

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

NORTHEAST BEVERAGE CORPORATION
AND B. VETRANO DISTRIBUTORS, INC., A
WHOLLY OWNED SUBSIDIARY OF
NORTHEAST BEVERAGE CORPORATION

and

Case 34-CA-10139

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 1035

NORTHEAST BEVERAGE CORPORATION
AND NORTHEAST BEVERAGE CORP. OF
CONNECTICUT, A WHOLLY OWNED
SUBSIDIARY OF NORTHEAST BEVERAGE
CORPORATION, D/B/A BURT'S
BEVERAGES, INC.

and

Case 34-CA-10156

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 1035

*Margaret A. Lareau, Esq., for the General Counsel
Thomas W. Budd, Esq., and G. Peter Clark, Esq.
(Clifton Budd & DeMaria), of New York, NY,
for the Respondent*

*Gregg D. Adler, Esq., (Livingston, Adler, Pulda,
Meiklejohn & Kelly), of Hartford, Connecticut,
for the Charging Party*

DECISION

Statement of the Case

ELEANOR MACDONALD, Administrative Law Judge: This case was tried in Hartford and New Haven, Connecticut on five days between December 9 , 2002 and January 17, 2003. The Amended Complaint alleges that the Respondent, in violation of Section 8 (a) (1), (3) and (5) of the Act, by passed the Union and dealt directly with employees, threatened its employees with discipline for engaging in concerted activities, suspended its employees, discharged its employees and refused to consider for hire and refused to hire its employees because they engaged in concerted activities and because they joined and assisted the Union. The

Respondent denies that it has engaged in any violations of the Act and asserts that the Complaint is barred by Section 10 (b) of the Act.¹ On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all the parties, I make the following²

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Findings of Fact

I. Jurisdiction

10 The parties stipulated that during the period October 1, 2001 to June 17, 2002, Northeast Beverage Corporation and B. Vetrano, Inc., a wholly-owned subsidiary of Northeast Beverage Corporation were affiliated business enterprises. During the period April 1, 2002 to June 17, 2002, they constituted a single employer within the meaning of the Act.

15 The parties stipulated that during the period April 1, 2002 to June 17, 2002, Northeast Beverage Corporation, B. Vetrano, Inc., and Burt's Beverages, Inc., a wholly owned subsidiary of Northeast Beverage Corporation were affiliated business enterprises. During the period April 1, 2002 to June 17, 2002, they constituted a single employer within the meaning of the Act.

20 The parties stipulated that during the period June 17, 2002 to the present Northeast Beverage Corporation and Northeast Beverage Corp. of Connecticut, a wholly owned subsidiary of Northeast Beverage Corporation have constituted a single employer within the meaning of the Act.

25 The parties agree that at all material times the single employer Respondents described above have met the dollar amount and out-of-state purchase requirements for assertion of Board jurisdiction. The parties agree, and I find, that the single employer Respondents described above have been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The parties agree and I find that International Brotherhood of Teamsters, Local 30 1035, is a labor organization within the meaning of Section 2 (5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

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This case arises from the purchase of two Connecticut beer and soft-drink distributors by Northeast Beverage Corporation, a Rhode Island based company. In October 2001 Northeast Beverage Corporation purchased B. Vetrano, a company located in Bristol, Connecticut. The Vetrano drivers had for many years been represented by the Local 1035. Kenneth Mancini, the president of Northeast Beverage met with the Vetrano employees and told them that the future was bright now that they were part of his organization. In April 2002 Northeast Beverage Corporation purchased Burt's Beverages, Inc., a company located in Bethel, Connecticut. The

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45 ¹ On March 20, 2003, Respondent served and filed a Motion to amend its Answer and a First Amended Answer. The Motion is hereby granted. The Motion and the First Amended Answer are hereby admitted into evidence as ALJ Exhibit # 1. Respondent's proposed Exhibit # 18 and the Order dated February 24, 2003 rejecting that proposed exhibit are hereby placed in the Rejected Exhibit file. I note that Respondent has abandoned the Section 10 (b) defense.

² The record is hereby corrected so that at page 234, line 16, the witness Paul Johnson is answering the question; from pages 647 to 822 the name of the company should be spelled "Vetrano".

Burt's employees were not represented by a Union.

5 After the purchases described above, Mancini retained Alex Reveliotty to advise him on methods of merging the two Connecticut operations to insure their profitability. Reveliotty recommended that the operations be merged in Bethel at the Burt's facility, a decision which would entail closing the B. Vetrano facility. Local 1035 and Northeast Beverage began effects bargaining. The Vetrano employees, now unsure of their futures and feeling anxious about their jobs, decided on the spur of the moment to go to a bargaining session that was scheduled for 10 am at the Local 1035 Union hall on May 29, 2002. Management viewed this attendance with 10 the concomitant absence of the employees from their jobs for a few hours as an illegal strike. The drivers were suspended for a day and ultimately discharged, with one exception, at the time that the Vetrano facility closed.

15 During the effects bargaining, which continued until the B. Vetrano facility closed on Saturday, June 15, 2002, management engaged in a direct communication with an employee which is alleged to constitute bypassing the Union.

20 The effects bargaining dealt with many matters not relevant to the instant proceeding. As much as possible, I shall omit discussion of these extraneous matters in the discussion of this case.

The parties stipulated that the following individuals are supervisors of the single employer within the meaning of Section 2 (11) of the Act.

25 Kenneth Mancini: President and Chief Executive Officer, Northeast Beverage Corporation

Alex Reveliotty: Transitional Operations Manager/Consultant, April to August 2002

30 John Vetrano: Manager at B. Vetrano until June 17, 2002
 Manager, Northeast Beverage Corp. of Connecticut, June 2002 to present

James Davenport: Manager, Northeast Beverage Corp. of Connecticut

35 Diane Scott: Office Manager, Northeast Beverage Corp. of Connecticut

The record shows that various employees of B. Vetrano in Bristol were hired to work at the Burt's facility in Bethel. These included John Vetrano, foreman Fred Bergeron, and the sales manager and four sales people.

40 The collective bargaining agreement between B. Vetrano and Local 1035 applied to the following unit of employees:³

45 All regular drivers, regular helpers, regular warehousemen, driver's assistants, seasonal employees, temporary employees and spares; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

The collective bargaining agreement contained the following language:

³ The parties stipulated that the collective bargaining agreement was effective from May 1, 1999 through April 30, 2003.

Article XVI

NO STRIKE-NO LOCKOUT

5 **Section 1.** The Union guarantees the employer that there will be no authorized strikes, work stoppages or other concerted interference with normal operations by its employees during the term of this Agreement.

10 **Section 2.** The employer guarantees that it will not lock out its employees during the term of this Agreement. For the purposes of this section, an authorized strike, work stoppage or other concerted interference with normal operations is one that has been specifically authorized or ratified by the General Executive Board of the International Union or one which has been called or sanctioned, directly or indirectly, by representatives of teamsters Local No. 1035.

15 **Section 3.** In the event that the above job actions occur, the International Union shall not be liable, financially or otherwise, provided, however that within twenty-four (24) hours after actual notice in writing or by telegram from the employer that the International Union notify the local officers that such action is unauthorized and instruct such officers to bring it to the attention of the involved employees. The Local Union whose members are involved in such unauthorized action shall not be held liable thereafter, if it would otherwise be liable, provided that it meets the following conditions:

20 (a) the Union promptly posts notices in conspicuous places at the affected company and at the Local Union office stating that such action is unauthorized.

25 (b) The Union promptly orders its members to resume normal operations.

30 **Section 4.** The employees who instigate or participate in such job actions in violation of this Agreement shall be subject to discharge or discipline. In this event, their sole recourse to the grievance and arbitration procedure shall be limited to the question of whether, in fact, they did instigate or participate in such strike or work stoppage.

35 **Section 5.** In no event shall either the Local or the International Union be held liable for the actions of employees who are not members of the Union, nor shall the International Union be liable for any act or omission not specifically authorized or ratified by its General Executive Board.

B. Consolidation of the Facilities and Effects Bargaining

40 Kenneth Mancini testified that in May and June 2002 he had primary responsibility for the company's operations in Connecticut when he engaged Alex Reveliotty to assist him in evaluating efficiencies of operations at B. Vetrano in Bristol and at Burt's in Bethel and to recommend a business plan.

45 Reveliotty testified that Mancini has used him as an advisor on various occasions.⁴ In early April 2002 Mancini contacted Reveliotty to advise him on ways to enhance the profitability of two small Connecticut distributors acquired by Northeast Beverages. Reveliotty and Mancini

⁴ At the time of the hearing herein Reveliotty was employed by Atlantic Coast Brewing. In the past, Reveliotty had owned a beer distribution business in Massachusetts.

discussed various options for dealing with the facilities. Reveliotty said that he met with Mancini once a week and called him every few days. Mancini wanted to consolidate the two Connecticut operations under one roof.

5 On April 15, 2002 Reveliotty visited the Vetrano facility and later in the week he visited Burt's. Beginning May 15 and continuing to June, Reveliotty met with John Vetrano once a week. Reveliotty testified that staffing is important and that he gave consideration to this subject when completing his tasks for Mancini. Reveliotty discussed staffing with John Vetrano. The key issue was how to work out the routes serviced by B. Vetrano. Reveliotty asked who did
10 what routes and who drove on which trucks. John Vetrano told Reveliotty that he wanted to take care of his drivers as much as possible; he wanted to get jobs for some of his drivers in Bethel. Reveliotty knew that there was a union at B. Vetrano and that the Burt's employees were not represented.

15 After getting to know the Vetrano operations, Reveliotty spent much of his time at Burt's where he dealt with James and Jeff Davenport.⁵ Reveliotty stated that he was familiar with Burt's staffing. Reveliotty testified that he placed newspaper advertisements in April and May for drivers at Burt's. Whether or not there was an actual opening for a driver he wanted to develop a pool of candidates. Although he knew that the Union wanted jobs for the B. Vetrano
20 men, Reveliotty did not discuss with Mancini whether the latter would consider offering positions to the B. Vetrano drivers rather than placing ads in the papers for new employees. Reveliotty said that towards the end of May Burt's was only advertising for warehouse people.

25 Reveliotty knew that there was an employee manual at Burt's. Diane Scott, the Burt's office manager, told him it was out of date, but she did not say that there had been written changes.

30 On May 7 or 8, 2002 Reveliotty gave Mancini a written recommendation. In this document Reveliotty recommended that the two Connecticut locations be consolidated at Burt's in Bethel. Reveliotty wanted to deal with the increase in volume at the Burt's facility by changing to a system where a night crew was employed to load the trucks. This would allow the drivers more time to make their deliveries. Reveliotty testified that he was the person who decided how many employees were needed for the night loader crew in Bethel.

35 Mancini met with the Union representatives on May 13, 2002 and informed them that he had decided to consolidate the operations of B. Vetrano and Burt's.⁶ Mancini said that 70% of the business volume was closer to the Bethel location of Burt's and that the operations would probably be consolidated in Bethel. Mancini said that the B. Vetrano Bristol facility was too small. Mancini testified that there was a general discussion of the fate of the Bethel employees.
40 He was thinking of employing them and this may have been talked about. Mancini told the Union that Northeast Beverage was not clear what its needs would be and that he would talk to the Union as soon as more information became available. Mancini remarked that some of the Bristol employees might not want to commute to Bethel. Mancini testified that he asked the Union to provide names of those employees who wanted to work in Bethel although he did not
45 know whether he would employ these drivers in Bethel. Mancini wanted to inform the

⁵ Jeff Davenport is not further identified in the record.

⁶ Northeast Beverage was represented by Mancini, Reveliotty and Thomas Budd, Esq. The Union was represented by Secretary/Treasurer Christopher Roos, Union representative John Hammond and Gregg Adler, Esq. Adler was not always present. Shop Steward Gary Everett attended most sessions.

employees of the consolidation but the Union requested that they wait a day or two.

5 Mancini testified that on May 13 he told the Union that a probable merger date for Bethel and Bristol was between mid-June and mid-July. Northeast Beverage had applied for the necessary permits from the Connecticut liquor authorities and it was awaiting their issuance. Until Northeast obtained the required permit it could not order employees in Bethel to deliver beer on the Bristol routes previously served by B. Vetrano. Mancini testified that until June 14, their last day of work in Bristol, the B. Vetrano employees did not know when they would actually stop working.

10 Management attorney Thomas Budd, Esq., testified that at the May 13 meeting the parties discussed a possible merger of the facilities in Bristol and Bethel which would take place in mid-June. The Union suggested that all the work could remain at the B. Vetrano facility in Bristol or could be relocated to a new facility. The company responded that Bethel was the only facility adequate to house a merged operation. The Union said if there was a merger then the company should offer jobs to the B. Vetrano employees. The company suggested that some of the unit employees would not commute to Bethel and Union secretary/treasurer Roos replied that was possible but he did not know. The company said the Union should provide the names of employees who would be interested in going to Bethel if there were a merger. Roos asked that before the company spoke to employees about the merger the Union should be given the opportunity to communicate with them. During this meeting the company did not ask for a written list of unit employees willing to work from Bethel. According to Budd, the Union did not assert at the May 13 meeting that the collective bargaining agreement would apply in Bethel if the employees were transferred there, but Roos said he would check with attorney Adler as to the application of the contract.

Budd summed up the discussion in a May 14 letter to Roos which stated:

30 the Company expressed an interest in knowing what B. Vetrano unit members would go to Bethel, assuming the employment conditions are satisfactory, so that the Company could evaluate the necessity of hiring additional employees at Burt's to cover the anticipated increase in volume.

35 Roos testified that during the discussion on May 13 the company asked the Union for the names of B. Vetrano employees who would go to Bethel. The Union replied that Respondent should take all the employees by seniority. Mancini said he thought there might be work for some of the unit employees in Bethel but he was not sure how many would make the trip. Roos testified that it would take 30 minutes to drive from B. Vetrano in Bristol to Burt's in Bethel.

40 Gregg Adler, Esq., who had not been present at the May 13 meeting, replied to Budd's letter to Roos on May 15 with a request for information and an assertion that the collective bargaining agreement applied, by its terms, to "any employer who is a replacement as to product and/or routes in territory under the jurisdiction of Local Union 1035."

45 Budd replied to Adler by letter dated May 16, providing certain information, questioning the geographic jurisdiction of Local 1035 and stating that there would be a legitimate opportunity for employment in Bethel for the Vetrano employees. Budd said Roos had been asked for a list of employees who would be interested in working in Bethel.

Mancini stated that the Union maintained that the collective bargaining agreement provided that the contract follows the work. He said the Union did not provide a written list of employees who wanted to work in Bethel. Mancini testified that at every negotiation session he

informed the Union that the Vetrano employees had the right to apply for jobs in Bethel. He acknowledged that he also said that no jobs were currently available.

C. Events of May 29, 2002

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There is no dispute that the unit employees at B. Vetrano were paid by a combination of hourly and commission pay. Drivers would typically come in early in the morning to load their own trucks and help other drivers load trucks. For this portion of the day the drivers would punch a time clock and would receive hourly pay. After the trucks were loaded, the drivers would punch out. While making deliveries the drivers were paid on a commission basis.

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The company and the Union had scheduled a 10 am negotiating session for May 29 at the Union Hall in South Windsor, Connecticut in order to bargain over the effects of the decision to merge the B. Vetrano and Burt's businesses. That morning the unit employees at B. Vetrano were loading their trucks and discussing their anxieties about the future of their jobs.

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Counsel for the General Counsel called the unit employees to testify about their actions on that day.⁷ Before the first day of the instant hearing, Counsel for the General Counsel had issued a subpoena to Respondent requesting, *inter alia*, the production of the employees' time cards and route sheets for that day. The Respondent did not supply these documents until after the employees' testimony was concluded. Therefore, the employees testified about their start times and routes without the benefit of refreshing their recollections by use of the documentary evidence. Having observed the employees closely I find that each of them made a great effort to be accurate and to set forth the facts as he truly remembered them. Each of these employees is worthy of belief. If the employees' testimony varied from the actual details noted on their time cards or route sheets that is a result of the passage of time and not out of any desire to shade the facts. In fact, these witnesses were without guile. Most of them testified freely to facts which were not helpful to the General Counsel's case. It was clear that they had not collusively prepared their testimony.

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Paul Johnson⁸

Paul Johnson, who had worked for over a year at B. Vetrano, testified that he reported to work that morning at about 6:30 am.⁹ Johnson is a member of Local 1035. He has driven trucks for about 11 years. His CDL has endorsements for tankers, HAZMAT and air brakes. Johnson stated that he usually reported to work between 6 and 6:45 am and that he typically worked a 10 hour day. Johnson recalled that his truck was 95% loaded on the morning of May 29 and that he had about 10 minutes more to go before completing the loading. At this point all the employees were disgruntled. After the purchase of B. Vetrano by Northeast John Vetrano had brought Mancini to the warehouse to speak to the employees who were worried about their jobs and their seniority. Vetrano and Mancini had told the employees that nothing would happen to their jobs as the result of the purchase. Mancini said the jobs would only get better, there would be a lot more product coming into the warehouse, more drivers would be needed, and the future was great. But then in April or May 2002 John Vetrano told the employees that Northeast had bought Burt's. Vetrano said that the warehouse would be closed down and that all the products would be moved to Burt's. The men worried about their seniority and their jobs.

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⁷ Respondent called Christopher Fedor.

⁸ Johnson was a truthful witness and I shall rely on his testimony.

⁹ The time cards produced after Johnson testified show that he punched in a 6:25 and punched out at 6:35 am. His truck was already loaded and he was not paid for loading that day.

John Vetrano could not tell them whether they would still be working. During the weeks preceding May 29 the men had been trying to get answers from Vetrano, from their shop steward Gary Everett and from the Union, but no one could supply any answers.

5 While loading the trucks on May 29 the men were saying they might not have jobs tomorrow. They did not know when the company would be shut down. At that point shop steward Everett said that there was a meeting that morning between management and the Union that might provide some answers. The men decided that it might not be a bad idea to try to go to the meeting and seek answers to their questions. At about 8 am all the men punched
10 out and Everett told mechanic "Butch" that they were going to the Union hall to attend a meeting and that they would be back. The men did not check with any Union officials before leaving the warehouse. They drove to South Windsor in three cars and stopped at a diner to formulate questions that they intended to pose once they reached the Union hall. Johnson said the questions were: would the unit employees have jobs at Burt's, would they have seniority and
15 would their pay change.

 Johnson testified that the trip from the warehouse to the Union hall took about 45 minutes to one hour. He did not recall what time it was when the employees reached the Union hall.¹⁰ Once in the parking lot the employees stayed outside to wait for unit employee Joe Pignatella who had been called by cell phone while the men were *en route*. At that point John Hammond, the Local 1035 business rep, came out from the Union hall and walked to the parking lot, exclaiming, "What the fuck are you guys doing here, you have to get back to work!"¹¹ According to Johnson the men replied that they wanted answers to their questions about what would happen to their jobs. They said they did plan to go back to work. Either
25 Union attorney Greg Adler or Secretary/Treasurer Christopher Roos came outside and said it was a closed meeting and that the employees could not attend. But the Union officials said the men could come in for 10 minutes and maybe get some answers. Several times Union officials told the employees to get back to work. Johnson recalled that the men went inside the Union hall and talked for about 15 minutes. But they got no answers because the Union had no
30 information. Just as the men were getting up to leave for work, Mancini came in with Attorney Thomas Budd. These two looked shocked to see the men. Adler explained what the men were doing there and he said they would go back to work. After being told again that there were no answers to their questions the men drove back to the warehouse. Johnson estimated that the employees had spent 20 to 30 minutes at the Union hall, but he did not know what time it was
35 when they left. The employees drove straight back to the warehouse. When they got there, the trucks were missing and a sales manager named Tony told them that they were suspended until further notice.

 During cross-examination by Counsel for Respondent Johnson testified that while the
40 men were at the Union hall they were informed by the Union representatives that the meeting was "a very technical legal meeting that we ... weren't invited to." Counsel for Respondent asked whether Johnson had asked to be able to attend the meeting. Johnson replied "yes". He said the men were told "that we couldn't attend the entire meeting but we could go in ... and they could try to answer some of our questions. ... That's why we were there." Counsel for
45 Respondent then suggested to Johnson "You wanted to attend the entire meeting, ... the Union attorney ... told you no, you can't stay for the whole meeting?" Johnson then tried to recall who

¹⁰ On cross-examination Johnson estimated the time as 9:10 am.

¹¹ All the witnesses agreed on the wording of this exclamation as being the first thing Hammond said upon perceiving the men in the parking lot. I shall not repeat this phrase in describing the testimony of succeeding witnesses.

told the men they could not stay. Respondent argues that Johnson testified that the unit employees wanted to stay for the several hours that the entire meeting would last and that this proves the drivers had no intention of returning to work. I do not agree that this is what the testimony shows. Johnson did not testify that the men wanted to attend the "entire meeting".
5 Johnson said the men wanted to attend the meeting and ask questions. They were told by the Union that they could not attend the entire meeting but could go in for a few minutes. Counsel for Respondent never asked Johnson whether he in fact had intended to attend the entire meeting and Johnson's attention was never directed to that particular aspect of Counsel's compound question. I believe it would be inaccurate to say that Johnson actually testified that
10 he wanted to stay for the entire meeting.

On cross-examination by Counsel for Respondent Johnson said that he did not believe he was scheduled for a 7:15 am delivery to a customer called Liquor Depot on the morning of May 29, 2002. Johnson stated that Liquor Depot does require an early delivery and he said the
15 drivers try to deliver there by 7:15 am but that it is hard to get out of the warehouse on time. All the trucks cannot be loaded at once and, "We missed that one a lot." Johnson said the men thought it was OK to leave the warehouse on May 29th. They all had families to support and they all wanted to know if they would have jobs the next day.

Johnson testified about practices at B. Vetrano. He stated that the drivers left the warehouse most days close to 8 am. If a truck had a very large load it might not leave until 10. Johnson was never criticized for leaving after 8 am. Every morning each driver looked at his load sheet for the day and planned the order in which he would deliver the products. Johnson
20 had never been told that there was a limit on the number or duration of breaks he took during the day. Johnson said there was no set time to finish driving a route. Often he was on the road until 8 pm when the package stores closed.

Johnson said he did not try to call John Vetrano on the morning of May 29. Johnson had his cell phone and home numbers but he had not seen Vetrano at the warehouse in weeks.
30 Nobody knew where Vetrano was.

Chris Fedor¹²

Chris Fedor stated that on May 29, 2002 he arrived at work at 6:30, got his load sheet and began loading his truck.¹³ Both Pignatella and Everett were there helping with the loading.
35 Fedor spoke to Johnson about their concern for the future of their jobs. The men did not know what to do about getting answers to their questions. They asked Everett and he said there was a meeting with management. When the employees suggesting going to the meeting, Everett said they could not do that. Eventually all the employees joined in and said they wanted to
40 attend the meeting despite Everett's advice that they should not do that. Fedor recalled that the employees left the warehouse between 8:30 and 9 am. Fedor drove with Everett who said that although he did not like what the men were doing as a Union steward he had to support the majority against his better judgment. Fedor testified that it would take ½ hour to reach the Union hall so the employees stopped for about ½ hour and had coffee in a diner. Written
45 questions were prepared in anticipation of the departure for the Union hall but he did not recall

¹² Fedor, a 17 year employees of B. Vetrano, was called by Respondent. Fedor had a strong recollection and stated on the record when he was asked a question to which he did not recall the answer. I shall credit his testimony.

¹³ The time cards produced after Fedor testified show that he punched in at 6:38 and punched out at 7:49.

5 who had the questions. The employees reached the Union hall at 9:45. Hammond told the men
 to leave when he saw them but they refused; they went into the Union hall at about 9:50 or 9:55
 and sat down to wait for the owners to come in. The Union leaders kept telling the employees
 to leave and get back to work. Adler said the employees' presence would disrupt the meeting
 and that it was a bad idea. An understanding was reached that after management arrived and
 the men were introduced, they would return to work. The employees talked to the Union
 leaders for about 10 minutes asking about the future of their jobs, but the Union had no
 answers. Then Budd, Mancini and Reveliotty entered the room. Budd said the men were
 engaging in an illegal work stoppage. After a brief discussion the employees left. Fedor
 10 testified that the employees had always had the intention of returning to work to deliver the
 loads.

Union shop steward Gary Everett testified that he is familiar with the route Fedor was
 scheduled to drive on May 29.¹⁴ Although Fedor's route sheet lists a delivery at Price Chopper,
 15 Everett said this was an error. The B. Vetrano secretaries often put Price Chopper on a delivery
 schedule for Wednesdays even though Price Chopper does not normally take deliveries on
 Wednesday. Everett said that Fedor's route would take seven hours to deliver and that he
 could have completed the route if he took the truck out at 11:30. Although Fedor's route
 included a Big Y store in Winsted, Fedor could have missed that stop and made it the next day.
 20 Everett testified that John Vetrano's policy concerning all supermarkets was that if a
 supermarket were missed on one day it was acceptable to make the delivery the next day.

Gary Everett¹⁵

25 Gary Everett began working for B. Vetrano in October 1983. Everett had been a Union
 shop steward for 5 years when the events material to this case took place. In March 2002
 Everett was injured in a serious accident and despite his efforts to return to work on several
 occasions he always ended up back on disability. While Everett was out on disability, John
 Vetrano would occasionally ask Everett to open the warehouse in the morning. This was the
 30 case on May 29, 2002. On that day Everett arrived at the warehouse at 5:30 am and watched
 the drivers build their loads.¹⁶ The drivers spoke as they worked; they wondered what was
 going on with their jobs and what kind of security they had. When Northeast Beverage bought
 Vetrano the drivers had been told that the work would come up to them in Bristol, but now there
 were rumors that all the work would go down to Burt's. The men were unsure whether they
 35 could go to work at Burt's and they thought they might not have jobs at all. Some new drivers
 had just lost their jobs at Fordham and they were concerned that they might lose their jobs
 again. Although Everett had been speaking to the Union officials in an attempt to get
 information for the unit employees, the Union often did not have much information to give. Chris
 Fedor, who was supposed to be leaving to make a delivery at the Liquor Depot, had questions
 40 but Everett did not have the answers. Everett said he was going to the meeting that morning to
 try and get answers for everybody. Fedor asked whether the men could go too but Everett said
 it might be a closed meeting. Both Fedor and Paul Johnson said that they wanted to see what
 was going on. After discussion with all the drivers, Everett suggested a vote and all the men
 got together and agreed to see whether they could get any information from Mancini. Everett told
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¹⁴ Everett was called on Rebuttal by Counsel for the General Counsel after John Vetrano was called by Respondent to testify about the time cards and routes for May 29.

¹⁵ Everett was a truthful and cooperative witness. He answered fully on cross-examination and I shall credit his testimony.

¹⁶ The time cards produced after Everett testified on General Counsel's direct case show that he forgot to punch in but that he was paid for loading from 3:30 to 7:30 am.

mechanic Fred Bergeron that they were all going to the meeting and they left. Everett also telephoned Pignatella and told him that they were all going to the meeting.¹⁷ At a diner in East Hartford the men sat down to drink coffee and write up some questions. The drivers arrived at the Union hall at about 9:45. In the parking lot Everett told Hammond that the guys had some questions but Hammond said they were not supposed to be there. Everett said they knew that Mancini would be there and they wanted to find out what was going on. After speaking to Mancini the men would return to work. Roos came out and he was also unhappy to see the men in the parking lot. After standing in the parking lot for about 15 or 20 minutes, Adler told the men to come into the Union hall and sit down in the meeting room. A short time later, Mancini, Reveliotty and Budd entered the room. It was a few minutes after 10 am. Mancini looked shocked. Everett stated that he could not recall details of the discussion that ensued but he recalled that after talking for a while the men left for work. They had been in the building between 10 to 30 minutes. Everett's affidavit states that after the drivers left the meeting the Union was told the employees were suspended pending investigation but at the end of the meeting management said the drivers could work the next day. Everett and Pignatella, who were not scheduled to drive trucks on the 29th, stayed in the meeting. Everett gave his opinion that the drive from the Union hall to the B. Vetrano warehouse takes 30 to 35 minutes.

Everett testified about his experience at B. Vetrano during the 20 years he worked there. He said that on a typical day the drivers left the barn from 7:45 to 8:30 am. Once or twice a week a driver left after 8:30 am but he was not disciplined or criticized for that. This might be caused by weather conditions or the absence of the load crew. Occasionally a particular truck might leave the warehouse later than 9 am, but it would be unusual to leave three hours after the trucks were completely loaded. Once on the road the drivers were subject to no limits on when or for how long they took their breaks. Everett acknowledged that the owner of the Liquor Depot wanted delivery at 7:30 am.

Jerzy Marczewski¹⁸

Jerzy Marczewski worked for B. Vetrano from April 2001 until June 14, 2002. He holds a current CDL with endorsements for tankers and HAZMAT. Marczewski testified that he generally reported to work at 6:30 am and finished his route anywhere from 2 pm to 8 pm depending on the daily assignment. Marczewski stated that he usually left the warehouse with his truck between 8:30 or 9 am. The truck might leave later if a product was not in stock and he had to wait for a delivery from a supplier or if the employer called a meeting with employees. Marczewski stated that a driver with a Liquor Depot assignment would have to leave earlier than the others. On May 29, 2002 Marczewski loaded his truck and helped others with their loading.¹⁹ The men discussed the future. Some of the employees had recently been laid off without any notice from a company called Fordham and had just begun working for B. Vetrano. The unit employees did not want to be laid off in the way their colleagues described the events at Fordham. The employees decided to attend the meeting at the Union hall to find out whether they would have work or not. They went to a diner for 20 or 30 minutes because the Union hall was closed. Marczewski could not recall details of the conversation at the diner. When the men arrived at the Union hall Hammond was very upset to see them and he said they were

¹⁷ Pignatella's time card showed that he was on the clock from 4:17 to 6:48 am that morning.

¹⁸ Marczewski was a cooperative witness with an impressively credible demeanor. I shall rely on his testimony.

¹⁹ The time cards produced after Marczewski testified show that he punched in at 6:25 and punched out at 7:52.

supposed to be at work while the Union was at the meeting representing them. Hammond said they had messed everything up. The employees replied that they were only seeking information and that they would return to finish their jobs. Inside the Union hall the company representatives seemed happy that the men had “screwed up” by coming to the meeting.

5 Marczewski heard Mancini say that the employees had made a good case for the Respondent. Marczewski stated that the employees left the Union hall sometime after 10 am. He recalled that the meeting between the Union and management was supposed to begin at 10 am but that it was a little late in starting.

10 Shop steward Gary Everett stated that he was familiar with Marczewski’s route on May 29. This route would take six hours to complete. If Marczewski had set out from the warehouse at 11:30 am he could have made all of his stops but one – the Shaw’s supermarket in Glastonbury. Although two of the stops, California Pizza Kitchen and La Cucina, seek to put limits on hours of delivery, Everett said that he has always been able to deliver to those two
15 establishments whenever he showed up. They have never refused a delivery from him. The Vetrano routes take between six to eight hours to drive in the summer months. Although May 29 fell during a short week because of Memorial Day and the route would thus have been heavier, Everett believed that it took John Vetrano too long to do Marczewski’s route on May 29.²⁰

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Ricardo Bosques²¹

Ricardo Bosques began working for B. Vetrano in March 2002 and joined the Union at the same time.²² On May 29 Bosques arrived at work at 6:30 am to load his truck and help the
25 other drivers with their loading.²³ Bosques testified that shop steward Everett had been telling the unit employees what was happening in the negotiations. The men had thought they would have jobs at Burt’s but then on the 29th Everett said they would probably be laid off. After a discussion the group decided to go to the session at the Union hall to find out if they had jobs or not. At that point Bosques’ truck was loaded except for 5 cases of product. He did not finish
30 loading because all the others were ready and they were going as a group. The employees’ plan was to punch out, go to the meeting to find out they had jobs or not and afterwards to go back to work. According to Bosques the drive from B. Vetrano to the Union hall takes less than 30 minutes, so the men went to a diner because they were early for the meeting. In the Union hall parking lot the men told Hammond that they were there to see whether they would have
35 jobs. Bosques could not recall all that Hammond said but he remembered that Hammond told them to get back to work. After about five minutes in the lot, the employees went into the hall. They left after Mancini and Budd came to the meeting.

40 Bosques stated that he usually left the B. Vetrano warehouse at 8 or 8:30. Some of his stores did not open until later than that. There was no limit to the breaks that Bosques could take when he was out on the road.

Everett said that he was familiar with Bosques’ route on May 29th. The route should take seven hours to complete and it could have been done if Bosques had taken his truck out at
45 11:30. Bosques was supposed to deliver product to Shaw’s in Bristol. Despite the fact that

²⁰ Vetrano’s testimony about delivering Marczewski’s route is set forth below.

²¹ Bosques was a credible witness and I shall rely on his testimony.

²² Bosques had a current CDL in 2002.

²³ The time cards produced after Bosques testified show that he punched in at 6:33 and punched out at 7:51.

Shaw's requests deliveries between 6 and 11 am, Everett said that this establishment permitted deliveries until 12 or 12:10.

Russell Towle²⁴

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Russell Towle worked for B. Vetrano from mid-May until June 14, 2002.²⁵ He arrived at work at 6 am and he worked until anywhere from 3 to 8 pm making deliveries. Towle had worked for Fordham for 11 years until he was laid off after a buy-out and he was worried that the same thing was about to happen to him again. On May 29, Towle loaded his truck and then helped Bosques with his load.²⁶ All the employees were talking about their concerns for their jobs. The men decided to go to the Union hall to get a better idea of where they would be next month. Towle testified that he loved his job and he wanted to keep it. He was very concerned about where he would be for the next year because of the talk that the company would move and not take the employees. Towle said the men had been discussing this issue for a while but they finally felt it was time to do something about it. Everett was there but he did not say they should or should not go to the negotiating session. It was a mutual decision by all the employees. Towle recalled that they left the warehouse at approximately 8:30 am and drove to the Union hall, stopping for coffee on the way. This is a 35 to 40 minute drive. At the Union hall, the men told Hammond that they wanted to talk to the people who bought the company to see what they were planning on doing with the men in the future. Towle saw Mancini and Budd enter the room. Hammond could not answer any of their questions and after about 15 or 20 minutes inside the Union hall the men drove back to the warehouse. Towle did not believe that it was as late as 10:30 when they departed. Both Hammond and Roos had told the men they had to return to work.

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Towle testified that on a typical day he left the warehouse anytime from 8:10 to 8:50. He rarely left before 8 am and he was never criticized for this. There was no set time to finish his route and he could take breaks for lunch and shopping. Towle said that the deliveries at Fordham and at B. Vetrano were done in the same fashion. Once Towle was off the clock and working on commission he could do whatever he wanted as long as he did his day's work. On May 29 Towle had his route set up so that he could have made all his stops. Towle delivered to the chain stores between 6 am and noon or between 12 and 3 pm depending on the particular store. These stops can take anywhere from five minutes to ½ hour. If the chain store will not accept a delivery quickly, Towle leaves and returns later. Towle acknowledged that a four day week requires longer routes than a five day week.

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Shop steward Everett did not express an opinion about Towle's route because he was not familiar with it.

40 Robert Collins²⁷

Robert Collins worked as a driver at B. Vetrano in May and June 2002. He had previously worked for Fordham Distributors and was a member of Local 1035.²⁸ Collins had

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²⁴ Towle impressed me as a truthful and cooperative witness. I shall rely on his testimony.

²⁵ Towle had a current CDL in 2002.

²⁶ The time cards produced after Towle testified show that he punched in at 6:14 and punched out at 7:51.

²⁷ Collins was a credible witness. He gave a strong impression of candor and was cooperative on cross-examination.

²⁸ Collins was the holder of a valid CDL until June 30 when it was suspended.

an OSHA license to drive a forklift and had discussed his warehouse and forklift experience with John Vetrano when he was hired in May. On May 29 Collins loaded his truck and helped the other drivers load their trucks.²⁹ When Collins was ready to go he heard other drivers engaged in a discussion about going to the Union hall where Mancini and his lawyer would be meeting with the Union officials. The men were concerned because they had heard that two companies were merging and they might not have jobs. The employees had heard that after the merger only Fedor and Pignatella would be hired. They decided to meet Mancini and ask some questions. Collins said the drivers also wanted to show that they “weren’t just ... names on a piece of paper. [W]e weren’t just a statistic....” Collins wanted to shake Mancini’s hand and show that he can handle the job. After the meeting the drivers would come back and take their trucks out. Collins had suggested driving his truck down to the Union hall because his run was in that direction but he was told that there was not a lot of room to park at the location. Gary Everett did not urge the men to attend the meeting. On the way to the Union hall the employees stopped at a diner to put together a list of questions. They arrived at the Union hall at about 10 am. Although Hammond told them it was a closed meeting the men said they wanted to ask questions and introduce themselves. After about 10 minutes the men went inside and talked with Hammond and Roos for a short while. Then Budd and Mancini came in and Budd said to Mancini that the men had engaged in a “work stoppage” and a “job action.” Roos spoke to Budd and Mancini and told the employees that they could not meet with management and that they had to go back and start their runs. The employees left, having spent a total of 15 minutes in the Union hall. The drive back to the warehouse took 40 or 45 minutes. When they reached the warehouse one of the salesmen told the drivers that John Vetrano had called and instructed him to lock all the doors and send the men away.

Collins testified that he did not leave the warehouse at the same time every day. There was no rule that the drivers had to be out by a certain time. Some days the loading did not go smoothly and the drivers got out as late as 10 or 10:30 am. Collins recalled one such occasion when John Vetrano helped load and even drove a truck. If a driver were assigned to the Liquor Depot and he could not get there by 8 am someone from the office would call and ask the customer to accept a late delivery. This happened to Collins on one occasion and he did make a late delivery to Liquor Depot. Collins testified that he did not take lunch breaks and that he was done with his routes anywhere from 3 pm to 7 pm. Shop steward Everett testified that Collins’ route on May 29 would have taken seven hours or less to deliver. Collins could have made all the deliveries except those to two Shaw’s supermarkets.

Gregg Adler, Esq.

Adler testified that he arrived at the Union hall on May 29 at about 9:45 or 10 am. He saw people in the parking lot and when he saw Roos and Hammond inside the building they told him that the B. Vetrano employees were there. Roos was surprised to see the drivers and had instructed them to go back, but the employees wanted to know what was going on. Roos asked Adler what he should do. Adler said the employees should come in and he spoke to them for a while. They wanted to know what was going on. Adler replied that the meeting was private and that he did not yet have an answer for the employees. Adler testified that he told the employees that the meeting was for the purpose of effects bargaining and that they could not stay. The drivers responded that they did not intend to stay but that they were there to get information about their jobs. Adler said the Union had no definite information and that it would communicate answers when it got them. Adler decided that it was best to let the employees stay briefly

²⁹ The time cards produced after Collins testified show that he punched in at 5:46 am and punched out at 7:52.

before dismissing them and he discussed this with Roos.

5 About 5 or 10 minutes later the management representatives came in at a time Adler estimated as 10 or 10:15 am. Adler told them that the men were anxious for information and that they intended to return to work. While the company caucused the drivers went back to Bristol. Adler said this occurred about 20 minutes after management came to the meeting. Initially the company said the men would be suspended pending investigation and the Union protested that this was harsh. The parties began negotiations. Adler said all eight unit employees were interested in jobs at Burt's. Mancini replied that he did not think there would be jobs for them in Bethel, but the company said it would offer a supervisory position to Fedor. The company said that the Vetrano facility would be merged with Burt's as soon as a license was issued by the State with a target date set for June 15.

15 Budd sent a letter to Adler on May 31 confirming the many subjects discussed at the meeting. Concerning the decision to merge the two facilities in Bethel, he stated, "the decision was made unrelated to labor costs, as these costs are not significantly different between the two facilities...."

20 **Alex Reveliotty**

Alex Reveliotty recalled that on May 29 the company met face to face with the Union committee at about 10:30 or 10:45. He knew that the B. Vetrano drivers had left the facility. Greg Adler informed management that the drivers were in the Union hall. He said the Union had not requested the employees' presence. When Adler told the drivers to go home they left immediately. The company representatives caucused and then Budd announced that the drivers would be suspended indefinitely pending investigation. Eventually the company said the employees could return to work but that they would be interviewed and possibly disciplined.

30 Reveliotty instructed John Vetrano to interview the employees, however he did not tell him to interview Everett and Pignatella because they were not subject to discipline since both were not scheduled to drive on May 29. Reveliotty wrote out the questions that Vetrano was instructed to pose to the men and Budd reviewed them.³⁰ Vetrano returned the completed questionnaires to Reveliotty on June 12 and Reveliotty sent them to Mancini on June 13th. On direct questioning by Counsel for the Respondent Vetrano said that Mancini discussed his decision to fire the employees with Reveliotty. The decision to terminate the employees was made on June 14. The termination letters were mailed on June 19. Reveliotty said that he was present at Burt's when the unit employees applied for jobs on June 19. Reveliotty told Burt's manager James Davenport how to process the applications. He knew the drivers were terminated and he told Davenport that management did not intend to hire them.

40 The questionnaires given to John Vetrano asked each driver to state what time he arrived at work on May 29, when he expected to leave with his loaded truck, and how long it would have taken him to finish deliveries. The instructions required Vetrano to show each driver his load sheet and ask whether he could have completed a certain stop. The answers written by Vetrano on each employee's questionnaire show that the various employees thought they could have finished in from 6 to 8 hours. Vetrano did not write on any questionnaire that certain stops could not have been completed. The questionnaires asked employees what time they left the warehouse to go to the meeting but did not ask what time they actually returned to take their

³⁰ At the interviews Vetrano wrote each employee's answers on a separate questionnaire that the employee then signed.

trucks out. The questionnaires asked who told the employees about the bargaining session, whether they knew when it would start and when it would end, whether they intended to stay for the entire meeting and whether employees asked permission to leave or notified a manager. The questionnaires asked whether Everett had told the employees to attend the meeting, what the Union said when they got to the Union hall, what the Union told them about leaving the meeting and whether the Union discussed negotiations that day. One question asked who told the employees to leave work that day and whether it was one person or many. All of the employees who were interviewed by Vetrano gave answers consistent with their testimony in the instant hearing.

John Vetrano

On May 29, 2002 John Vetrano was employed by Northeast Beverages as the general manager of the B. Vetrano facility in Bristol.³¹ At about 8 am that morning Vetrano received a cell phone call from Pignatella telling him to call down to the warehouse. Pignatella said the trucks were loaded but that Vetrano should call because the drivers were getting a little riled up. Then Vetrano learned that the drivers had left the barn and he called to inform Mancini of the fact.

Vetrano compiled a document purporting to show the routes assigned to the individual drivers on May 29, 2002. Vetrano prepared the document after the fall of 2002 and in preparation for the instant litigation. Vetrano testified from this document giving his reasons why the drivers could not have completed their routes if they had taken the trucks out at 11:30 am on May 29.

Vetrano stated that Bosques had a huge route and that he could not have finished by 8 am when the package stores must close. Bosques also had a Shaw's in Bristol which stops receiving deliveries at 11 am. Vetrano stated that Fedor could not have finished his route until 8 pm because he had a Price Chopper which required a delivery by noon and this would have been "almost impossible." Further, Fedor had to make a delivery to a Big Y store on the other side of town. Vetrano said that Collins would not have been able to finish his route by 8 pm because he had an IGA store that stops receiving at noon and other stores that have limited delivery times. Vetrano said Johnson could not have completed his route because the Liquor Depot will not permit delivery after 7:30 am. Vetrano said that he himself had left the warehouse at 9:30 am to drive Marczewski's route and that he finished after 7 pm without completing all the deliveries. Marczewski had stores with restrictions and he would have had to line up the route carefully if he had started on time. Vetrano testified that Towle could have completed his route if he had left the warehouse at 11:30 am.

Vetrano acknowledged that sometimes a driver arrives late at an establishment that seeks to limit deliveries to certain times, and the driver is able to convince the customer to accept a late delivery. Further, although package stores close at 8 pm many bars accept later deliveries. Vetrano said there have been times that drivers missed a stop and returned to the warehouse with items on the trucks. Vetrano has never disciplined anyone for missing a stop. If items were brought back on a truck the product would go out the next day if the driver were in the area or the delivery might wait for a couple of days.

Vetrano conducted interviews of the drivers on June 11 based on questionnaires

³¹ At the instant hearing Respondent's witness identified Vetrano as the current operations manager of Burt's in Bethel.

prepared by Reveliotty. Vetrano stated that the interviews were conducted on that day because right after the 29th he was busy delivering beer before the Memorial Day weekend.³² Vetrano said he had to conduct the interviews in the morning when all the drivers were in the warehouse. During the week of June 2, 2002 Vetrano asked shop steward Everett about sitting in while the drivers were interviewed and Everett had to check with the Union. Then it took a while to schedule the interviews because Everett is a single father raising three children. Vetrano conducted the interviews but he had no responsibility for determining what discipline would be imposed on the drivers. No one asked his opinion. Vetrano did not write the termination letters sent to the employees but he signed them at the request of Northeast Beverage. Vetrano acknowledged that there was no requirement to conduct all the interviews on one day.

Kenneth Mancini

15 Kenneth Mancini testified that on May 29, 2002 he understood that the unit employees had come to the Union hall without authorization by Local 1035. Mancini stated that management told the Union that day that the employees' action was an unauthorized strike or stoppage. He said the Union was surprised by the attendance of the unit employees that day.

20 Mancini testified that Budd arrived at the Union hall around 10:30. Mancini stated that his cell phone bill showed two calls to John Vetrano on May 29. One call made at 10:48 am was identified by Mancini as "most likely" a call made before he met with the Union representatives and the unit employees in the Union hall. Mancini was asking how Vetrano was doing getting the trucks out and trying to find drivers. A second call recorded on the phone bill at 10:53 am and Mancini stated that this call was made right after he caucused with Budd and had decided that Vetrano should suspend the men and not allow them on the trucks. However, Mancini also testified that his bill showed a call to Vetrano at 10:25 am; Mancini stated that this call, and not the 10:48 call, could have been the one he made before meeting the Union to see how Vetrano was making out. Mancini did not claim to have any independent recollection of the timing of his calls. Mancini's bill also showed a call to Vetrano at 8:58 am, and Mancini stated that he was receiving a progress report from Vetrano at that time.

35 Mancini testified that after the employees left the Union hall he spoke to his attorney and informed the Union representatives that the employees would be suspended. At the end of the meeting he told the Union that the men would be allowed to report to work the next day. The Union said that the suspension of the employees violated the collective bargaining agreement.

Thomas Budd, Esq.

40 Thomas Budd, Esq., testified that on May 29 he arrived at the Union hall at 10:35 am. Budd stated that he got lost on the way to the meeting due to a defect in the instructions. Budd presented his cell phone bill which lists incoming calls but not the numbers from which these were made. Budd stated that he received calls at 8:30, 9:18, 9:40 and 9:45 from Mancini. Budd claimed that at 9:45 he was at the intersection of Route 91 and the Merritt Parkway (also called State Route 15). He explained that it took him the 45 minutes to get to the Union hall because he got lost. The computerized instructions Budd obtained from a source other than the Union show that the intersection of the Merritt Parkway and Route 91 is 22.9 miles from the Union hall and should take 31 minutes to drive. Budd recalled that he arrived at the Union hall at 10:30 am

³² This testimony is incorrect. In 2002 the Memorial Day weekend was observed before May 29.

and met with Mancini and Reveliotty in the parking lot. In earlier phone calls to his car Budd had been informed that the employees had walked off the job and when the management group walked into the Union hall at 10:45 he saw that the unit employees were present. During a short conversation during Budd said the employees had engaged in an illegal stoppage and Adler told the men to leave. Adler informed the management team that the employees had always intended to return to work following their appearance at the meeting. After a management caucus Budd said the company was suspending the employees indefinitely pending investigation. Adler responded that the drivers were already on the way to work. Later in the meeting the company said the men could return to work the next day but warned that there was a possibility the employees would be discharged.

After the employees left the meeting Mancini discussed his business decision. The Union said it wanted to obtain as many jobs as possible for the unit employees. Mancini said he expected that there would be no jobs available at Burt's.

Christopher Roos

Roos testified that he arrived at the Union hall at 7:30 am on May 29 and Adler got there about 9:45. Roos was inside the Union hall speaking to Hammond when Adler informed him that there were employees outside. Hammond went to see who it was and then Roos walked over to the group. Johnson said the men wanted to know what was going on with the job. Roos told the employees that they had to go back to work and the men agreed but said that they wanted some answers. Roos testified that he had a hard time calming the employees and he brought them inside to see Adler. Adler told the men that they could not stay for negotiations but they said they wanted to meet the company representatives and they wanted some answers. Budd and Mancini arrived at 10 am or shortly after and Mancini told Roos that he was "not good" because his guys had left. Adler explained that the employees just wanted some answers and then they planned to go back to work. Then Roos turned to the men and told them to go back to work, explaining that the company knew they were interested and what their position was. Roos testified that he was very surprised to see the unit employees at the meeting.

After the drivers returned to B. Vetrano the parties commenced bargaining. Adler said the Union wanted all the Vetrano people hired in Bethel but the company said it did not foresee any positions available in Bethel at that time. However, the company said there might be a supervisory position for Fedor.

Roos testified about the administration of the collective bargaining agreement at B. Vetrano both before and after the company was bought by Northeast Beverage. The contract provides that the departing time for delivery is no later than 8 am.³³ This provision is to insure that if management does not have a truck loaded and ready for delivery by this hour the employees will be paid on a waiting-time basis. The provision protects drivers paid by commission if they are forced to sit around waiting for their trucks to be loaded. The contract also allows employees to plan their daily delivery routes as they see fit and to contravene customer preferences about deliveries during lunch hours if the route assigned to the drivers make it impossible for them to honor customer preferences.³⁴ Roos stated that no driver at B. Vetrano has ever been disciplined for taking a break while on the road. Sometimes a driver cannot reach a customer in time to make a delivery. If a load is not completely delivered the

³³ Article 11, section 8.

³⁴ Article 21, section 7.

products are brought back to the warehouse and delivered the next day. No B. Vetrano driver has been disciplined for failing to make all the stops on a daily route sheet.

5 On cross-examination by Counsel for Respondent, Roos was asked about the no strike clause of the collective-bargaining agreement. He stated that he does not consider the May 29 actions of the employees a strike within the terms of the contract. Roos said that on several occasions at other companies the employees have walked out of work to talk to him about an issue and then returned to work. These actions were not considered a strike.

10 Roos testified that the action of the unit employees on May 29 was unauthorized by the Union. Respondent did not request that the Union take any action required by the contract in response to unauthorized strikes such as posting a notice. Roos does not believe that the action on May 29 was a violation of the collective-bargaining agreement. On May 29 Budd characterized the unit employees' action as an improper work stoppage and he did not assert
15 that it was a strike authorized by the Union. Respondent has not claimed in statements to the Union that shop steward Everett played an improper role on May 29. Roos said the Local Union by-laws limit the authority of shop stewards. They are not permitted to authorize a strike.

20 In response to questions posed by Counsel for Respondent, Roos said he thought a wildcat strike was prohibited by the contract but he was not sure. He stated that he did not know of any wildcat strike ever occurring. Roos then defined a wildcat strike as an event where the employees rip things apart and walk off the job and cause a ruckus like a riot. It is clear that Roos is not familiar with the usual definition of a wildcat strike and I shall disregard his answers
25 on this issue.

D. After May 29

30 On May 31 Respondent sent a letter, signed by John Vetrano, to those drivers who had been scheduled to work on May 29 informing them that the company viewed their action as an illegal job action and that it was investigating "your participation in or instigation of the activities in issue. The Company expects to complete its investigation within the next week or so, at which time it will impose appropriate discipline up to and including discharge."

35 Also on May 31, Respondent sent a letter, signed by Mancini, to all of the unit employees of B. Vetrano. The letter reviewed the facts relating to the decision to merge the two Connecticut facilities into one Bethel location, summarized the company's offer in effects bargaining, including an offer of "a severance package ... continuation of health insurance" and expressed the hope that bargaining would be successfully completed by June 5. The letter
40 went on to say

The company will need Vetrano employees to work until the Bristol facility is closed. We have informed the union that a severance package will be dependent upon an orderly shutdown in which employees continue to work until they are released by the company.

45 Mancini testified that a negotiating session held on June 5, 2002 the Union said that the company was advertising for drivers in Bethel. Mancini told the Union that this was possible because he was trying to hire part-time night loaders. Mancini testified that "apparently we had advertised." Mancini had discussed with Revelioty the need to advertise for a pool of candidates to fill Bethel positions.

Reveliotty testified about the meeting on June 5.³⁵ The company said there was no position at Burt's for any of the B. Vetrano employees with the exception of Fedor who might be moved into an administrative position. Roos asked why the company did not offer jobs to the Vetrano men if there were positions open at Burt's. After some testimony about his notes relating to a Union suggestion to replace the short term employees at Burt's with senior Vetrano men, Reveliotty testified that he knew that the company did not want to use the Vetrano drivers at all. Reveliotty stated that labor costs at B. Vetrano were the same as at Burt's. Reveliotty knew that Mancini did not want to recognize the Union at the facility in Bethel.

Budd testified that at the June 5 meeting the Union asked about the interviews with drivers who had been suspended on May 29. Budd replied that the meetings would be scheduled. The Union asked for preferential hiring at Burt's for the B. Vetrano employees. Budd denied this request and said that the unit employees could apply for jobs at Burt's. Budd stated that Respondent informed the Union that there were no jobs available in Bethel but that there was turnover.

Adler testified that on June 5 the Union told Respondent that the preceding Sunday an advertisement for drivers had appeared in the newspaper.³⁶ The Union asked why Respondent could not offer jobs to the B. Vetrano employees if there was an ad requesting drivers for Bethel. At this meeting Respondent proposed severance payments for various employees including a sum of \$15,000 for Fedor, \$10,600 for Everett and \$11,600 for Pignatella.

Roos testified that on June 5 the Union asked that Respondent offer jobs to all the employees, not only Fedor. The company replied that there were no positions available. Then the Union said that there had been an ad in the paper on the prior Sunday for driver positions at Burt's.³⁷ Mancini said the ad was for part-time warehouse people. The company said management had spoken to Fedor about a job and Budd asked Adler which employees wanted positions in Bethel. Adler said all the employees want to go down except for Pignatella who might be working for another distributor.

On June 10 Budd wrote to Adler concerning the effects bargaining and the resolution of various grievances filed by the Union. Budd also stated, "there is still a possibility that work could be available for some, if not all, of the unit employees at Bethel. At present, there is no such work available."

Mancini testified that he received state regulatory approval to merge the B. Vetrano and Burt's liquor licenses on June 13. That approval determined the closing date of the warehouse. Mancini stated that if the license had come through closer to July 4th busy period he would have kept the B. Vetrano open past the holiday.

The Union and the company met on June 14. Budd testified that when the meeting started Respondent informed the Union that the license to merge Burt's and B. Vetrano had been issued and that B. Vetrano would close on June 15th, a Saturday. Friday the 14th would be the last day of work for the unit employees. Additionally, Budd informed the Union that five of

³⁵ Reveliotty attended some of the bargaining sessions between Northeast Beverage and the Union. Mancini asked him to take notes and help assess the details. In taking notes, Reveliotty tried to quote what the speakers said and he added his own commentary.

³⁶ Adler did not have a copy of the ad in his possession at this meeting.

³⁷ The advertisement was admitted into evidence. It calls for Delivery Drivers, full time, CDL, Class B, and gives the address of Burt's in Bethel.

the unit employees who had left work on May 29 were discharged.³⁸ Fedor, who had worked for B. Vetrano for 17 years, was given a one day suspension. Respondent offered jobs in Bethel to the three employees who were not terminated, Pignatella, Everett and Fedor. According to Budd, these three would be given jobs but they had to apply for them. If the men did not accept the jobs, the company would agree to a severance payment of one week's pay per year of service based on the total pay of the individual employee in the previous calendar year. The Union said that Pignatella would take the severance and it asked for jobs for Everett, Fedor and Paul Johnson. The company rejected this request on behalf of Johnson because he had been terminated. Budd testified that he did not recall when the decision to terminate the employees was made and that he did not recall when he first learned of the decision.

Adler recalled that on June 14 the Respondent said it would offer a job to Fedor and that a couple of drivers had quit at Burt's so that Pignatella and Everett could come down and apply for positions in Bethel. The Union wanted to see how much severance would be offered as an alternative because Pignatella had another job which was covered by a multi-employer collective bargaining agreement and he was unlikely to work at Burt's. The Union, which believed that both Everett and Johnson would accept a job in Bethel, told Respondent that a job should be offered to Johnson, but the company refused.

Roos testified that on June 14 the Union asked whether positions were available for all the employees but the company said no. The Union asked whether Respondent was hiring at Burt's and the company said it was not. Then Roos showed Mancini the advertisement that had appeared on June 2 asking for Class B drivers. Mancini said it was an ad for warehousemen but Roos pointed out that the ad referred only to drivers. Mancini said he would look into it. The company said there might be two positions available in Bethel. According to Mancini the summer season had opened two full time vacancies. The Union said the jobs should be offered to Everett and Johnson since Pignatella was not interested. The company made a severance offer to the three senior employees if they declined jobs in Bethel. The offer was \$15,000 for Fedor, \$11,6000 for Everett and \$10,600 for Pignatella. Roos testified that in reviewing his notes of the June 14 session he noticed that Budd said all the unit employees could apply for jobs at Burt's. Roos did not recall that this statement was made at other meetings.

According to Mancini, on June 14 the Union said all the unit employees wanted to go to work in Bethel. The parties discussed turnover in Bethel and the company said that it had 10 or 12 drivers in Bethel and that it was changing to an evening loading system. Mancini was not sure what his needs would be. The Union asked for jobs for Everett and Johnson at this session. Mancini said this may not have been linked to a requirement for severance if the jobs were declined.

Everett testified that on June 14 Mancini said he was not sure that there were any driving jobs at Burt's.

E. Alleged Direct Dealing

Everett testified that he went to hand in his warehouse key after the last day of work at B. Vetrano. He saw Reveliotty in the warehouse and told him that the severance offer made to him and Pignatella by Mancini was insulting and that he had no respect for Mancini.³⁹ Although Fedor had worked fewer years than the two more senior drivers Fodor was being offered

³⁸ These were Johnson, Marczweski, Towle, Collins and Bosques.

³⁹ Everett testified that he attended all the negotiating sessions until mid-June 2002.

\$15,000, much more than the offer to Everett and Pignatella.⁴⁰ Everett told Reveliotty that he and Pignatella often opened the warehouse in the morning and brought trucks in at night and that they were not paid for doing these things. The next day or the day after that Reveliotty telephoned and told Everett that Mancini had not known the facts and that he would offer
5 \$15,000 across the board for all three senior employees.⁴¹ Everett said that was better but he would still rather have a job. Everett informed Pignatella and Roos about this conversation with Reveliotty. Roos was not happy because he did not know about this offer. Pignatella testified that Reveliotty telephoned to talk about a number of things and said that he and Mancini thought
10 it fair that the three senior employees get the same amount of severance, either \$15,000 or \$16,000. This was a change from what Pignatella had heard before when he had been told that he was slated to receive a \$10,000 severance payment.

15 Roos testified that Everett was the shop steward and attended almost all negotiating sessions. Roos stated that the Union did not have a formal negotiating committee.

20 Roos testified that on Tuesday, June 18 Everett called him and said that he was not accepting a job in Bethel because the company had increased the severance package to \$15,000. Roos did not know anything about it and he angrily telephoned Adler to accuse him of making a deal without consulting with Roos. Adler said he had never made a deal. Adler told
25 Roos that he had a brief discussion with Budd that if Fedor took a job in Bethel there might be more money available to increase the severance pay for the others, but that there was no specific offer. The day after Roos spoke to Adler he received a voice mail from Mancini informing him that the severance offer for Everett, Pignatella and Fedor was increased to \$15,000.

30 Reveliotty testified that he was in Boston on June 15 and 16, Saturday and Sunday after the last day of work for the drivers at B. Vetrano. He said he spoke to Everett on Tuesday, June 18 to see whether Everett would work for Northeast in Bethel. During this conversation he and Everett discussed the increased severance offer. Reveliotty had known before this day that
35 Everett was upset that his severance offer was too low. Before June 18 Reveliotty had discussed severance with Budd and Budd had informed him that the offer had been changed and that the Union attorney had been notified.

40 Budd testified that in a telephone conversation with Reveliotty on June 17 the latter said he had heard that the employees were upset that Fedor was getting higher severance pay although he had fewer years of employment with B. Vetrano than Pignatella and Everett. According to Budd, he spoke to Adler on June 17 and said that the company would modify its
45 severance offer to give \$15,000 to each of the three senior employees. Budd thought that Fedor was likely to accept employment in Bethel and that the company would save money because it would not have to pay severance to Fedor. On June 18 Adler wrote to Budd via fax accusing Reveliotty of direct dealing with the unit employees because Reveliotty had told Everett that the company would give \$15,000 to the three senior employees if they declined employment in Bethel. Budd replied that day that he had mentioned the offer to Adler on the 17th.

Adler testified that in a June 17 telephone conversation with Budd, the latter said he had

⁴⁰ Everett and Pignatella had taken time off during the last year due to physical injuries and the severance offer was based on the fact that their earnings had been lower than Fedor's.

⁴¹ Everett testified that Reveliotty called him one or two days after Saturday June 15 when B. Vetrano closed.

heard that Fedor would probably accept a job in Bethel. If that happened, Mancini would authorize a severance pay offer to Pignatella and Everett of \$15,000 each. Adler recalled that Budd did not say the increased offer was to counter a perceived unfairness to Everett and Pignatella. Adler testified that Budd had not actually made an offer of severance for all three men of \$15,000; he understood that Budd said if Fedor accepted the job the two others would be offered \$15,000.⁴² Adler stated this belief in a message to Budd on June 18. Budd replied in a letter to Adler dated June 19 which said, in relevant part:

I apologize for what was either a miscommunication on my part or a misunderstanding on your part.

I apologize for any misunderstanding that occurred in our phone conversation on Monday. I did inform the Company that the offer had been made of \$15,000 and that it was free to communicate that offer.

Thus, Budd and Adler differ as to whether Budd's statement to Adler on June 17 was that the company was offering \$15,000 to all three men because it was likely Fedor would take the job rather than the severance or whether Budd said if Fedor took the job then the company would increase the offer to the other two senior employees.

F. Discipline of the Employees

Mancini received the interview documents on Thursday, June 13. He read the documents to see whether the employees had a "legitimate reason" for walking off the job, such as being threatened or a misunderstanding. Mancini made the decision to terminate the employees without advice from Revelioty and Vetrano. Mancini did not realize that Johnson had not been interviewed and that he did not have an interview report concerning Johnson when he terminated the employees, including Johnson. Mancini stated that he decided not to terminate Fedor but to leave him with the May 30 suspension on his record because he was a long service employee with a clean record.

Mancini testified that when he decided to fire the men he knew that their action on May 29 was an unauthorized work stoppage.

Mancini testified that he did not consider the employees who were discharged for employment in Bethel because they were employees who had been terminated. He never hires employees who have been terminated. Mancini did not realize that Johnson had not been interviewed when he decided not to consider him for employment. I note that John Vetrano testified that Johnson had told him before June 15 that he would not drive to Bethel every day to work. This testimony was given after Johnson himself had testified about applying for work at Burt's. Respondent did not question Johnson about the drive to Bethel. Mancini did not testify that he did not offer Johnson a job because he would not drive to Bethel. In fact, Mancini made it clear that the only reason for not hiring Johnson was his termination.

Mancini said he did not recall whether he knew that he had the license from the state when he decided to terminate the employees.

Johnson testified that from May 30 until June 14, 2002 there was no change in the work

⁴² Adler's contemporaneous notes of the telephone call read that Budd said he "would probably go to \$15,000 if he does not have Fedor to worry about."

at B. Vetrano except that there were more and different products in the warehouse. Johnson was never interviewed by a member of management about the events of May 29. On Friday, June 14 in the driver's room Joe Pignatella said that it was the last day and then he asked John Vetrano whether that was correct. Vetrano just nodded. Johnson testified that he recalls that moment vividly because Vetrano would not make eye contact. John Vetrano said goodbye to Johnson that evening and said that he was very sorry about how things had gone. He told Johnson that he would give him a great reference and that he was a "great worker." Johnson saw a newspaper ad for Class B drivers for Burt's. The advertisement stated "Delivery Drivers, FT, CDL, Class B, required. Competitive pay and benefits. Apply in person" and it gave the address for Burt's in Bethel.⁴³ Johnson and a number of other B. Vetrano employees went to Burt's and filled out applications on June 19. Johnson was not interviewed and he was not offered a job at Burt's. Johnson was not on disability on June 19 and if he had been offered a job he would have reported for work. Johnson testified that about 10 days after his last day he received a termination letter from B. Vetrano.

Marczewski testified that after May 29 his job remained the same. On the last day of work John Vetrano thanked Marczewski, gave him his card and said he would give Marczewski a good reference if he needed it. Marczewski applied for work at Burt's. He was not interviewed and he was not called by Burt's.

Bosques testified that on the last day of work he saw John Vetrano who shrugged his shoulders and said, "I'm sorry." He gave Bosques a card and told him that he would help him with a job reference. Bosques applied for work at Burt's but he was not interviewed and not hired.

Towle stated that on June 14 John Vetrano was in the warehouse when he brought his truck in at the end of the day. Vetrano apologized to Towle and said he was sorry not being able to work him as long as he would have like. Vetrano told Towle that he was one of the best workers he ever had and that he would be glad to give him a reference. Vetrano said, "Thanks for doing a good job for me." Vetrano did not say that Towle was discharged, he said, "We're not going to be needing your service any more because the company is moving." Towle applied for work at Burt's on June 19. He was not interviewed and he was not contacted by Burt's for a job.

Collins testified that his work did not change after May 29. On the last day John Vetrano said, "you realize this is your last day." Collins remarked that the warehouse was empty so he could tell. Vetrano told Collins he was sorry things had worked out the way they did. Vetrano did not tell Collins that he was laid off. Vetrano gave Collins his business card and said Collins could use him as a reference for a job at Burt's. Vetrano told Collins that he was a hard worker and that it had been a pleasure to work with him. Collins applied for a job at Burt's after receiving a call from Johnson. He was never offered a job.

Everett applied for work at Burt's on June 19th. Before he had a chance to complete his written application he was taken to a room to be interviewed by Revelioty and one of the Davenports. They told Everett what the route and pay structures would be and what benefits would be in place. Everett was never formally offered a job at Burt's because he elected to receive severance.

⁴³ This advertisement was admitted into evidence.

G. Staffing and Hiring at Burt's

5 Reveliotty testified that when he went to consult at Burt's he and James Davenport
 instituted a policy that they would run regular job advertisements in local papers so that they
 would have enough resumes on hand if employees quit. The ads ran in April and May 2002.
 Reveliotty said there was a lot of turnover at Burt's. After B. Vetrano was closed Respondent
 advertised for driver positions at Burt's from July 26 to 29, August 23 to 29 and August 31 to
 10 September 6, 2002. Respondent advertised for warehouse positions at Burt's from July 26 to
 29.

James Davenport has been the operations Manager at Burt's since April 1, 2002 when it
 was purchased by Northeast Beverage.⁴⁴ Before that Davenport was a part owner of Burt's and
 served as president. Davenport described the job categories at Burt's prior to April 1, 2002.
 15 There were two day warehouse people, there were 10 drivers who loaded their own trucks,
 there was an office staff and there were four salespeople. No immediate change in staffing at
 Burt's took place after April 1. However the number of drivers increased in June, July and
 August to 12 drivers. At the time of the instant hearing Respondent employed 12 drivers at its
 Bethel location. In June or July more warehouse employees were hired. At the time of the
 20 instant hearing Respondent employed three daytime warehouse workers and a foreman. In
 mid-June 2002 Respondent began to employ a "loading crew" of 10 employees who worked
 part time at night. This crew now consists of 7 pickers, 2 forklift operations, one helper and one
 foreman. Occasionally a night loader will work for a day as a helper on a delivery truck.

25 Davenport testified that since April 2002 the qualifications for drivers at Burt's have been
 a valid CDL and the ability to pass a pre-offer drug screen.⁴⁵

James Davenport testified that before mid-June 2002 his brother Peter Davenport hired
 employees for Burt's. If a driver was needed, James Davenport would ask his brother to hire
 30 someone. James Davenport did not know what happened to employment applications when
 Peter was in charge of hiring. After mid-June James Davenport took over hiring. He now keeps
 the applications in a pile on his desk and he throws them away after several months or
 whenever he cleans his office unless he has contacted the applicants.

35 Before mid-June 2002 Peter Davenport was responsible for placing employment
 advertisements. Peter called Rhode Island and asked the office to put an ad in the paper. After
 mid-June it became James Davenport's duty to call Rhode Island.⁴⁶

40 James Davenport testified that there was a high turnover rate at Burt's and that this
 continued after mid-June 2002. Burt's anticipated that vacancies would occur in its employee
 complement. Davenport said that in June 2002 Burt's was over hiring because of the high rate
 of turnover. Davenport said there was no number limit on the over hiring at that time.
 Davenport said in June Respondent did a lot of hiring because of the anticipated work load
 coming from the B. Vetrano facility in addition to the high turnover rate. He wanted to be sure
 45

⁴⁴ I note that John Vetrano has also been identified as the operations manager at Burt's.

⁴⁵ Davenport stated that for the last three or four months before he testified in the instant
 hearing he has hired drivers who do not have a CDL and he has trained them.

⁴⁶ Presumably this testimony refers to a time after the April 1, 2002 purchase of Burt's by
 Northeast Distributors which is based in Rhode Island. The June 2 advertisement for drivers
 would thus have been placed when Peter Davenport was in charge of hiring.

he was ready to handle the load.

James Davenport has called the Rhode Island office of Respondent for ads twice from mid-June 2002 to the present. The ads were placed in the "Danbury News Times" and "The Waterbury Republican."⁴⁷ In response to a question by Counsel for the Respondent Davenport stated that he did not advertise for drivers unless he needed them. Davenport said that he probably mentioned the ads to Reveliotty when the latter was consulting from mid-April to mid-August 2002. Reveliotty sat in on interviews and he played a role in deciding whether people should be hired during that time. Reveliotty advised James Davenport when he was hiring. According to Davenport, Reveliotty's function was to blend Burt's and B. Vetrano together.

On June 19 Davenport and Reveliotty interviewed Everett when he applied for a job in Bethel with the other unit employees. None of the other applicants were interviewed. Reveliotty instructed Davenport that the others were not to be interviewed because they had been terminated in a disciplinary action. Reveliotty had all the applications and he handled everything related to the closing of B. Vetrano. Davenport said he could not recall whether he needed drivers when the unit employees came in on June 19.

Davenport testified generally that at the time of the instant hearing Respondent started drivers at \$13.50 per hour. Davenport said that as a matter of policy he preferred applicants who expected less money. Davenport then testified about employees hired in 2002. He said that the hiring rate for drivers at Burt's in May 2002 was \$15 per hour or commission. George Gaylord, who lives in Waterbury, was hired before May 1, 2002 at \$15 per hour. He filed an application showing that he expected to be paid between \$15 and \$20 per hour. Troy Boyd, who lives in Danbury, was hired June 1 at \$15 per hour. Boyd's application states that he filed it in response to a newspaper ad and that he expected to earn \$15 per hour. Steven DeGroot, who lives in New Milford 25 minutes from the Bethel facility, was interviewed on July 1 and hired. DeGroot asked for \$16 per hour; he was hired at \$10 per hour and left after a few days. Joseph Alves, who lives in Danbury, filed an application dated March 8, 2002 stating he expected \$15 per hour. He was hired to start on May 20 at \$15 per hour. Davenport acknowledged that some of Respondent's applications do not have any space where the potential employee is asked for an expected rate of pay. For example, an application signed on August 27, 2002 by Harold Reed does not inquire what he hopes to earn.

Davenport testified that at some point Burt's drivers were loading and were indeed paid \$15 per hour. When they drove some received commission and some did not. If they were paid commission they might actually earn more than \$15 per hour depending on the route and the skill of the driver. Davenport said some drivers remained on commission until the fall of 2002. He did not provide any details about the earnings of senior, long-service drivers. Davenport maintained that the unit employees who applied on June 19 were asking for higher wages than he was paying, either \$17.25 or \$17.35 per hour. However, Davenport acknowledged that the B. Vetrano drivers were paid by a combination of hourly wages and commissions and that he would have been aware of this if he had interviewed them.

Davenport said that he preferred to hire employees who live close to Bethel so that they would not be late to work. Davenport said he would hire employees who reside in Waterbury

⁴⁷ The record shows that Respondent advertised for drivers in the "Waterbury Republican" from August 23 to 29 and from August 31 to September 6, 2002. Respondent advertised for drivers in "The Danbury News Times" from July 26 to 29, and for warehouse workers from July 26 to 29.

but not Bristol, not Weathersfield and not Winsted. However, Davenport testified that it is possible that he has hired drivers who live in Winsted.⁴⁸ Going over the residences of Respondent's current employees Davenport found that many of them lived in Waterbury, one lives in Wolcott which is farther than Waterbury and very close to Bristol and one lives in
 5 Norwalk which is 25 to 30 minutes from Bethel. Davenport acknowledged that operations manager John Vetrano commutes from West Simsbury and the salesmen come from the Hartford and Bristol areas and have a long commute to Bethel. Davenport said that he was not concerned about commuting distances for any but the drivers. Davenport did not explain why it was more important for these employees to live close to the facility than the loaders or the
 10 operations manager. Davenport stated that Respondent has never had a written policy that reflects any geographic preference for potential employees. Indeed, none of the newspaper advertisements placed by Respondent contained any such geographic limit.

15 The B. Vetrano personnel files show that Fedor lives in Bristol, Pignatella lives in Bristol and Everett lives in Bristol.

Davenport identified the September 1994 Burt's employee manual. All long term employees would have a copy of this document, according to Davenport.⁴⁹ The manual contains a "Statement on Unions." This section says, *inter alia*, "BBI [Burt's Beverage Inc.] is a
 20 union-free company and we will do everything legally possible to remain that way because we believe that outside interference from a union would be of no advantage to our employees. ... If anyone should ask you to sign a union authorization card, we are asking you to refuse to sign it." Respondent has never issued any revocation of the 1994 manual because, Davenport explained, "verbally since the merger we've been going, kind of floating between both
 25 handbooks, the new Rhode Island one and this one."

H. Alleged Probationary Status of Employees

30 Three of the B. Vetrano employees had worked less than 60 days as of June 14, 2002. These were Towle, Collins and Bosques.⁵⁰ Roos testified that the collective bargaining agreement does not provide for a 60 day probationary period for newly hired employees. Roos stated that there are various categories of employees, namely preferential hire, regular driver and temporary driver. These categories were listed at the top of the "Confidential Employee
 35 History" forms at B. Vetrano. The forms for Towle, Collins and Bosques all list them as "regular" employees. B. Vetrano also employed William Bartlett as a "temporary" employee. He was a former Fordham employee who was a preferential hire. John Vetrano testified that after Collins, Towle and Bartlett had been laid off by Fordham Hammond begged him to hire these men. He said they would all be on 60-day probation and that Vetrano could get rid of them on a no-
 40 questions-asked basis. Vetrano acknowledged that the contract does not have a probationary employee designation, but he said that on many occasions Hammond agreed with him that there would be a 60 day probationary period for an employee. Vetrano did not testify that Hammond had asked him to hire Bosques as a probationary employee.

III. Discussion and Conclusions

45 Respondent's Brief presents the following arguments: 1. The work stoppage was in

⁴⁸ Winsted is almost on the Massachusetts border.

⁴⁹ Long service employees include driver James Vacarro, 23 years; a salesman at least 15 years, and Davenport and his brother who have been there over 20 years.

⁵⁰ Towle and Collins had been laid off from Fordham Distributors.

violation of the collective-bargaining agreement and was thus not protected activity: therefore, Respondent was free to discharge the 5 employees and suspend Fedor. 2. Even if the work stoppage was not a violation of the contract, it was nevertheless unprotected activity because it was “an unwarranted usurpation of Company time by employees” and it was “in derogation of the exclusive bargaining representative.” 3. The Respondent did not condone the employees’ actions on May 29. 4. The work stoppage was so egregious that it would have resulted in discharge regardless of any unlawful motivation on the part of Respondent. 5. The unit employees who applied for jobs in Bethel would not have been hired even if considered for employment. 6. The Respondent did not bypass the Union and deal directly with the employees; Everett had apparent authority to receive a modified offer.

Respondent’s assertion that the matter should be deferred to arbitration has been withdrawn.

A. The May 29 Events

Sequence of Events

Based on the testimony of the unit employee witnesses I find that on May 29, 2002 they clocked out and left the warehouse sometime after 8 am. They knew that an effects bargaining session was to take place at the Union hall in South Windsor at 10 am. At a location not far from the Union hall the employees met in a diner and they formulated questions to be asked when they got to the meeting. Based on the testimony of Fedor, Everett, Collins, Adler and Roos, I find that the employees arrived at the Union hall at around 9:45 am. Hammond and Roos were inside talking. Adler arrived a few minutes after 9:45, went inside and informed Hammond and Roos that there were some men in the parking lot outside. Between 9:45 and 10 am Hammond came outside, saw the employees in the parking lot, exclaimed his surprise and instructed the men to go back to work. The men explained that they were anxious about their jobs and that they wanted some answers. They expressed their intention of returning to work. Roos went outside to speak to the men. He told them to go back to work and they said that they would but that they needed some answers and they wanted to introduce themselves to the company representatives. Eventually, Adler and Roos thought it best to bring the men inside the Union hall. The Union representatives explained that the meeting was a closed meeting to deal with the issues the employees were concerned about and that there were not yet any answers to questions about the future of the bargaining unit jobs. The men were told they could stay and introduce themselves to the employer representatives and that they should leave thereafter.

The General Counsel’s witnesses recall generally that the company representatives entered the Union hall sometime after 10 am. All the witnesses agreed that shortly after Mancini, Reveliotty and Budd came into the meeting room, the employees left and returned to the warehouse. Mancini testified that based on his cell phone records he first met with the Union either after 10:48 am or after 10:25 am. He recalled that Budd was late for the meeting, arriving at about 10:30. Budd testified that he arrived at the Union hall at 10:30, saw Mancini and Reveliotty in the parking lot and then walked into the meeting at 10:45. Reveliotty stated that the company met face to face with the Union at about 10:30 or 10:45.

Based on the testimony and Mancini’s cell phone records, I find that the Union, the unit employees and Respondent met sometime between 10:30 and 10:45. As soon as introductions had been made the employees left to return to the warehouse in Bristol. Based on the testimony of Fedor, Everett, Bosques, Collins and Towle, I find that the drive from the Union hall to the Bristol facility took from 30 to 40 minutes. Thus, I find that the employees had returned to

the B. Vetrano warehouse in the expectation of taking their trucks out before 11:30 am.

Actions Not Authorized by the Union

5 The evidence shows, and Respondent's witnesses agreed, that when the unit
employees drove from the warehouse to the Union hall on May 29 their actions were not
authorized by the Union. The uncontradicted testimony shows that the unit employees decided
to go to the meeting because they were anxious about the future and because the effects
10 negotiations between the Union and Respondent had not produced any answers so far. After
Northeast Beverage purchased B. Vetrano in October 2001, Mancini had told the unit
employees that the future was bright and that their work would increase as a result of the
purchase. However, by the spring of 2002 the employees had been told that their work would
be shifted to Burt's in Bethel and that B. Vetrano would be closed. The employees did not know
15 how much longer they would be employed. Several of them had recently been laid off by
Fordham and they were afraid that the same thing was about to happen again. There is no
question that the Union officials expressed consternation and surprise when the unit employees
appeared at the Union hall. The Union officials repeatedly told the employees that they could
not stay and they urged them to return to work. Mancini testified that on May 29 he understood
20 that the unit employees had come to the Union hall without authorization by Local 1035.
Mancini stated that Respondent informed the Union on May 29 that the work stoppage was an
unauthorized strike or stoppage. Mancini testified that the Union was surprised by the
employees' action.

25 The record is uncontradicted that shop steward Everett did not urge the unit employees
to attend the meeting. Employees recalled that he said it was not a good idea and that they
could not attend the meeting. Indeed, Respondent's brief alleges that it was Johnson, not the
shop steward, who was the "instigator" of the trip down to the Union hall. The uncontradicted
evidence shows that a shop steward is not authorized to call a strike.

30 Concerted Activity

 There is no question that the employees' actions in driving down to the Union hall on
May 29 constituted concerted activity. The employees came to a mutual decision to go to the
meeting to ask questions about what would happen to their jobs once the B. Vetrano facility was
35 closed and their delivery routes moved down to Bethel. The drivers wanted to ask whether they
would have jobs in Bethel, whether they would they have seniority and whether their pay would
change.

40 Effect of the Collective-Bargaining Agreement

 The next question presented is whether the collective bargaining agreement clearly and
unequivocally waives the employees' right to engage in an unauthorized work stoppage.⁵¹ I find
that it does not. Article XVI of the collective-bargaining refers to "authorized strikes, work
45 stoppages or other concerted interference with normal operations." Section 1 guarantees that
there will be no such authorized strikes, work stoppages or other concerted interference.
Section 2 defines an authorized strike, work stoppage or other concerted interference as one
"specifically authorized .. by the ... International Union or one which has been called or

⁵¹ It is Respondent's burden to show that the employees' actions violated the no-strike
clause of the contract and that the contract clearly and unequivocally waived the employees'
right to engage in concerted activity. *Silver State Disposal Service*, 326 NLRB 84 (1998).

sanctioned, directly or indirectly, by representatives of teamsters Local No. 1035.” Section 3 deals with “the above job actions” and provides that if they occur the International shall notify Local officers “that such action is unauthorized” and that steps are taken to resume normal operations. The purpose of Section 3 is to avoid liability for an authorized strike on the part of the International and the Local union so long as the International and the Local take steps to resume normal operations. Section 4 provides that “employees who instigate or participate in such job action in violation of this Agreement shall be subject to discharge or discipline.” Manifestly, each time the phrase “above job actions” or “such job action” is used, the antecedent is “authorized strike, work stoppage or other concerted interference with normal operations.” Thus, the only activity clearly and unequivocally prohibited by the contract and waived on behalf of the unit employees is the participation in an “authorized” work stoppage or strike called by the International or the Local Union. That the language of Article XVI of the contract is confusing and perhaps not well drawn cannot be gainsaid. The one conclusion that may be reached from parsing the phrases is that nowhere does the contract clearly and unequivocally define a strike or stoppage that is not “authorized” and nowhere does the contract clearly and unequivocally prohibit such a strike or job action.⁵²

Protected Activity

Respondent urges that the May 29 action was unprotected, even in the absence of a contractual no-strike provision, because it involved activities which are “customarily done during non-work time.” Citing *Gulf Coast Oil*, 97 NLRB 1513, 1516 (1952), and other cases.

In *Gulf Coast Oil*, the Board found that all the company’s drivers had gone to sign up at the Union hall instead of coming to work. By the time the drivers reported for work, about three hours late, the company had hired new drivers to replace most of them. The General Counsel conceded that the company was privileged to replace all the drivers when they failed to report to work, but argued that there was an unlawful refusal to reinstate three drivers who had not been replaced. The Board held that there was no evidence of anti-union animus and it dismissed the Complaint, saying, “we find applicable those cases holding that employees who violate valid nondiscriminatory company rules in connection with their union activity are vulnerable to discharge.” In *Gulf Coast Oil* the Board distinguished cases such as *Office Towel Supply Co.*, 97 NLRB 449 (1951), where an employee was fired for joining in a group discussion about unsatisfactory working conditions, and *Spencer Auto Electric*, 73 NLRB 1416 (1947), where employees were discharged after they walked out to protest the firing of the chief union supporter.

In *GK Trucking*, 262 NLRB 570 (1982), the Board dismissed the Complaint, affirming the ALJ decision which relied in part on *Gulf Coast Oil*. The ALJ distinguished cases where employees abstained from work to protest working conditions or abstained from work to meet with the Union in order to seek help in resolving work-related problems. In *GK Trucking* the ALJ found that the employees were absent from work “to attend a union meeting whose purpose was unrelated to their own concerns.” 262 NLRB at 573 Respondent also relies on *Embossing Printers*, 268 NLRB 710, 722-23, but that case is inapposite as the holding is limited to intermittent or quickie strikes.

The decision in *GK Trucking* distinguishes *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962), where the employees walked out to protest their miserably cold working conditions as

⁵² For the reasons discussed above I shall not credit any of Roos’ answers relating to a possible wildcat strike.

part of a running dispute with the company over heating of the shop on cold days. In *Washington Aluminum* the Court held that it was not necessary for the employees to present a specific demand at the time of the walkout which was aimed at bringing about an improvement in their working conditions. The employees acted concertedly to “spotlight” their complaint. The Court stated that “the reasonableness of workers’ decisions to engage in concerted activity is irrelevant”, 370 U.S.16. The Court cautioned that Section 7 of the Act is not be interpreted and applied in a restricted fashion.

Respondent views the facts of the instant case as coming under the fact patterns in the cases it relies upon. Respondent argues that there was no existing adverse working condition being protested, a necessary condition for the stoppage to be protected. Respondent asserts that the unit employees were simply seeking information which they could have obtained on non-work time by questioning the Union “as to the Employer’s position concerning their futures.”

I believe that the facts of the instant case fall under the broad wording of *Washington Aluminum*. The employees here knew that there was an ongoing discussion about the future of their jobs, their seniority and their earnings. They knew that negotiations had not produced any answers even though they had sought satisfaction for several weeks by asking management and the Union what was going to happen to them. The unit employees’ testimony shows that they went to the Union hall because they had not received any answers to questions concerning the future of their employment. They did not know whether they would have jobs, they did not know whether they would retain seniority and they did not know what they would be earning. All the men had families to support and they did not know when they might be laid off as a result of the upcoming merger of routes belonging to B. Vetrano and Burt’s. Respondent and the Union had been negotiating about the very issues that were troubling the employees on May 29. Thus, the meeting that the employees drove down to attend was directly related to their concerns. The testimony of the employees shows that not only did they want answers to their questions, but they wanted to “spotlight” their anxiety. They wanted to show that they were not just names on a list and they wanted to show that they were capable of doing the job. The possibility that the employees might have waited and sought more information from their Union representatives, as urged by Respondent, is not controlling. As quoted above, the Supreme Court has stated that the reasonableness of a decision to engage in concerted activity is not relevant. I do not agree with the Respondent’s position that there had to be an “existing adverse working condition” in order to fit the employees’ action under the rubric of concerted activity. The aim of obtaining answers to important questions such as for how long one will continue to have a job and under what conditions of seniority and pay is as strong a reason to take action as is a miserably cold working environment. As the Supreme Court held in *Washington Aluminum*, a finding of concerted activity does not require that there be a previously articulated demand upon the employer.

Alleged Derogation of Majority Representative

I find no merit in the Respondent’s argument that the employees’ actions on May 29 were in derogation of their majority representative under *Emporium Capwell v. Western Addition*, 420 U.S. 50 (1975). The employees were not seeking to empower a minority bargaining representative. Furthermore, the Union herein always maintained that the employees were not on strike and that they were returning to work immediately. The Union always supported the unit employees and never claimed that they were holding positions inconsistent with those put forth in negotiations. The Union said the employees’ appearance at the Union hall was unwise but it did not state that the positions of the Union and the employees were in opposition. Unlike *River Oaks Nursing Home*, 275 NLRB 84 (1985), cited by Respondent, where the Board found the employees’ actions unprotected because they walked

out in support of demands which were inconsistent with those of their union, the Respondent's employees in the instant case were not seeking to replace their own Union's objectives and they were not dissidents. The standards for analyzing purported dissident activity were set forth in *R. C. Can*, 140 NLRB 588 (1963), en'f'd at 328 F.2d 974, (5th Cir. 1964). If the employees' activity is "in support of the things which the union is trying to accomplish" then it is protected. 328 F.2d at 979 Here, the Union was conducting effects bargaining and trying to get jobs for the employees in Bethel under the same working conditions as obtained in Bristol. The employees came to the meeting to see whether that would happen and to express their anxiety about the situation. Thus, the employees are not regarded as dissidents seeking to usurp or replace the majority representative. *Energy Coal Partnership*, 269 NLRB 770 (1984).

I have found above that the unit employees arrived at the Union hall around 9:45 am, that before 10 am the Union instructed the men to return to work, that the Union and the employees quickly came to an understanding that the employees would return to work as soon as they had met the company representatives and that the men did in fact return to work as soon as that occurred. It is not accurate, as suggested by Respondent's brief, that the unit employees were defying their Union's instructions to return to work from 9 am to 11 am. Although the Union was not pleased to see the unit employees and urged them to leave immediately, once the Union representatives saw that the employees were anxious and upset about their uncertainty regarding the future, the Union officials judged it best to let the employees stay and introduce themselves to management and then to return to work. The only reason the employees did not return to work right after 10 am was that management was late in coming to the meeting and that Budd himself did not arrive until about 10:30 am. If the company team had been on time the employees would have been on their way back to Bristol by 10:05 am.

The Employees Were Not Engaged in a Strike

The General Counsel argues that the May 29 action was not covered by the collective bargaining agreement because it was not an authorized strike as defined by Article XVI and because it was not a strike at all. Citing *Empire Steel Manufacturing Co.*, 234 NLRB 530 (1978), the General Counsel argues that where there is no purpose to pressure an employer to change its ways, the Board does not consider the action to be a strike. The intent of employees is directly relevant to the applicability of a no strike proscription. In *Empire Steel* the intent of the meeting was informational. In *BMC America*, 304 NLRB 362, 364 at fn. 23 (1991), the Board found that the employees did not engage in a strike where they left work to obtain employment related information from the Board and not for the purpose of pressuring their employer. The evidence here is clear that when the employees left the warehouse at 8 am on May 29 they did not have a plan to pressure the employer to grant any concessions or to take any action. Indeed, the questionnaire that Respondent used to interview employees about the events of May 29, after asking what the Union said to them about returning to work, sought information whether the Union asked the men what they wanted in negotiations and how long the Union talked to them about their demands. All of the employees answered that on May 29 the Union did not ask them what they wanted in negotiations and did not talk about demands. They all said they went to the Union hall to get some answers.

I find that the employees' intention on May 29 was not to conduct a strike and not to interfere with normal operations at B. Vetrano. Their action was a spontaneous response to the lack of information about their future job security; the employees went to the meeting to receive information and make their anxieties known. They had the intention to return to their delivery work immediately afterwards.

Respondent argues that the drivers did not really intend to return to work on May 29 and Respondent maintains that the drivers wanted to stay for the entire meeting which could have lasted several hours. In my discussion of Johnson's testimony above I have found that Johnson did not testify that it was the original intent of the drivers to stay for the entire meeting. When Hammond saw the men and made his memorable exclamation which ended with the exhortation "you have to get back to work", the men assured Hammond that their intent was to get back to work when they had asked their questions and received an answer. Nor was it established that Johnson or the other men had any understanding of how long the meeting might last. Certainly the testimony shows that none of them had any clear understanding of what would actually be discussed. I have found above that the employees were truthful and I believe their testimony that they wanted to get some answers and that they intended to return to work thereafter. Indeed, Collins had wanted to drive his loaded truck to the Union hall so that he could commence making his deliveries as soon as the employees had asked their questions. He was only deterred from doing this when he was told that the Union hall parking lot was not large. When the employees left the Union hall on May 29 they did in fact return to the warehouse in order to take their trucks out and make their deliveries. However, they were not able to proceed because Respondent had suspended them.

The General Counsel points out that the Board sometimes considers the length of concerted activity in determining whether it constitutes a strike. *Empire Steel, supra*. Here, the employees left the B. Vetrano warehouse sometime after 8 am and arrived back before 11:30 ready to take their trucks out. The testimony is uncontradicted that B. Vetrano did not discipline drivers who were not underway by 8 am. Indeed, the testimony shows that on occasion the trucks were not loaded by 8 am: sometimes the product necessary for a load had not been delivered to the warehouse and the driver had to wait for the items; sometimes the employer called a meeting and the drivers could not leave; sometimes a very large load might not be completely placed onto a truck until 10 am. The testimony is uncontradicted that the regular practice at B. Vetrano was that once the drivers punched out in the morning it was up to them to configure their own routes and decide how to make their deliveries. There were no time limits on the lunch or personal breaks that the drivers could take while out making deliveries and being paid on a commission basis. John Vetrano testified that while at B. Vetrano he had never disciplined a driver for missing a delivery stop. On occasion, drivers missed a stop and returned to the warehouse with products still on their trucks. When this happened, Vetrano said, the product went out the next day if the driver were in the area or the delivery might wait for a couple of days. Vetrano's testimony comports with that of the drivers. They testified that with respect to chains and supermarkets, the Vetrano policy was that if a delivery were missed it could take place the next day. Further, the uncontradicted testimony shows that even those customers such as Liquor Depot, California Pizza Kitchen, La Cucina and certain bars would accept late deliveries if the Vetrano office staff telephoned and requested that they do so or if the driver showed up prepared to wait for the delivery to be received. Moreover, the testimony that the Liquor Depot delivery was "missed a lot" was not contradicted by John Vetrano.

I find that even if they had started their routes close to 11:30 am most of the drivers could have completed their deliveries on May 29. I also find that the exceptions – those stops that could not have been completed on May 29 – were not of a type that would have occasioned discipline under the B. Vetrano policies in effect on May 29. First, John Vetrano testified that he did not have the original route sheets issued to the drivers on May 29. Instead, he attempted to reconstitute the route sheets in the fall of 2002 in preparation for the instant hearing and long after the Vetrano office had closed. Using this method, some errors had crept in; thus, Everett

identified an error in John Vetrano's testimony concerning Fedor's route.⁵³ The inclusion of Price Chopper for a Wednesday delivery to be made by Fedor was an error by the secretarial staff. In fact, according to Everett, Fedor could have completed all of his deliveries on May 29 except the Big Y supermarket and that could have been done the next day. The record is uncontradicted that Towle could have finished his route even setting out at 11:30 am. Everett testified that Marczewski could have made all his stops except the Shaw's supermarket in Glastonbury on May 29. The supermarket delivery could have been made up the next day. Everett stated that Bosques could have completed his route on May 29. Everett testified that Collins could have made all of his deliveries except those to two Shaw's supermarkets on May 29. Those two places could have been covered the next day. Vetrano said that Johnson could not have completed his route because it included an early delivery to Liquor Depot. However, the record shows that this stop was often missed and that it might have been attempted successfully if the Vetrano office staff had telephoned to ask for an exception to the early delivery policy.

Based on this discussion of the B. Vetrano policies and practices and on the drivers' routes on May 29, I find that when the drivers set out for the Union hall with the intention of returning late to deliver the products, they were reasonable in their belief that they could return to work and do their jobs later in the day. Thus, there is no evidence that they had any intention to engage in a strike or work stoppage to pressure their employer on May 29. Based on past practice at B. Vetrano the drivers knew that if they missed one or two stops they would not be disciplined and they would be permitted to complete the stops the next day. The drivers had not been disciplined in the past for taking breaks during their delivery routes and it was not unreasonable to suppose that, faced with an urgent desire to find out whether and when and under what circumstances they would have jobs, they took some off to try to get answers with no expectation that they would be subject to penalties for their actions.

Condonation

The General Counsel argues that, even if it is found that the unit employees' actions on May 29 were unprotected, the Respondent condoned the employees' actions on by returning them to work and urging them to remain at their jobs. Respondent argues that it did not condone the May 29 activity because it warned the employees that they still faced discipline. In *General Electric*, 292 NLRB 843, 844 (1989), the Board said, "The doctrine of condonation applies where there is clear and convincing evidence that the employer has agreed to forgive the misconduct, to 'wipe the slate clean,' and to resume or continue the employment relationship as though no misconduct occurred. 'The doctrine prohibits an employer from misleadingly agreeing to return its employees to work and then taking disciplinary action for something apparently forgiven.'" (citations omitted)

The Respondent's brief deals at length with the May 31 letter signed by John Vetrano which warned the employees that they were facing discipline. However the Respondent's brief on the issue of condonation does not mention Mancini's letter of the same date. As quoted

⁵³ With respect to the testimony concerning the drivers' routes I shall credit Everett's testimony over that of John Vetrano. I have found above that Everett is a credible witness. Everett is also a disinterested witness. He was offered employment and then severance by Respondent and, unlike John Vetrano, he is no longer employed by Respondent and has no reason to shade his testimony. Finally, Everett drove trucks for B. Vetrano for many years and he was personally familiar with the routes about which he testified. In contrast, John Vetrano was not a regular driver of these routes.

above, that letter told the employees that the company was negotiating a severance package with the Union and “will need Vetrano employees to work until the Bristol facility is closed.” Mancini’s letter said the company “informed the union that a severance package will be dependent upon an orderly shutdown in which employees continue to work until they are released by the company.” The Mancini letter, standing alone, meets the Board’s standards for condonation. The letter clearly states that Respondent needs the employees to work for as long as their facility is open. The letter clearly states that the employees’ hope for a severance package is dependent on their continued willingness to work until the facility is shut down. The letter does not mention the possibility of discipline or discharge: thus the employees were being asked to continue their employment relationship with Respondent as though no misconduct occurred. Indeed, the Mancini letter refers to the fact that Respondent has told the employees’ bargaining representative that their possible receipt of a severance package depends on their continued employment so as to facilitate an orderly shutdown. Here, the Respondent offered inducements, without any reservation of future disciplinary action, to entice the employees to work until Respondent closed their warehouse. The letter of John Vetrano and the letter of Mancini cannot be reconciled. Indeed, Respondent offers no argument to show how the employees were to know which of the two letters they should rely upon. I find that a reasonable employee would rely on the letter sent by Mancini, the president and chief executive of Respondent rather than on the letter sent by John Vetrano, a manager operating under Mancini’s direction and control. The employees knew that Mancini was their new boss. They knew that John Vetrano no longer controlled their fate. They knew that Mancini was negotiating with their collective bargaining representative and they knew that John Vetrano was not present at the bargaining sessions with the Union. Thus, I find that Respondent condoned the unit employees’ actions on May 29. Because the Respondent condoned the May 29 activity, it was not free to rely on that activity to discipline and discharge its employees thereafter.

I conclude that because John Vetrano’s letter of May 31 threatened the employees with discipline and discharge because they engaged in protected concerted activities, Respondent violated Section 8 (a) (1) of the Act.

B. Anti-Union Animus

The General Counsel argues that Respondent harbored anti-union animus. The General Counsel argues that Respondent did not want to hire any significant number of B. Vetrano drivers to work at the merged facility in Bethel because they were members of and represented by the Union. The General Counsel urges that Respondent seized upon the events of May 29 as a pretext to avoid hiring a significant number of B. Vetrano employees in Bethel.

I find that the record shows the following facts: Reveliotty, who advised Mancini on the method of consolidating the B. Vetrano facility in Bristol and the Burt’s facility in Bethel, met with Mancini once a week and called him every few days. Reveliotty spent a lot of time at B. Vetrano and at Burt’s. Reveliotty considered decisions about staffing to be important in executing his job for Respondent. According to Reveliotty a key issue he confronted was how to work out the routes serviced by B. Vetrano. Reveliotty asked John Vetrano which of the Vetrano drivers drove certain routes and certain trucks. Vetrano told Reveliotty that he wanted to get jobs for his drivers at the consolidated facility in Bethel. Reveliotty knew that B. Vetrano employees were represented by a Union that that Burt’s employees were not organized.

Reveliotty testified that he placed newspaper ads in April and May to develop a pool of

5 candidates for hire at Burt's.⁵⁴ Further, the record shows that Burt's advertised for drivers on June 2, July 26 to 29, August 23 to 29 and August 31 to September 6. James Davenport testified that there was a high turnover at Burt's which continued after mid-June 2002. In June Burt's was over-hiring and there was no limit on the over-hiring at that time. Davenport said that in the month of June Burt's did a lot of hiring to handle the increased work coming from the anticipated merger. Mancini testified that he had discussed with Reveliotto the need to advertise for a pool of candidates. Reveliotto said that he did not discuss with Mancini whether the latter would offer positions to the B. Vetrano drivers instead of hiring new employees for Bethel. Reveliotto testified that he knew that Respondent did not want to hire the Vetrano drivers and he knew that Mancini did not want to recognize the Union at the Bethel facility. According to James Davenport, Reveliotto sat in on interviews and advised Davenport on whom to hire in the process of blending the operations of Burt's and B. Vetrano.

15 The record is clear that beginning with the May 13 negotiations the Union asked Respondent to offer jobs to the B. Vetrano employees in the merged facility at Burt's in Bethel. Mancini testified that he was thinking of employing the Vetrano employees and he questioned the Union whether some of them would want to commute to Bethel. Mancini also said he was not clear what his needs would be. Mancini testified that his consistent position in negotiations had been that no jobs were currently available in Bethel. The company asked for names of unit employees who wanted jobs in Bethel. The Union said that Respondent should hire all the employees by seniority. At the May 29 negotiating session, the Union again asked that the B. Vetrano employees be hired at Burt's but Respondent said it did not foresee that any positions would be available except for a possible supervisory position for Fedor.

25 By June 5 the Union had learned that Respondent had been advertising for drivers to work in Bethel. When the Union confronted Respondent with this information at the June 5 bargaining session, Mancini said he needed part-time night loaders. Reveliotto, who was present at this session and who testified that he had placed these ads, did not speak up at the meeting. He did not tell the Union what he admitted in testimony in the instant hearing: he had placed ads for drivers at Burt's and he was trying to develop a pool of driver candidates for future hire. The company continued to state in negotiations that there were no jobs for unit employees with the possible exception of Fedor who would be moved into an administrative or supervisory position. On June 5 Budd said that there were no jobs available in Bethel but that there was turnover. Budd denied the Union's request for preferential hiring of unit employees. He told the Union that the unit employees could apply for jobs in Bethel. In response to Budd's question about which employees wanted jobs, Adler said they all did except possibly Pignatella who might get a job with another distributor.

40 On June 10, Budd wrote to Adler stating that there was no work available in Bethel at present for unit employees

45 On June 14, Respondent at first said it was not hiring but after being confronted with its recent newspaper advertisement for drivers the company said there were two full time driver positions open in Bethel. Respondent told the Union that it would offer jobs to Everett, Pignatella and Fedor. Respondent said it was discharging the other unit employees for their activities on May 29. When the Union responded that Pignatella would probably take a severance payment and asked that the third job be given to Johnson instead, Respondent refused.

⁵⁴ Although Reveliotto said that by the end of May Burt's was only advertising for warehouse people, the record shows that Burt's continued to place ads for drivers in June, July and August.

I conclude that the record supports a finding that Respondent was motivated by anti-Union animus and that the reasons advanced by Respondent for refusing to consider them for hire and refusing to hire them were false and were designed to obscure the anti-union animus.

First, it is clear that Reveliotty and Mancini were consulting closely and constantly about the merger of Burt's and B. Vetrano. Although Reveliotty testified that staffing and the integration of the Vetrano routes into the merged facility were key and although Reveliotty said that John Vetrano gave him details about who drove the Vetrano routes and told him that he wanted to get jobs for these men, Respondent did not take any steps to hire the B. Vetrano drivers. In the negotiations Respondent told the Union that jobs were not available at the same time that it was advertising for drivers in the local newspapers. When confronted with this contradiction, Mancini said the ads were for warehouse people, a blatant untruth. Reveliotty, who was present and who also knew about the ads, did not offer a truthful answer to the Union negotiators. Indeed, Reveliotty testified that he placed ads for drivers at Burt's in April and May and he testified that by the end of May he was only advertising for warehouse workers, but this testimony is contradicted by the record evidence that drivers were being sought through August. Davenport's testimony confirmed that there was turnover and constant hiring at Burt's in anticipation of the increased workload. Yet throughout the period of seeking new hires at Burt's and of high turnover and facing the problem of increased workload, Respondent was telling the Union that there were currently no jobs in Bethel and Mancini was saying that he was still unsure of his needs. As late as June 10, four days before the merger, Budd was writing to the Union saying that there was no work at present for the unit employees. It was only on June 14 that Respondent offered jobs to Everett, Pignatella and Fedor. On this date, it already seemed likely that Pignatella would not accept the offer. Further, Respondent had stated that Fedor would be hired or moved shortly after hire to a supervisory or administrative position; thus he would not be eligible for representation by the Union.

Second, Reveliotty admitted that Respondent did not want to hire the B. Vetrano drivers. Reveliotty testified that Mancini did not want to recognize the Union in Bethel. Reveliotty said he never even discussed with Mancini the possibility of hiring the drivers who were experienced on the very routes that had to be serviced at the merged facility. Reveliotty advised James Davenport about who should be hired in Bethel and Reveliotty attended interviews with prospective employees. Thus, Respondent's agent who controlled the new hiring knew that it was Respondent's policy not to hire the B. Vetrano drivers. This is in marked contrast to Respondent's practice with the employees of B. Vetrano who are not represented by the Union. In fact, Respondent hired John Vetrano, almost all of the sales force and one foreman.

Third, James Davenport testified that it was Respondent's policy to hire drivers who live in Bethel or Waterbury, or close by, but that he would not hire employees who reside in Bristol, Hartford or surrounding areas. As detailed above, Davenport admitted that there were exceptions to this rule when he was asked about the actual residences of his current driver employees. Further, Davenport's testimony about a purported policy of Respondent is belied by the Respondent's willingness to employ Pignatella, Everett and Fodor all of whom live in Bristol. Indeed, Davenport and Reveliotty were so eager to hire Everett that they did not even let him complete his questionnaire before interviewing him when he applied for a job at Burt's on June 19. Finally, Davenport admitted that the B. Vetrano employees who were hired by Respondent all have long commutes to Bethel. I consider that Davenport shaded his testimony to make the unit employees look unemployable and that this was an attempt to cover up Respondent's anti-Union animus.

Thus, I find that Respondent's policy was to avoid hiring Union represented employees and was designed specifically not to hire any significant number of the B. Vetrano unit employees. I find that Respondent's policy was the result of anti-Union animus.

5 I find that the suspension of the unit employees on May 29 and their subsequent discharge was the result of Respondent's anti-Union animus and because they engaged in protected concerted activity. I have found above that the employees' action was concerted, that the right to engage in the activity was not waived by the contract and, in any event, was not a strike, and I have found that the employees did not lose the protection of the Act by acting in derogation of their collective-bargaining representative.

10 I find that under the policies in place at B. Vetrano on May 29, Respondent would not have disciplined the employees for their activities which resulted in a late beginning to the scheduled deliveries for the day. The testimony is unrefuted that B. Vetrano drivers were never
15 disciplined for leaving the warehouse later than 8 am. The testimony is also unrefuted that once on their routes, the drivers were not limited in their break times or in how they performed their deliveries. Further, John Vetrano himself stated that he has never disciplined a driver for missing a stop. He stated that if items were brought back on a truck at the end of the day the delivery could be made the next day or even a few days later when the driver was back in the
20 area of the missed delivery. Vetrano did not contradict the testimony of the unit employees that he had a policy that deliveries to supermarkets could be missed and that it would be acceptable to make the delivery the next day. Further, Vetrano's actions on June 14, the last day of work, for the drivers are entirely consistent with the actions of an employer who is chagrined to be losing reliable and valuable employees. Vetrano told the drivers that he was sorry, he thanked
25 them for their work and he offered to give them good references.⁵⁵ Based on Everett's testimony, discussed above, I have found that Towle and Bosques would have completed their routes on May 29 if Respondent had permitted them to return to work. I have found above that Fedor, Marczewski, and Collins could have completed their routes except for the supermarkets and that Respondent would normally have permitted them to make up the supermarket
30 deliveries the next day. I have found above that Johnson could have completed his routes except for Liquor Depot. However, the uncontradicted testimony shows that this stop was often missed but that no discipline was ever meted out for failure to complete it. Thus, Respondent has not met its burden to show that it would have disciplined the employees by suspending and then discharging them in the absence of their protected concerted activities and in the absence
35 of their membership in and support for the Union. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

40 It is hard to discern the purpose, if any, of the questionnaires that Respondent prepared and that John Vetrano administered to the employees. Respondent contends that these were used as a basis for disciplining the employees because it was necessary to find out whether any employees had been coerced into leaving their jobs on May 29. I do not credit this assertion. All of Respondent's representatives met with the unit employees on May 29 and nothing in the descriptions of the events given by any of Respondent's witnesses even hints at coercion. Further, Paul Johnson was never interviewed and there was no questionnaire filled out for him.
45 Mancini testified that he had to wait to see the questionnaires before deciding on discipline. However, he discharged Johnson without even realizing that Johnson had not answered any of the questions which purportedly bore on the discipline to be imposed.

⁵⁵ It is uncontested that John Vetrano had no part in deciding to discipline and discharge the employees. No one asked his opinion.

Respondent has not shown that Towle, Collins or Bosques were probationers. The collective bargaining agreement does not mention this status and the B. Vetrano personnel records do not identify any unit members as probationary employees. In contrast, the records do have spaces for "preferential hire, regular driver and temporary driver." Thus, John Vetrano's testimony that he had an oral agreement with Hammond to hire Towle and Collins as probationers was not convincing because the written company records do not mention any purported probationary status. If there were such an agreement, the notation would have been made when the employees were listed as "regular drivers." John Vetrano did not testify that Hammond agreed that Bosques would be on probation. Moreover, even if an employee could be considered a probationer that would not permit Respondent to discriminatorily discharge him for protected concerted activities.

Finally, I have also found above that Mancini's letter of May 31 condoned the employees' concerted activity on May 29. As discussed above, Mancini wrote to the employees that he needed them and he said he had informed their Union that any negotiated severance package depended on their continued employment and an orderly shut down of the plant. Mancini's letter did not mention the possibility of discipline or discharge. I have found that Mancini's letter governed the situation. Having condoned the employees' actions and reaped the benefits of having a stable and dedicated work-force when Respondent could ill have afforded to deal with employee defections, Respondent is not now free to change its position. Thus, even if it were found that the employees' actions on May 29 were unprotected, Respondent was not privileged to discipline and discharge the employees for actions which it initially condoned. *General Electric Co.*, 292 NLRB 843, 845 (1989).

C. Criteria Pursuant to FES

I find that James Davenport's testimony about hiring standards and practices at Burt's is vague, contradictory and incomplete. I conclude that Davenport's testimony is not reliable as to certain subjects.

First, in questioning by Counsel for Respondent, Davenport was at great pains to show that Respondent would not hire drivers who lived as far away from Bethel as Bristol or Hartford. No documentary evidence from an employee handbook or from a newspaper advertisement supported this position. Davenport did not explain why Respondent admittedly was willing and, indeed, eager to hire Pignatella, Fedor and Everett, all three of whom lived in Bristol. Davenport also admitted that he might actually have hired drivers who live far from Bethel but he said he could not recall. Davenport was questioned at length on this subject by Counsel for Respondent; he gave not a single instance from his past hiring practice at Burt's where he hired one individual instead of another individual because the individual actually hired lived closer to the Bethel facility. Thus, Davenport was testifying as to a hypothetical situation and not testifying as to decisions he had actually made in hiring real employees. I consider Respondent's purported policy of preferring employees from the local Bethel area to be a sham which was concocted for the instant hearing with the aim of disqualifying the Union represented employees of B. Vetrano who applied for work on June 19.

Second, Davenport's testimony about Respondent's policy of not hiring employees who expect more than a stated rate of pay also suffered from the same inconsistency, lack of precision and conflict with documentary evidence. Davenport admitted that some of Respondent's application forms do not have a space for indicating expected rate of pay. Thus Harold Reed filled out an application on August 27, 2002 that did not ask him what he wanted to earn. Davenport testified that in 2002 the hiring rate for drivers at Burt's was \$15 per hour or commission. However, Davenport admitted that he hired employees Gaylord and DeGroot,

both of whom asked for far more than the wage rate at which they were hired in the summer of 2002. I conclude from Davenport's testimony that Respondent did not enforce any policy against hiring employees who asked for higher wages than they were given by Respondent.

5 Third, Davenport's testimony about what the drivers in Bethel were actually paid was vague and unspecific. Thus, Davenport said that some drivers loaded their trucks and were paid \$15 per hour. Some received commission and some did not. Davenport said that if drivers were paid commission they might actually earn over \$15 per hour depending on the route and the driver's skill. Davenport did not specify the actual hourly earnings of the long-service, skilled
10 drivers at Bethel in 2002. Davenport said the B. Vetrano employees who filled out applications on June 19 all asked for \$17.25 or \$17.35 per hour. He said this was higher than he was paying. He acknowledged that the B. Vetrano men were paid by a combination of hourly wages and commission. He did not offer any testimony comparing their expectations with the actual earnings of skilled drivers on the payroll in Bethel who were earning commission. Further,
15 Davenport and Reveliotty were eager to hire Everett on June 19 and would have hired Fedor and Pirgnatella. Davenport did not explain why they would have been hired despite their expectation of higher pay than \$15 per hour. Thus, Davenport's testimony did not establish that the June 19 applicants would have been rejected for employment because of the way they answered a question about expected rates of pay. I also note that Budd and other company
20 representatives informed the Union that labor costs were not significantly different between B. Vetrano and Burt's.

Turning to the matters that were established by Davenport's testimony as well as that of Reveliotty, I find that when Respondent purchased Burt's in April 2002 there was a lot of driver
25 turnover at the facility. Respondent instituted a policy of running regular newspaper advertisements so that when drivers quit they could be quickly replaced. Respondent wanted a pool of driver applications on hand at all times. Successful driver applicants had to possess a CDL. Davenport said that Respondent liked to hire former employees and it liked to hire applicants who were referred by current employees. In April there were 10 drivers and in June,
30 July and August there were 12 drivers at Burt's. The high rate of turnover among drivers continued after mid-June 2002 and as a result Respondent continued to overhire in June 2002. There was no limit to the overhiring in June due to the turnover and the anticipated work load from the closed B. Vetrano facility. Reveliotty sat in on job interviews and advised Davenport whom to hire.

35 It is undisputed that the following unit employees applied for jobs at Burt's on June 19:

Johnson, position as a truck driver
Collins, position as driver, helper, warehouse
40 Marczewski, did not list position requested
Bosques, position as driver
Towle, position as route driver

45 Reveliotty told Davenport that he was not to interview them and that he was not to consider their applications because they had been fired.

As set forth above, Respondent told the Union it had two driver vacancies on June 14. Further, Respondent's payroll documents show that employee Joseph Alves last worked during the pay period ending June 8.⁵⁶ Thus, there were three driver vacancies in the week ending

⁵⁶ A document showing that he was terminated on June 14 contains many other erroneous
Continued

5 June 14. Respondent knew at this time that the Union was asking for jobs for all of the B. Vetrano employees. As found above, Respondent was giving inconsistent and inaccurate information about its advertising and hiring all during the negotiations. Although Davenport testified that during this period he was permitted to over-hire without limit, Respondent was
10 telling the Union there were no jobs or maybe two jobs. Respondent's payroll records show that Respondent hired three drivers, namely Patrick Dineen, Edward Woolfolk and Edgar Tenesaca during the week ending June 22. The record is clear that during this week Johnson, Collins, Towle, Bosques and Marczewski all had a valid CDL and would have been considered by
15 Respondent but for its unlawful discrimination. Moreover, as former employees who had driven the very routes that were now being integrated into the Bethel operation they would have been attractive workers for Respondent and would have been given preference under its policies of hiring former employees. John Vetrano had offered all of his drivers a good reference and he was willing to help them get a job. Vetrano is a current employee of Respondent and his recommendation would have carried weight under the policy stated by Davenport. Three of the
20 drivers would have been hired on June 19 but for the unlawful discrimination. Respondent hired three more drivers in the first two weeks of July: Steve DeGroot, Timothy Albert and Edward Dudley. DeGroot left after a few days. David Urquhart was hired as a helper around July 16 and became a driver in August. Respondent later hired Nderim Belica who started October 11 or 14, 2002. It hired Eric Williams as a helper in September or October but moved him to a driver position when he obtained a CDL one month later.

Collins' CDL was suspended at the end of June. Since his application clearly states that he was interested in a job as a helper or in the warehouse and that he had forklift experience,
25 Collins was then eligible for the many such positions filled by Respondent. Further, Marczewski had not stated on his application what position he was applying for. Thus, Marczewski should have been considered for driver, helper and warehouse positions. He could have been hired into any such position. Four warehouse employees were hired in the period ending June 29, Jon Havanick, Louis Sansone, Jason Hicks and Christopher Pritchard. Marc Brousseau was hired as a helper in the payroll period ending August 24. Also, employees Steven Encarnacion,
30 Leo Giattino, James McHatten and David Sheppard, whose start dates are not firmly established, were hired during this period. McHatten and Sheppard were later terminated.

I find that the General Counsel has met the burden set forth in *FES*, 331 NLRB 9, 15 (2000) to show that Respondent excluded applicants from the hiring process and that antiunion
35 animus contributed to the decision not to consider the applicants for employment. Respondent admits that it did not consider Johnson, Collins, Bosques, Marczewski and Towle for employment on June 19 or thereafter. As discussed above Respondent has not shown that it would not have considered the applicants even in the absence of their protected concerted activities and their union activity or affiliation.

40 I find that the General Counsel has met the burden set forth in *FES*, 331 NLRB at 12-15, to show a discriminatory refusal to hire Johnson, Collins, Bosques, Marczewski and Towle. The Respondent was hiring employees. The applicants had experience and training relevant to the requirements for hire. Furthermore, Respondent had not adhered uniformly to its purported
45 hiring requirements and the requirements were applied as a pretext for discrimination. Respondent's anti-union animus contributed to the decision not to hire the applicants. Finally, Respondent condoned the protected concerted activities of the applicants and it was not free to consider those activities as a bar to employment. As discussed above, Respondent has not

dates. Respondent's payroll records are the most accurate indicator of when employees were hired or terminated. Two other documents prepared for the instant litigation are full of errors.

shown that the B. Vetrano employees were not qualified, that others who were hired had superior qualifications and that Respondent would not have hired them in the absence of their protected activities and their union affiliation and activity.

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D. Direct Dealing and Bypassing the Union

I credit Adler's testimony that in a June 17 telephone call Budd told him that he had heard that Fedor would probably accept a job in Bethel. If that happened, Budd stated, Mancini would authorize a severance pay offer to Pignatella and Everett of \$15,000 each. Adler made a note memorializing the conversation which read, "would probably go to \$15,000 if he does not have Fedor to worry about." Manifestly, Adler's contemporaneous note supports his version of the telephone call. Thus, I find that on June 17 Budd did not actually make an offer to the Union of \$15,000 severance for Pignatella, Everett and Fedor which would be payable if they did not accept jobs with Respondent in Bethel. I note that the record shows that it was Budd's custom when he made an oral offer to the Union to follow up the offer with a written letter or fax to a Union representative. There is no such written confirmation in the record with respect to this alleged offer.

I do not find that Everett had apparent authority to receive an offer from Respondent on behalf of the Union. Two conditions must be satisfied to create apparent authority: "(1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity." *Dick Gore Real Estate*, 312 NLRB 999 (1993). The record is devoid of any indication that Everett negotiated actively on behalf of the Union or that the Union took any action which would lead Respondent to believe that he had apparent authority to receive an offer. Similarly, there is no testimony on the record that any representative of Respondent believed that Everett had apparent authority to receive an amended offer from Reveliotty. Indeed, Reveliotty testified that before he spoke to Everett he had been informed by Budd that the Union attorney knew about the amended offer. Thus, Reveliotty did not believe that he was making a new offer to Everett. I find that Respondent violated Section 8 (a) (5) of the Act by bypassing the Union and dealing directly with a unit employee.

Conclusions of Law

1. At all material times International Brotherhood of Teamsters, Local 1035, has been the exclusive collective-bargaining representative of Respondent's employees at the B. Vetrano facility in the following unit:

All regular drivers, regular helpers, regular warehousemen, driver's assistants, seasonal employees, temporary employees and spares; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

2. By dealing directly with bargaining unit employees and bypassing Local 1035, Respondent violates Section 8 (a) (5) and (1) of the Act.

3. By threatening employees with discipline and discharge because they engaged in protected concerted activities, Respondent violated Section 8 (a) (1) of the Act.

4. By suspending Paul Johnson, Chris Fedor, Jerzy Marczewski, Russell Towle, Robert Collins and Ricardo Bosques on May 29, 2002, because they engaged in protected concerted activities and because they joined and supported the Union, Respondent violated Section 8 (a) (1) and (3) of the Act.

5. By discharging Paul Johnson, Jerzy Marczewski, Russell Towle, Robert Collins and Ricardo Bosques because they engaged in protected concerted activities and because they joined and supported the Union, Respondent violated Section 8 (a) (1) and (3) of the Act.

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6. By refusing to consider for hire and by refusing to hire Paul Johnson, Jerzy Marczewski, Russell Towle, Robert Collins and Ricardo Bosques because they engaged in protected concerted activities and because they joined and supported the Union, Respondent violated Section 8 (a) (1) and (3) of the Act.

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Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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The Respondent having discriminatorily suspended employees on May 29, 2002, it must make them whole for any loss of earnings and other benefits, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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Christopher Fedor signed a general release when he accepted Respondent's severance package. Thus, Fedor shall not be entitled to a make whole remedy for his one day's suspension on May 29, 2002.

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Having found that Respondent refused to consider five applicants for employment I shall recommend that it be ordered to cease and desist. Having found that Respondent refused to hire the five applicants for employment I shall recommend that it be ordered to cease and desist and that Respondent be order to offer immediate reinstatement to the positions to which they applied, or, if these positions no longer exist, to substantially equivalent positions, and to make them whole for losses sustained by reason of the discrimination against them.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵⁷

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ORDER

The Respondent, Northeast Beverage Corporation and B. Vetrano Distributors, Inc., Bristol, Connecticut, a wholly owned subsidiary of Northeast Beverage Corporation, Bethel, Connecticut, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

(a) Bypassing International Brotherhood of Teamsters, Local 1035, and dealing directly with the employees.

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(b) Threatening employees with discipline and discharge because they engaged in

⁵⁷ 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.

protected concerted activities.

(c) Suspending and discharging employees because they engaged in protected concerted activities and because they joined and supported the Union.

5

(d) Refusing to consider for hire and refusing to hire employees because they engaged in protected concerted activities and because they joined and supported the Union.

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

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

(a) Make Paul Johnson, Jerzy Marczewski, Robert Collins, Ricardo Bosques and Russell Towle whole for any loss of earnings and other benefits suffered as a result of their suspensions, in the manner set forth in the remedy section of the decision.

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(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions Christopher Fedor, Paul Johnson, Jerzy Marczewski, Russell Towle, Robert Collins and Ricardo Bosques and to the unlawful discharges of Paul Johnson, Jerzy Marczewski, Robert Collins, Ricardo Bosques and Russell Towle, and within 3 days thereafter notify the employees in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

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(c) Offer immediate reinstatement to Paul Johnson, Jerzy Marczewski, Robert Collins, Ricardo Bosques and Russell Towle to the positions to which they applied, or, if these positions no longer exist, to substantially equivalent positions, and make them whole for losses sustained by reason of the discrimination against them.

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

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(e) Within 14 days after service by the Region, post at its facility in Bethel, Connecticut, copies of the attached notice marked "Appendix."⁵⁸ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former employees employed by the Respondent at its B. Vetrano facility in Bristol, Connecticut at any time since May 29, 2002.

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⁵⁸ 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."

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

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Dated, Washington, D.C. [Date]

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Eleanor MacDonald
Administrative Law Judge

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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 had 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 do anything to interfere with these rights. More specifically,

WE WILL NOT threaten to discipline our employees because they act together with other employees concerning their terms and conditions of employment.

WE WILL NOT suspend, discharge or otherwise discipline our employees because they are members of, or support, International Brotherhood of Teamsters, Local 1035, or any other union.

WE WILL NOT suspend, discharge or otherwise discipline our employees because they act together with other employees concerning their terms and conditions of employment.

WE WILL NOT refuse to consider for hire, or refuse to hire, job applicants because they are members of or support the Union.

WE WILL NOT refuse to consider for hire, or refuse to hire, job applicants because they act together with other employees concerning their terms and conditions of employment.

WE WILL NOT fail or refuse to bargain with the Union by dealing directly with our employees concerning severance benefits or any other terms and conditions of employment.

WE WILL NOT in any similar way interfere with your right under Federal law.

WE WILL rescind the May 29, 2002 suspensions of Ricardo Bosques, Robert Collins, Christopher Fedor, Paul Johnson, Jerzy Marczewski and Russell Towle, and the June 2002 discharges of Ricardo Bosques, Robert Collins, Paul Johnson, Jerzy Marczewski and Russell Towle, remove any references to their suspensions and discharges from our files, and pay them for the wages and benefits they lost as a result of their suspensions.

WE WILL offer the following employees immediate reinstatement to the positions for which they applied in June 2002, and we will pay them the wages and benefits they lost as a result of our failure to hire them: Ricardo Bosques, Robert Collins, Paul Johnson, Jerzy Marczewski and Russell Towle.

Northeast Beverage Corp. and B. Vetrano Distributors, Inc., a wholly owned subsidiary of Northeast Beverage Corp.

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.nlrb.gov.

280 Trumbull Street, 21st Floor, Hartford, CT 06103-3503

(860) 240-3002, Hours: 8:30 a.m. to 5 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, (860) 240-3524.