

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ESU, INC.

Case Nos. 29-CA-25162
29-CA-25206
29-CA-25219
29-CA-25394

and

SPECIAL AND SUPERIOR OFFICERS
BENEVOLENT ASSOCIATION

Nancy Reibstein, Esq., for the General Counsel.
Gregory L. Reid, Esq., for the Respondent.
Bruce Lichtenstein, for the Union.

DECISION

Statement of the Case

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on April 8, 9, and May 5, 2003 in Brooklyn, New York.

Upon the charges filed by the Special and Superior Officers Benevolent Association, herein called the Union, on March 5, 2003, the Regional Director for Region 29 of the National Labor Relations Board issued an Order Further Consolidating Cases, Second Consolidated Amendment Complaint, herein called the Complaint, and Notice of Hearing in Case Nos. 29-CA-25162, 29-CA-25206, 29-CA-25129 and 29-CA-25394. The Complaint alleges that Respondent, ESU, has violated the Act by engaging in conduct in violation of Section 8(a) (1), (3) and (5) of the Act.

During the trial of this case, I granted General Counsel's motion to amend certain paragraphs of the Complaint, including:

1. Adding paragraph 19c, alleging that on September 24, 2002, Respondent reduced employee Lovaglio's hours of work; and
2. Adding paragraph 20(a), alleging that on September 7, 2002, Respondent denied employee Arthur Blinn's request for a day off on September 19, 2002.

Based upon the entire record herein, including a very detailed brief with an accurate statement of the facts and the applicable law, submitted by Counsel for the General Counsel, from which I quote freely, and my observations of the demeanor of the witnesses, I make the following findings of fact and conclusions of law.

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Counsel for Respondent did not file a brief. Counsel for Respondent did not introduce any witnesses in defense of the Complaint herein. Therefore the testimony of General Counsel's witnesses and exhibits received in support thereof are not rebutted or disputed.

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In connection with the demeanor of General Counsel's witnesses, each of General Counsel's witnesses testified in all material respects in a direct, consistent and credible manner. Internally consistent, inherently believable, and mutually corroborative. Each witness testified in a forthright and fully detailed manner that defies attack on their credibility. In addition, their testimony remained consistent throughout questioning on cross-examination.

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In contrast to the employee witnesses, and Keith Evans, a 611(c) witness,¹ and an admitted supervisor within the meaning of the Act gave testimony that was, from beginning to end, riddled with inconsistencies and blatantly contradictory. For example, Evans contradicted his own affidavit, in which he clearly admitted that he fired employee Artie Blinn, by proffering the implausible testimony that he only *thought* he fired Blinn but later learned that he had not. Evans then contradicted his initial testimony by admitting that he had, in fact, fired Blinn.

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In contrast, Evans' demeanor was at times uncooperative and often evasive. He tried to avoid answering questions and feigned not to recall certain details that he believed would damage Respondent's case. When not trying to evade answering questions, Evans gave unresponsive answers. I totally discredit Evans's testimony, except as to admissions against Respondent.

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It is admitted that Respondent is a corporation engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act. It is also admitted that the Union is a labor organization with the meaning of Section 2(5) of the Act.

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Respondent provided armed and unarmed security services to approximately fourteen Federal sites in Nassau and Suffolk Counties in New York. Respondent admitted that at all material times, Jerry Brooks was Respondent's owner, Keith Evans was Respondent's manager and Lawrence Troutman was Respondent's supervisor and agent, within the meaning of the Act.

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The evidence also establishes that sergeant Thomas Laquori was Respondent's supervisor and agent. In that regard, the evidence establishes that Laquori's duties and responsibilities included overseeing the operation of certain of Respondent's sites and that he had the authority to and actually did discipline employees. The evidence establishes that in early February 2002, Respondent's employees sought Union representation, hoping to finally address long-standing workplace abuses by Respondent. After meetings between Respondent's employees and the Union, the Union filed a representation petition on February 25, 2002. A mail ballot election commenced on April 5th. The April 22nd tally of ballots shows that 23 of 28 employees unanimously voted to elect the Union as its bargaining representative. The Union was certified as the exclusive collective-bargaining representative on May 9, 2002.

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¹ Federal Rules of Evidence Section 611(c) which permits cross-examination of hostile witnesses.

5 The overwhelming and undisputed evidence establishes that certain employees emerged as key Union proponents. These employees, Arthur Blinn, Pasquale (Pat) Colangelo, Dick Raynor and Joseph Bilello, contacted the Union, arranged and attended Union meetings, spoke to employees at their job posts to encourage them to support the Union and signed and distributed Union authorization cards. They also acted as liaisons between the employees and the Union throughout the organizing campaign. The evidence also establishes that employee George Lovaglio was actively involved in Union organizing activity. Lovaglio also spoke to his co-workers, at their job posts, to enlist their support for the Union, as well as signing and distributing Union authorization cards. After the Union was elected, Colangelo was selected to serve as Union shop steward and was on the Union's negotiating committee.

Respondent's Anti-Union Animus and the Section 8(a)(1) violations.

15 The evidence established that Jerry Brooks revealed his animus toward the Union and toward its adherents from the outset of the employees' organizing campaign. In this regard, Madeline Levine, at that time a supervisor within the meaning of the Act, testified that in early 2002, Brooks told her that he knew that the employees were trying to get a union, and he asked Levine if she knew who was spearheading the Union organizing. Brooks asked Levine about the Union organizing on another occasion, at the INS building site, and stated that the Union would not get into Respondent's company. In April 2002, just before the Union election, Brooks again asked Levine who was spearheading the Union organizing. During this conversation, Brooks also told Levine to get out additional job applications and to begin hiring new employees, "in case we have problem personnel." Levine's un rebutted testimony establishes that there were no particular business problems that Respondent was facing at that time. The only change Respondent faced was the possibility of the employees electing the Union. In this context, and in connection with his questioning Levine regarding who started the Union organizing, Brooks' reference to "problem personnel." I conclude such statement to mean those employees who spearheaded the Union organizing. Therefore, I further conclude that Brooks devised a plan to hire new employees, which he in fact did, ensuring himself that the business would be properly staffed after he began firing the Union supporters, as set forth and described below.

35 Further supporting the conclusion that Respondent formulated a plan to get rid of the Union supporters, and the Union, was Levine's testimony regarding a July 2002 conversation with Keith Evans, when he was rehired by Brooks. While visiting Levine at her job site, Evans told Levine that Brooks rehired him to run the company and to "straighten everything out for Brooks." Again, as there were no apparent business problems that Respondent was facing, I conclude this could only be a reference to "straightening out" Respondent's new problem – having to recognize and bargain with the Union.

40 Respondent's plan to get rid of the Union adherents was further established by the un rebutted and very detailed testimony of Anthony Froller, an employee, who corroborated Levine's testimony regarding Evans' statements. Froller testified that he first met Evans on June 21, 2002 at Froller's job post. Froller testified that after introducing himself, Evans said that he was coming to work for Respondent "to clean things up." The following Monday, Evans telephoned Froller at home. During their conversation, Evans told Froller that Brooks was upset about the Union. Evans also instructed Froller, who was then serving as acting supervisor, to begin writing up the guards for anything and everything – regardless of how minor the infraction. This compelling testimony leads to my conclusion that Respondent devised a plan to rid itself of the Union supporters by manufacturing bogus disciplinary actions against them, creating a sham paper trail to hide its unlawful motivation and conduct.

Joe Bilello's testimony also corroborates that of Levine and Froller. Bilello testified that at the end of June or beginning of July 2002, when Evans returned to the company, Evans telephoned Bilello to inform him that Evans was changing Bilello's schedule and job sites. Respondent transferred Bilello from a job inside an office to a post in a garage, where he was exposed to the elements and endured a longer commute to and from work. When Bilello protested and asked why his schedule was being changed, Evans stated that he was doing what he had to do, and that Brooks brought him back to "take care of the Union."

I find Evans' statement that Brooks had brought him back to "take care of the Union" to constitute a threat of unspecified reprisals and a violation of Section 8(a)(1).

During another conversation with Evans on July 14, 2002, Bilello testified that Evans again stated that Brooks rehired him to "take care of the Union," adding that he "does not give a shit about the Union", and that "this Union business has to stop." Similarly, I find such statement to constitute a threat as unspecified reprisals, in violation of Section 8(a)(1).

Finally, Keith Evans himself admitted that when employees raised complaints about changes to their schedules, job locations and work hours, and regarding other work-related problems, Evans often responded that he would run the business as he wanted and that he would not be dictated to by the Union. I also find this statement to be a threat of unspecified reprisals, in violation of Section 8(a)(1).

Pat Colangelo, an employee, testified that in September 2002, Respondent's supervisor Lawrence Troutman told Colangelo that Jerry Brooks had a "hit list", and that Artie Blinn and Joe Bilello, along with two to three other employees, were on that "hit list." I find such statements to be a threat of discharge, and a violation of Section 8(a)(1).

The undisputed evidence also establishes that Respondent threatened employees that their Union activity would be futile. In this connection, Anthony Froller testified that on December 17, 2002, Keith Evans visited Froller's work site. Froller had just given an affidavit at the National Labor Relations Board in connection with the unfair labor practice allegations in this case. Froller testified that Evans said that he was upset that he had to answer "bullshit complaints" made against him and Jerry Brooks to the Union and to the National Labor Relations Board. Brooks told Froller that "complaining doesn't mean anything, it won't matter. You can complain to the Union, the National Labor Relations Board, your mother and Jesus Christ and it doesn't mean a thing." I find such statement to be a threat that their Union activity would be futile, in violation of Section 8(a)(1).

The Discharge of Arthur Blinn

Artie Blinn began working for Respondent as an armed security guard in October 2000. Respondent fired Blinn on September 7, 2002. The evidence establishes that Blinn was a good employee. It is undisputed that prior to the Union organizing, Respondent had never disciplined Blinn.

On June 8, 2002, Blinn made a written request to take off work on July 13th and 14th, clearly indicating that he needed those days off to attend an out-of-state wedding. His leave request was inadvertently sent down to Respondent's corporate office in Alabama, where it was "disapproved" because of Respondent's policy that accrued paid vacation leave must be taken in 40-hour increments. Blinn then informed his supervisor at the time, Captain Madeline Levine, that he needed those days off to attend the wedding. The evidence establishes that Levine approved Blinn's request, in accordance with Respondent's practice of allowing guards to switch

shifts with other guards or to find coverage for their posts. The overwhelming record evidence establishes that Respondent had a practice of permitting employees to mutually switch shifts or to have a supervisor get coverage for their shift if they needed to take off a day or two.

5 At the end of June 2002, Keith Evans called Blinn and informed him that he was returning to ESU to manage the company.² Evans told Blinn that he was changing his schedule. At this time, Blinn advised Evans that he was taking off on July 13th and 14th, and that due to the schedule change, he would also have to take off on July 12th. It is undisputed that Evans approved Blinn's request, stating that Evans would make sure to get Blinn's post covered.

10 The evidence establishes that at no time after Evans approved Blinn's request did Respondent call Blinn to tell him that there was no coverage for his post and that he could not take those three days off. To the contrary, after some evasion, Evans admitted that Blinn's request for days off on July 12 through 14 was approved. Blinn took off on those three days without incident. The evidence establishes that at that time, Respondent did not counsel or discipline Blinn for taking those days off.

15 On Friday, July 19, 2002, after his work shift, Blinn called Evans to advise him that he had taken ill and would not be able to work on his next tour, Saturday and Sunday, July 20th and 21st. Blinn told Evans that he would let Evans know when he was well and able to return to work. On Tuesday, July 23rd, Blinn advised Evans that he was well and able to return to work on Thursday, his next scheduled shift. Evans told Blinn that he needed to provide a doctor's note. Blinn questioned Evans, asking why he needed to provide a doctor's note, as he was not getting paid for the days that he missed. Blinn credibly testified that Evans responded that it was because of "this Union thing."

20 Blinn testified that prior to this incident, Respondent had never required him to provide a doctor's note. The evidence establishes that it was not Respondent's policy or practice to require its guards to provide doctor's notes after a medical absence. In this regard, employee George Lovaglio testified that he was not required to provide a doctor's note for two sick days in March, 2002. Madeline Levine testified that during her employment as Captain, Brooks never advised her that it was Respondent's policy to require employees to provide doctors' notes to verify sick days, and that she never required that of the guards.

25 On Wednesday, Evans called Blinn and advised him that Respondent had filled Blinn's regular Thursday and Friday shift at the Social Security building in Riverhead. Evans directed Blinn to report to his regular assignment on Saturday at the Federal Courthouse.

30 When Blinn returned to work on Saturday, he submitted the requested doctor's note to his supervisor, Lt. Thomas Laquori. In the beginning of August, enclosed with his pay stub, Blinn received a note from Respondent's corporate office stating that his doctor's note was insufficient and asking him to provide another note. Blinn immediately called Evans, asking him to clarify what information Respondent wanted on the doctor's note. Evans said that he would find out and let Blinn know. The evidence, including Evans's own admission, establishes that Respondent never informed Blinn of why his original doctor's note was insufficient or what information it wanted him to provide.

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² Evans left Respondent employ in June 2001. He returned in June 2002, as a supervisor.

On September 8, 2002, Blinn told Evans that he needed to take the day off on September 19th. Evans testified that he then fired Blinn because of "chronic absenteeism." Evans admitted that although the Employer has a progressive discipline policy, Respondent did not issue Blinn a warning or suspend him for his purported absenteeism, even though Blinn had
5 no prior discipline. Evans admitted that contrary to Respondent's progressive discipline policy, he just summarily fired Blinn.

Respondent presented no evidence in defense of the allegation that it fired Blinn in retaliation for his Union activity.
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First, Respondent gave shifting reasons for firing Blinn. In its position statement to the Board and in its submission to the Department of Labor regarding Blinn's application for unemployment, Respondent falsely asserted that it did not fire Blinn, but that he quit. This assertion was utterly contradicted by Evans, who admitted that Blinn did not quit, but that Evans
15 fired Blinn. Next, in its November 20, 2002 position statement to the Board during the investigation of these unfair labor practice allegations, Respondent asserted that Blinn was fired for "unexcused absences from work on July 12th, 13th and 14th of 2002 and from July 20th through July 26th of 2002." In its position statement, Respondent asserted that Blinn's leave from July 12th to 14th was "unexcused." This assertion was flatly contradicted by the record
20 evidence, including Evans's testimony, which establishes that Blinn's leave request was, in fact, approved by Captain Levine and by Keith Evans. Respondent continued its position statement by asserting that Blinn attributed his July 12-15 absence to illness. This assertion is contradicted by the record evidence. Blinn's written leave request clearly states that he took those days off to attend an out-of-state wedding. Respondent then misrepresented the facts,
25 claiming that Blinn was absent from July 20th through July 26th. Contrary to the impression that Respondent tried to create, the record evidence establishes that Blinn called in sick on two days, July 20th and 21st, after which he informed Evans that he was able to return to work. It was Evans who told Blinn not to report to his regularly scheduled Thursday and Friday tour. Blinn returned to work on Saturday, July 26th. The remaining days during that week were Blinn's
30 regularly scheduled days off.

Respondent, in its position statement also falsely claimed that Blinn refused to provide a doctor's note, as requested by Respondent. As discussed above, the evidence establishes that Respondent never required employees to provide doctors' notes. It would appear that
35 Respondent's sudden demand that Blinn provide a doctor's note was in retaliation for his Union activity, and part of its scheme to manufacture cases of purported "misconduct" against the Union adherents to cover up its unlawful discharges. As Evans testified, Blinn did provide a doctor's note to Respondent. Respondent disciplined Blinn even though it was Respondent who never informed Blinn of why that note was insufficient or what information it needed.
40 Contradicting Respondent's position statement, Evans admitted that Blinn never refused to provide a doctor's note.

Under the Board's decision in *Wright Line, 251 NLRB 1083 (1980)*, approved by the Supreme Court in *National Labor Relations Board v. Transportation Management Corp.*, 462
45 U.S. 393 (1983), General Counsel must make a prima facie showing of sufficient evidence to support the inference that protected conduct was a motivating factor in the employer's decision to terminate, suspend or otherwise discipline an employee. Once this is established the burden then shifts to the employer to demonstrate that the same action would have been taken even in the absence of protected conduct. The question, then, is not whether the employer could have
50 taken the adverse action, but whether it would have done so in the absence of the discriminatee's union activities. *Standard Sheet Metal, Inc.*, 326 NLRB No. 35 (1998). Thus, Respondent must persuade by a preponderance of the credible evidence that it would have

taken the actions described herein in the absence of each discriminatee's protected activities in support of the Union. *T & J Trucking, Co.*, 316 NLRB 771 (1995).

5 General Counsel has established a strong prima facie case that Respondent discharged Blinn because of his support for and activities on behalf of the Union. The evidence establishes, and Respondent did not dispute, that Blinn was one of the key employee organizers. There is ample evidence of Respondent's animus toward the Union adherents, as demonstrated by the numerous violations of Section 8(a)(1) above, and toward Blinn in particular. The un rebutted evidence establishes that Respondent had a "hit list", - a list of employees whom it targeted for discharge – and that Blinn was on that "hit list".

Respondent did not put any witness on the stand to give testimony on its behalf.

15 In its position statement to the Board, Respondent claimed that Blinn quit. In its answer to the Complaint, and through Evans' testimony, Respondent admitted that it fired Blinn. It is well-settled Board law that when an employer vacillates in offering a rational and consistent explanation for its actions, an inference is warranted that the real reason for its actions is not among those asserted, but rather an unlawful one. *Johnson Freightlines*, 323 NLRB at 1221. Shifting defenses, such as that proffered by Respondent, compels the conclusion that Respondent's defense is pretext. *Johnson Freightlines*, 323 NLRB at 1221.

25 In addition to shifting defenses, the record establishes that Respondent gave irreconcilably contradictory accounts of the alleged misconduct that purportedly formed the basis for discharging Blinn. For example, in its position statement, Respondent asserted that Blinn's July 12-14 absence was unexcused. This was plainly contradicted by the testimony of Blinn, Levine, and Evans, himself, who admitted that Blinn's leave request was approved. Moreover, the record conclusively establishes that Respondent had a practice of allowing employees to switch shifts or to get coverage when they needed a day off. In that regard, Evans testified permission for employees to switch shifts was granted liberally, as long as no overtime was incurred. Thus, contrary to Respondent's assertion, as Blinn acted in accordance with Respondent's common practice, he did not engage in any misconduct.

35 Evans also contradicted Respondent's assertion that on several occasions, Blinn refused to provide doctors' notes to verify medical absences. Again contradicting the assertions set forth in Respondent's position statement to the Board, Evans admitted that Blinn's first leave request, from July 12-14, was not a medical situation. Therefore, Blinn was not, and could not have been required to provide a doctor's note. Evans also admitted that Blinn never refused to provide a doctor's note.

40 Respondent's failure to follow its progressive disciplinary systems further supports the conclusion that its discharge of Blinn was unlawful. Blinn was a good employee who had no disciplinary problems. Respondent's precipitous discharge of Blinn, without even considering giving him a lesser discipline, reveals Respondent's true goal of getting rid of Blinn, a strong Union supporter. Moreover, Respondent's harsh treatment of Blinn is in marked contrast to its discipline of other employees. The evidence establishes that Brooks merely issued a written warning to employee Hector Martinez, who on several occasions signed in but was missing from his post, conduct far more serious than merely requesting a day off.

50 Thus, the record evidence could not be clearer that Respondent's explanations for firing Blinn are pretextual. They either did not exist or were not, in fact, relied upon. Therefore, under Board law, I conclude Respondent "will not have met its burden and the inquiry is logically at an end." *Weis Markets, Inc.*, 325 NLRB 871, 892 (1998).

Accordingly, I conclude the reason for firing Blinn was an unlawful one that it tried to conceal in its effort to rid itself of a strong Union supporter. Accordingly, I conclude that Respondent violated Section 8(a)(3) of the Act by firing Blinn.

5 The Discharge of Madeline Levine

10 Madeline Levine began working for Respondent as an armed security guard in August 2000. In June 2001, Levine was promoted to Captain, a supervisory position. In July 2002, when Brooks rehired Evans to "take care of the Union," Evans replaced Levine, and she returned to the unit position of security guard. Respondent admitted that Levine was a good employee who had no disciplinary actions taken against her during the course of her employment.

15 It is undisputed that Madeline Levine submitted a statement, dated December 4, 2002, on behalf of Artie Blinn for his January 6, 2003 unemployment hearing. In her statement, Levine stated that, contrary to Respondent's claim, she had approved Blinn's request to take days off in July 2002. It is also undisputed that Respondent knew that Levine submitted a statement on behalf of Blinn.

20 Blinn's unemployment hearing was held on January 6, 2003. Keith Evans was present for Respondent, and Jerry Brooks attended via speakerphone. On January 10, 2003, the judge rendered her decision, finding that Blinn did not quit his employment and that he did not engage in misconduct that would disqualify him from receiving unemployment benefits.

25 On January 17, 2003, just days after Blinn's favorable unemployment decision, Respondent issued to Levine a Notice of Suspension. Respondent stated that it was suspending Levine, pending further investigation, because she overstepped her authority by approving Blinn's July 12th and 13th leave request, some six months earlier, and because of two missing handguns. By letter dated January 21, 2003, Levine submitted a response to the
30 accusations in her suspension letter. Without any further contact with Levine, and without any further inquiry, Respondent terminated Levine on January 31, 2003.

35 The record evidence overwhelmingly establishes a prima facie case that Respondent fired Levine in retaliation for providing testimony on behalf of Blinn at his unemployment hearing. First, the Board and courts are clear that testifying on behalf of a fellow employee is protected by Section 7 of the Act. *G&W Electric Specially Company*, 154 NLRB 1136 (1965); *National Labor Relations Board v. Coca Cola Bottling Company*, 811 F.2d 82 (1986). It is undisputed that Respondent knew that Levine provided testimony on behalf of Blinn. Moreover, the timing of Levine's discharge, just days after Blinn's hearing and a favorable decision, is
40 compelling evidence of Respondent's discriminatory motive in firing Levine. *Cell Agricultural Mfg. Co.*, 311 NLRB 1228, 1232 (1993) (timing alone, even without any other evidence of unlawful conduct or animus, held sufficient to find an unlawful reason as a motivating factor in an employer's actions).

45 The record evidence makes plain that Respondent's proffered reasons for firing Levine were pretextual. First, it is highly suspect that Respondent fired Levine in January, just after having testified on behalf of Blinn, for alleged misconduct that purportedly occurred in July 2002. The evidence also establishes that contrary to Respondent's assertion, Levine did not overstep her authority when granting Blinn's request for days off. In that regard, the evidence
50 conclusively reveals that Brooks gave Levine complete authority with respect to scheduling of the guards, and that it was common practice for employees to mutually switch shifts or to have a supervisor find coverage for a guard who needed a day off.

The record evidence also establishes the falsity of Respondent's claim that Levine engaged in misconduct regarding two missing handguns. First, the record establishes that in July 2002, Brooks questioned Levine regarding the whereabouts of one particular gun and requested that she deliver the gun to Respondent's gun custodian. Levine responded to Brooks, reminding him of their prior agreement about using the gun for parts or for training, and notifying Brooks that she gave the gun to the gun custodian. By letter dated August 23, 2002, Brooks acknowledged that the gun was in the possession of Respondent's gun custodian and that the issue was now "moot". Levine's un rebutted and credible testimony establishes that prior to receiving her notice of suspension, Respondent had never raised any questions regarding the location of a second handgun.

The pretextual nature of the reasons for Levine's discharge is further demonstrated by Respondent's failure to genuinely or fairly investigate the alleged misconduct it accused Levine of committing. Despite its self-serving remark that Levine was suspended "pending investigation," it is obvious that Respondent utterly disregarded her (Levine's) January 21st reply, which thoroughly addressed Brooks' concerns. It is clear that Respondent was merely going through the motions of conducting an investigation, while having already decided to use its trumped-up allegations to fire Levine. Respondent's failure to fairly investigate the alleged misconduct constitutes a significant factor in concluding that Respondent's proffered reasons for firing Levine are pretext. *Johnson Freightlines*, 323 NLRB at 1222; *Doctor's Hospital of Staten Island, Inc.*, 325 NLRB No. 144 (1998).

The preponderance of the record evidence makes it clear that Respondent's explanations for firing Levine are pretextual. It is clear that the purported "misconduct" that it accused Levine of committing did not exist, or were not relied on. Accordingly, I conclude that Respondent failed to meet its *Write Line* burden, and accordingly I conclude Respondent violated Section 8(a)(3) by the discharge of Levine.

The Suspension and Discharge of Pat Colangelo and the Suspension and Discharge of Louis D'Amato to hide the Unlawful Discharge of Colangelo

Pat Colangelo was employed by Respondent as an armed security guard from May 2000 until his suspension and subsequent discharge, on January 17, 2003 and January 31, respectively. It is undisputed, as testified to by Keith Evans, that prior to his discharge, Colangelo had no disciplinary problems. In fact, Evans testified, Respondent considered Colangelo to be a good employee.

The evidence establishes a strong prima facie case that Respondent fired Pat Colangelo in retaliation for his Union activity and for his testifying on behalf of Artie Blinn at Blinn's unemployment hearing. First, it is undisputed that Colangelo was one of the main Union adherents and played a key role in getting Union representation. After the Union was elected, Colangelo served as Union shop steward and participated on the Union's negotiating committee. Colangelo also engaged in protected activity by testifying on behalf of Artie Blinn at his January 6, 2003 unemployment hearing, where Evans and Brooks (via speakerphone) were present. Colangelo testified that he informed the unemployment judge that he was appearing on Blinn's behalf in his capacity as Union shop steward.

Not coincidentally, like Madeline Levine, Colangelo received a notice of suspension from Brooks dated January 17, 2003, just days after testifying on behalf of Blinn and after the judge rendered a decision in favor of Blinn. The reason proffered for the suspension by Respondent was that Colangelo left his work site early on December 5, 2002 due to an early closure of the building, but he signed out for a full day of work.

Pursuant to Brooks' request, Colangelo submitted a written response to the notice of suspension, dated January 21, 2003. In his response, Colangelo stated that due to a severe snowstorm, GSA closed the building at 2:30 p.m. Colangelo stated that GSA building manager Pat Canizio told Colangelo to sign out and that employees would receive a full day's pay, which was why he signed out his regular departure time. Colangelo submitted along with his response written statements from GSA managers Pat Canizio on behalf of Colangelo.

Without any further inquiry, and completely disregarding Colangelo's legitimate reason for his conduct, Respondent fired Colangelo on January 31st, claiming that the "severity of your actions warrant a release for cause. The reasons given for your actions are without merit and totally unjustified."

The pretextual nature of Respondent's reason for firing Colangelo could not be more evident. First, Respondent fired Colangelo almost two months after he engaged in this alleged "serious" misconduct. The two-month delay in firing Colangelo fatally undermines Respondent's claim that the conduct was serious. Further, in contravention of Respondent's progressive disciplinary policy, Respondent did not mete out a lesser punishment, such as a warning, even though Colangelo had no prior disciplinary history. Moreover, it is evident that, like with Levine, Respondent did not genuinely consider Colangelo's response to his suspension notice. Brooks clearly disregarded Colangelo's reasonable explanation and the statements of two GSA building managers, who praised Colangelo's work performance. This clearly reveals Respondent's true intent – not of conducting a genuine investigation, but of manufacturing a reason to fire Colangelo. Further, the evidence establishes that Respondent never advised its employees how to sign out in situations where a building closed early. In fact, Colangelo's undisputed testimony establishes that on an occasion in March 2001, when Colangelo arrived at work only to find that the building was closed due to a snow storm, Keith Evans told Colangelo to sign in for four hours that he did not work. Thus, it was not unreasonable for Colangelo to sign out his regular time when he was told by the GSA manager that he would be paid for the full day.

The pretextual nature of Respondent's reason for firing Colangelo is conclusively established by the evidence of disparate treatment. The undisputed evidence establishes that on December 24, 2002, Respondent did not fire – but merely issued a warning to – employee Alain Ocampo for exactly the same conduct for which it fired Colangelo, namely for signing out his regular time rather than the time of the early building closure.

The record contains evidence further supporting Respondent's disparate treatment of Colangelo. On March 15, 2002, Respondent issued a written warning to guard Hector Martinez for having signed in but not having been on post on several occasions. It cannot be disputed that Martinez's conduct, which reflects an intentional falsifying of time records and abandoning post, is far worse than Colangelo's conduct. Yet, Respondent fired Colangelo and merely issued a write up to Martinez. The undisputed evidence of disparate treatment clearly establishes Respondent's unlawful motive in discharging Colangelo.

Again, the record evidence clearly establishes that Respondent's reason for firing Colangelo was a pretext, a fabrication designed to hide its true, unlawful motive for its actions. Accordingly, I conclude Respondent has not met its *Write Line* burden and I conclude that Respondent violated Section 8(a)(3) of the Act by discharging Colangelo.

The evidence also establishes that Respondent's asserted reason for firing Louis D'Amato was a pretext. D'Amato was working with Colangelo on December 5, 2002, the day that GSA closed the building due to a severe snowstorm. Like Colangelo, after being told that

the building was closing and that he would be paid for the full day, D'Amato also signed out his regular time, 4:30 p.m., rather than the building's closing time of 2:30 p.m. D'Amato did not testify at Blinn's unemployment hearing. Unlike Colangelo and Levine, who did testify on behalf of Blinn, Respondent did not suspend D'Amato on January 17th, even though he engaged in the same purportedly "serious misconduct" as Colangelo. It would appear Respondent apparently realized that its failure to suspend D'Amato for the same conduct for which it suspended Colangelo would fatally expose its conduct against Colangelo as a sham. Therefore, on January 23rd, in an effort to cover its tracks, Respondent issued a notice of suspension to D'Amato and then fired him on January 31st. I find on the basis of the evidence that General Counsel has established a prima facie case.

It is undisputed, as Evans testified, that D'Amato was a good employee. D'Amato submitted a written response to the suspension, explaining the reasoning behind his action and even offering to reimburse Respondent for the two additional hours. However, Respondent ignored D'Amato's response. I conclude this was undoubtedly because Respondent was not conducting a genuine investigation into alleged "serious misconduct," but because it needed to fire D'Amato to cover up its unlawful discharge of Colangelo. I conclude that Respondent failed to meet its *Write Line* burden. I further conclude that as D'Amato's discharge was used by Respondent to hide its unlawful discharge of Colangelo, I find that Respondent violated Section 8(a)(3) by discharging D'Amato.

Denial of holiday pay and a written warning to Bilello

Joe Bilello began employment with Respondent as an armed security guard in October 2000. It is undisputed that Bilello was one of the key Union supports and was instrumental in getting Union representation. The evidence establishes that prior to the Union organizing, Bilello had no disciplinary history and that Respondent considered Bilello to be a good employee.

The uncontroverted evidence also establishes that Respondent harbored anti-union animus against Bilello. In this regard, the unrebutted evidence establishes that Bilello was on Respondent's "hit list", along with other key union supporters including Artie Blinn. In mid July 2002, after receiving his paycheck for the week including July 4th, Bilello noticed that Respondent did not pay him for the July 4th holiday. Bilello called Jerry Brooks, who refused to pay him for the holiday. During this conversation, Brooks told Bilello that he was being written up for visiting the guards who were working on July 4th and "harassing" them. Bilello responded that he just visited the guards to bring them coffee. Brooks disregarded Bilello's explanation, stating, "It doesn't matter. I'm writing you up. It's in your file".

The evidence is clear that Brooks disciplined Bilello and denied him July 4th holiday pay after Bilello, a known Union supporter, went to talk to his co-workers. The evidence establishes that Respondent's discipline of Bilello was in furtherance of its unlawful scheme to manufacture phony infractions against the Union supporters to be used to fire them. Moreover, since he was on Respondent's "hit list" it would appear he was simply next in line. Respondent did not present any defense to this allegation. In light of General Counsel's strong prima facie case and Respondent's failure to present any evidence to show that it would have engaged in the same conduct even absent Bilello's Union activity, I conclude that Respondent failed to meet its *Write Line* burden and violated Section 8(a)(3) by disciplining Bilello and by denying him July 4th holiday pay.

Written warning, suspension and reduction of hours of George Lovaglio

George Lovaglio began working for Respondent as an armed security guard on December 21, 2001. The evidence establishes that Lovaglio engaged in protected Union activity, talking to co-workers at their job site to encourage them to support the Union and distributing Union authorization cards.

Lovaglio's unrebutted testimony establishes that some time in February, after the employees began their Union organizing efforts, Jerry Brooks surveilled employees from a nearby building while they were talking to Pat Colangelo about the Union. Brooks' surveillance of employees' Union activity was corroborated by the uncontradicted testimony of employee Dick Raynor. Raynor testified that Brooks informed him that he knew what was going on at the INS building, where Lovaglio worked, and that he watched the employees from his room in the Wingate Hotel, which was across the street from the entrance to the INS building. The record also establishes Respondent's animus toward Lovaglio. Raynor's unrebutted testimony establishes that during a conversation with Keith Evans, Evans said that he was getting a "hard time" from certain employees, including Lovaglio, Colangelo, and Bilello, about their schedule changes, and that Evans was going to "take care of them".

Lovaglio testified that he worked on April 23, 2003, which was a cold morning, approximately 40 degrees. Lovaglio was wearing his ESU uniform, covered by his leather outer coat, which was his own uniform leather police coat. It is undisputed that despite several requests, Respondent never provided Lovaglio with an ESU uniform coat for cold weather. On that day, Brooks met with Lovaglio at his post. While the two had a conversation, the record establishes that Brooks did not say anything to Lovaglio about his wearing his own leather coat.

On or about July 8, 2002, Lovaglio received in the mail a written warning from Brooks for being out of uniform and wearing his leather coat. Although the envelope was postmarked July 8th, the letter was dated April 23rd.

I conclude the evidence is clear that the reason Respondent proffered for disciplining Lovaglio is a pretext, and in furtherance of Respondent's scheme to build phony cases against the Union supporters to hide its unlawful conduct. The pretextual nature of Respondent's discipline of Lovaglio is made clear by the unrebutted record evidence of disparate treatment. In that regard, Dick Raynor testified that during a visit by Jerry Brooks to his work site, Brooks commented on Raynor's being out of uniform because he was wearing his own windbreaker, and not an ESU issued windbreaker. Raynor told Brooks that Respondent never issued a windbreaker to him. Raynor was never disciplined for being out of uniform by wearing his own jacket. I conclude the issuance of the written warning as a violation of Section 8(a)(3).

The evidence also establishes that Respondent suspended Lovaglio for one day on July 16, 2002. On the previous day, Lovaglio called to speak to his supervisor, Lt. Martinez, to report that he could not report to work. Lt. Martinez was busy, so Lovaglio asked his co-worker, Sam Murphy, to relay the message to Martinez. Lovaglio also told Murphy to tell Martinez that he would be in on the following day, July 16th. The unrebutted evidence establishes that Murphy relayed the message to Martinez. Nonetheless, when Lovaglio reported to work on July 16th, Martinez told Lovaglio that Keith Evans had removed him from the schedule for the day, without explanation. The record reveals that no other employees were suspended or disciplined for taking a day off. This is particularly so in light of the fact that if an employee did not work, he did not get paid, and in light of Respondent's liberal policy of allowing employees to switch shifts or get their posts covered if they could not work.

The evidence further establishes that on September 24, 2002, Evans precipitously transferred Lovaglio to a site in Riverhead, New York and reduced Lovaglio's work hours from 40 to 18 per week. Lovaglio testified that during the course of his employment, Respondent had no complaints about his work performance.

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The un rebutted testimony of Anthony Froller conclusively establishes that Respondent reduced Lovaglio's hours in furtherance of its scheme to rid itself of Union supporters. Froller testified that Evans told Froller that he expected Lovaglio to quit after learning that his hours were cut in half, and that he was surprised that Lovaglio did not quit. Thus, the evidence is clear Respondent transferred Lovaglio and drastically reduced his hours in furtherance of its scheme to retaliate against and get rid of Union supporters.

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Based on the above, I conclude that Respondent violated Section 8(a)(3) of the Act by issuing a warning to, suspending and reducing the hours of George Lovaglio.

15

Unilateral change of terms and conditions of employment

The record establishes, and Respondent admits, that after an April 2002 mail ballot election, the Union was certified as the exclusive bargaining representative of Respondent's employees on May 9, 2002. In its Answer to the Complaint, Respondent admits that in June 2002, after the Union was exclusive bargaining representative, it changed the job locations, work schedules and number of work hours of certain employees, including Joseph Bilello, Artie Blinn, Anthony Froller and George Lovaglio.

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The record evidence establishes beyond question that Respondent unilaterally made these changes to employees' terms and conditions of employment without notice to or bargaining with the Union. In this connection, Union President Bruce Lichtenstein testified that Respondent changed the work schedules, locations and hours of approximately 1/3 of Respondent's approximately 28 employees. Lichtenstein's un rebutted testimony establishes that Respondent, prior to making these changes, never notified or bargained with the Union. Keith Evans also admitted that upon being rehired by Brooks, he implemented these changes to employees' terms and conditions of employment – without notifying or bargaining with the Union. Taking his cue from Brooks, Evans repeatedly told employees who protested their schedule changes that he would do what he wanted and would not be dictated to by the Union.

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Immediately upon learning of these changes, Lichtenstein sent a letter to Jerry Brooks requesting that he rescind the unlawful changes. Brooks refused, responding that the Union would not dictate to him how he runs his company.

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There is no dispute that Respondent unilaterally changed employees' job schedules, locations and work hours without notice to or bargaining with the Union, at a time when the Union was the exclusive bargaining representative. Board law is clear that employee schedules, job locations and hours of work are mandatory subjects of bargaining. Based on the above conduct, I conclude that Respondent violated Section 8(a)(5) of the Act. *National Labor Relations Board v. Katz*, 369 U.S. 736, 50 LRRM 2177 (1962).

45

Respondent refuses to execute a collective bargaining agreement agreed upon.

In its Answer to the Complaint, Respondent admits that on September 19, 2003, the Union and Respondent reached complete agreement on the terms and conditions of employment of the bargaining unit, these terms to be incorporated in a collective bargaining agreement. Respondent further admitted that since September 30, 2002, the Union has

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requested that Respondent execute a written contract containing the terms of employment that the parties agreed to on September 19th. Respondent has never executed this collective bargaining agreement.

5 On September 20, 2002, the Union sent a written contract, incorporating the terms to which the parties agreed on September 19th. On or about October 8th, Brooks sent back to Lichtenstein a copy of a proposed contract with numerous substantive changes to employees' terms and conditions of employment, including significant reductions in employee benefits. The evidence establishes that the parties had never agreed to these terms.

10 The evidence establishes that throughout all of the correspondence between Lichtenstein and Brooks or his attorney, Respondent never claimed that the Union's September 30th draft agreement was not an accurate representation of the parties' September 19th agreement.

15 Respondent presented no defense to this allegation. Its counsel, and some correspondence, seems to suggest that Respondent was privileged to not sign the contract because the Union reneged on its agreement to withdraw the two unfair labor practice charges that were pending against Respondent as of September 19th. I find this contention without merit. The overwhelming evidence conclusively establishes that the Union agreed to withdraw the two that were pending as of September 19th, when the parties reached full agreement, upon Respondent's execution of the contract. The evidence also establishes that the Union never withdrew its agreement to withdraw those charges; instead the Union was unable to fulfill its promise because Respondent never executed the contract. Given Respondent's entire course of conduct it is clear that Respondent's October 8 letter was just one more attempt to avoid a collective bargaining agreement.

25 Accordingly, I conclude that by refusing to execute the above described agreement, Respondent has violated Section 8(a)(5).

30

Remedy

35 Having found Respondent has committed violations of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

40 In view of the uncertainty in the record as to whether Respondent is operational, or in some other status, I shall provide remedial relief on the assumption that Respondent is operational. The exact status can be determined in compliance.

45 I shall recommend that Respondent be ordered to execute the September 19, 2003 collective bargaining agreement as requested by the Union on September 30, 2003. I further recommend that Respondent comply with the terms and conditions agreed upon, retroactive to September 19, 2003, and make the bargaining unit employees, as described in the agreement, and the Union whole for any losses they may have suffered as a result of Respondent's refusal to execute this agreement in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

50 I recommend Respondent be ordered to notify the Union of any proposed changes in mandatory subjects of bargaining and obtain the Union's consent before implementing such changes contained in the parties collective bargaining agreement and bargain in good faith upon request by the Union. I further recommend that upon request by the Union, Respondent

rescind the unilateral changes described above.

5 With respect to the discharge of employee Arthur Blinn, the suspensions and discharges
of employees Madeline Levine, Pasquale Colangelo and Louis D'Amato, I recommend that they
be offered unconditional reinstatement to their former positions of employment, or if such
positions no longer exist, to substantially equivalent positions of employment without prejudice
to their seniority or other rights previously enjoyed by them. I shall further recommend that
these employees be made whole for any loss of earnings, or other benefits suffered as a result
of their suspension and/or discharge from the date of their suspension and/or discharge until the
10 date a valid offer of reinstatement, as defined by the Board is made by Respondent, or until the
date Respondent has ceased to function as a business entity. Back pay shall be computed in
accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed by *New
Horizons for the Retarded*, supra. In connection with the denial of holiday pay to employee
Joseph Bilello, I shall recommend Respondent pay to Bilello the amount of such holiday pay
15 plus interest as described above. In addition, I recommend that Respondent be required to
provide documents showing each and every employee that was adversely affected by
Respondent's unlawful unilateral change of employees' terms and conditions of employment
and that Respondent be ordered to make each of those adversely affected employees' whole
with interest as described above. With respect to any employee discharged, suspended or who
20 received a written warning, as described above, Respondent must be ordered to remove from
the affected employee's personnel file any reference to such action, and to notify such
employee that this personnel action will not be used against him in any way.

25 On the basis of the above findings of fact and conclusions of law and on the entire
record, I issue the following recommended ³

ORDER

30 The Respondent, ESU, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

35 (a) Threatening it's employees with discharge, discipline and unspecified reprisals
because of their membership in, or activities on behalf of Special & Superior Officers
Benevolent Association, herein called the Union.

(b) Threatening it's employees that their membership in, or activities on behalf of the
Union would be futile.

40 (c) Discharging and/or suspending it's employees because of their membership in,
or activities on behalf of the Union.

45 (d) Discharging and/or suspending its employees because they testify before
Federal, State, or Municipal agencies, or other protected concerted activities for their mutual
aid and protection.

50 ³ 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.

(e) Denying holiday pay, or other benefits to its employees because of their membership in, or activities on behalf of the Union.

5 (f) Issuing written, or other warnings to its employees because of their membership in, or activities on behalf of the Union.

(g) Changing its employees' terms and conditions of employment, including requiring them to furnish a doctor's note after medical absences.

10 (h) Changing its employees' work schedules, job location, and number of work hours, without notice and bargaining to the Union.

15 (i) Failing and refusing to bargain collectively with the Union by refusing to execute a collective bargaining agreement containing the terms and conditions of employment that Respondent and the Union had agreed to on September 19, 2002.

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

20 (a) Execute the September 19, 2002 collective bargaining agreement as requested by the Union.

25 (b) Give retroactive effect to the terms and conditions of the collective bargaining agreement and make whole its employees and the Union for any losses they may have suffered by reason of Respondent's refusal to execute the collective bargaining agreement as set forth in the Remedy section of this Decision.

(c) On request by the Union, rescind the unilateral changes set forth and described above in the this recommended ORDER.

30 (d) Notify the Union in advance of any proposed changes in mandatory subjects of bargaining, obtain the Union's consent before implementing changes to such subjects contained in the parties collective bargaining agreement, and bargain collectively, and in good faith upon request by the Union.

35 (e) Provide to the Union, documents showing each and every employee that was adversely affected by Respondent's unlawful unilateral changes of employees' terms and conditions of employment and to make each of those employees adversely affected whole, and with interest, as set forth in the Remedy section of this Decision.

40 (f) Within 14 days of this Order, make unconditional offers of reinstatement to employees Arthur Blinn, Madeline Levine, Pasquale Colangelo, and Louis D' Amato to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges previously enjoyed.

45 (g) Within 14 days of this Order, make whole Blinn, Levine, Colangelo, and D'Amato, in the manner set forth in the Remedy section of this Decision, from the date of their discharge, until an unconditional offer of reinstatement is made.

50 (h) Within 14 days of this Order, make whole Levine and Colangelo, in the manner set forth in the Remedy section of this Decision, from the date of their suspensions until such suspensions terminated, or merged into a discharge.

(i) Within 14 days of this Order, make whole Joe Bilello for holiday pay as set forth in the Remedy section of this Decision.

5 (j) Within 14 days of this Order expunge from the personal files of Blinn, Levine, Colangelo, and D'Amato, any reference to their unlawful discharge, and/or suspension, and notify them in writing that this has been done.

10 (k) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

15 (l) Within 14 days after service by the Region, post at its principal office and place of business located 2003 Byrd Springs Road, Huntsville, Alabama, and its facilities in New York located in Central Islip, Riverhead, Hempstead, Garden City, Hauppauge, Patchogue, Melville, Freeport, Mineola, Long Beach, Lindenhurst and Hicksville, copies of the attached notice marked "Appendix." ⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in
20 conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In any event Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 21, 2002.

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

30 Dated, Washington, D.C.

35 _____
Howard Edelman
Administrative Law Judge

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45

50 _____
⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT threaten our employees with discharge, discipline or unspecified reprisals because of their membership in, or activities on behalf of Special & Superior Officers Benevolent Association, herein called the Union.

WE WILL NOT threaten our employees that their membership in, or activities on behalf of the Union would be futile.

WE WILL NOT discharge, and/or suspend our employees because of their membership in, or activities on behalf of the Union.

WE WILL NOT discharge and/or suspend our employees because they testify before Federal, State, or Municipal agencies, or other protected concerted activities for their mutual aid and protection.

WE WILL NOT deny holiday pay, or other benefits to our employees because of their membership in, or activities on behalf of the Union.

WE WILL NOT issue written, or other warnings to our employees because of their membership in, or activities on behalf of the Union.

WE WILL NOT change our employees' terms and conditions of employment, including requiring them to furnish a doctor's note after medical absences.

WE WILL NOT change our employees' work schedules, job location, and number of work hours, without notice and bargaining to the Union.

WE WILL NOT fail and refuse to bargain collectively with the Union by refusing to execute the collective bargaining agreement containing the terms and conditions of employment that Respondent and the Union had agreed to on September 19, 2002.

WE WILL execute the September 19, 2002 collective bargaining agreement as requested by the Union.

WE WILL give retroactive effect to the terms and conditions of the collective bargaining agreement and make whole our employees and the Union for any losses they may have suffered by reason of our refusal to execute the collective bargaining agreement as set forth in the Remedy section of this Decision.

WE WILL on request by the Union, rescind the unilateral changes set forth and described above in the this recommended ORDER.

WE WILL notify the Union in advance of any proposed changes in mandatory subjects of bargaining, obtain the Union’s consent before implementing changes to such subjects contained in the parties collective bargaining agreement, and bargain collectively, and in good faith upon request by the Union.

WE WILL provide to the Union, documents showing each and every employee that were adversely affected by Respondent’s unlawful unilateral changes of employees’ terms and conditions of employment and make each of those employees adversely affected whole, with interest, as set forth in the Remedy section of this Decision.

WE WILL within 14 days of this Order, make unconditional offers of reinstatement to employees Arthur Blinn, Madeline Levine, Pasquale Colangelo, and Louis D’ Amato to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions of employment without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL within 14 days of this Order, make whole Blinn, Levine, Colangelo, and D’Amato, in the manner set forth in the Remedy section of this Decision, from the date of their discharge, until an unconditional offer of reinstatement is made.

WE WILL within 14 days of this Order, make whole Levine and Colangelo, in the manner set forth in the Remedy section of this Decision, from the date of their suspensions until such suspensions terminated, or merged into a discharge.

WE WILL within 14 days of this Order, make whole Joe Bilello for holiday pay as set forth in the Remedy section of this Decision.

WE WILL within 14 days of this Order expunge from the personal files of Blinn, Levine, Colangelo, and D’Amato, any reference to their unlawful discharge, and or suspension, and notify them in writing that this has been done.

ESU, 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.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, NY 11201-4201
(718) 330-7713, Hours: 9 a.m. to 5:30 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, (718) 330-2862.