollingsworth, Bennett, and Soto establishes that throughout their stay at the HR office, neither Deleon or any other employee made any mention of the rotation process or its effects on them, rather, they repeatedly 25 demanded to know why Alvarez had been fired. Despite being told several times that Alvarez had not been fired and that information about disciplinary action taken against another employee was confidential and could not be disclosed to them (and that if they wanted to know they should ask Alvarez about it), the employees repeatedly stated that they would not return to work until they were told why Alvarez had been fired. The evidence also shows that the 30 Respondent offered the employees the opportunity to discuss any issues they had, apart from the discipline of Alvarez, but they raised none. There is no credible evidence that during the time they were at the HR office the employees were unable to effectively express their reasons for being there. I find no merit in the claims of Deleon and the other 2 employee witnesses to the effect that they were unable to communicate the reasons for the work stoppage because the 35 Respondent refused to provide an interpreter for them. The credited testimony shows that at least 2 Spanish-speaking management employees, Hernandez and Soto, were present and translated what was being said for Griffin, Anderson, and Hollingsworth, who were not fluent in Spanish.¹² Consequently, I find that the evidence fails to establish that the activities of the employees who gathered at the HR office were the result of or were focused on any specific job- 40 related complaint.

However, should the employees' demands to know why Alvarez was disciplined be

45 ¹¹ Although the General Counsel argues that the work stoppage on November 12 was not long after other concerted complaints by employees concerning the rotation and the new cut and that the Respondent should have known what it was about, this is apparently based on Deleon's discredited testimony about when strikes protesting the change in the rotation occurred.

50 ¹² It is simply not believable that, faced with an unexpected work stoppage by a large group of employees, the Respondent would have refused to provide the services of an interpreter in order to find out what was going on.

considered to be a specific job-related complaint and constitute protected activity, I would still find, under the circumstances involved here, there was no violation of the Act. As discussed above, the Board has held that in similar circumstances employees are entitled to persist in their in-plant protest for a reasonable period of time. Here, they were permitted to do so. But there comes a point when the employer is entitled to reclaim the use of its entire premises. The evidence establishes that during the course of the employees' in-plant work stoppage, the Respondent gave them a reasonable period of time and the opportunity to express themselves even though doing so meant a number of employees were diverted from their normal duties. The employees arrived at the HR office during their lunch period and were still there approximately 45 minutes to an hour after the lunch period ended. By that point, they had repeatedly made their demand to be told the reason why Alvarez had been fired and the Respondent had made it clear it would not divulge the reason. There was no reason to believe that either side was going to change its position. The employees were repeatedly asked if they wanted to discuss anything other than Alvarez's discipline and they were asked to return to work several times before being given an ultimatum that if they did not return to work they would be considered to have forfeited their jobs. At that point, about half the group returned to work without any disciplinary action being taken against them. The other 7 employees could have returned to work or left the plant but they remained at the HR office and continued their demand to be told why Alvarez was fired.¹³

I find that, given their continued insistence that they would not return to work until they were told why Alvarez was disciplined and the fact that they raised no other job-related issues to be discussed, at that point, "further in-plant refusals to work served no immediate employee interests and unduly interfered with the employer's right to control the use of its premises" and that the Respondent could lawfully discharge them for unreasonably continuing their in-plant work stoppage. *Cambro Mfg. Co.*, supra, at 636.

It follows that statements made by the Respondent's supervisors near the end of the work stoppage to the effect that if the employees did not return to work they would be forfeiting their jobs, alleged as violations in the complaint, did not violate the Act. Likewise, although the Respondent did call the police to the plant during what was an entirely peaceful work stoppage, the 2 police officers who responded had no contact with the employees until after they had been discharged and their presence did not interfere with any protected conduct. I shall recommend that the complaint be dismissed in its entirety.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. The Respondent did not commit any of the violations of Section 8(a)(1) of the Act alleged in the complaint.

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

¹³ I find no merit in the General Counsel's contention that the attempt by these employees to return to work was prevented by plant security. The evidence is clear that they made no attempt to return to work until after they were informed that they were being discharged.

ORDER¹⁴

The complaint is dismissed in its entirety.

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Dated Washington, DC September 23, 2004

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Richard A. Scully
Administrative Law Judge

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¹⁴ 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.