JD(ATL)–09–09
Kirksville, MO

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

CENVEO CORPORATION

and Cases 17–CA–24352
17–CA–24354

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Michael E. Werner, Esq., for the General Counsel.
D. Eugene Webb, Jr., Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. These cases were tried in Kirksville, Missouri, on March 3 and 4, 2009, pursuant to a consolidated complaint that issued on January 27, 2009.[1] The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by interrogating and threatening employees and promulgating and enforcing an unlawfully broad rule relating to the distribution of literature and violated Section 8(a)(1) and (3) of the Act by suspending and discharging employee Karla Stansberry and by discharging employee Tom Newton. The Respondent's answer denies any violation of the Act. I find that the Respondent, with the exception of the suspension of Stansberry, violated the Act substantially as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, Cenveo Corporation, the Company, is a corporation engaged in the manufacture and non-retail sale of envelopes. At its Kirksville, Missouri, facility, the Company annually sells and ships goods valued in excess of $50,000 directly to points outside the State of Missouri. The Company admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that United Steelworkers of America, AFL-CIO, CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

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[1] All dates are in 2008 unless otherwise indicated. The charge in Case 17–CA–24352 was filed on November 13. The charge in Case 17–CA–24354 was filed on November 13 and was amended on January 15, 2009.

II. Alleged Unfair Labor Practices

A. Background

In September 2007, Cenveo purchased and took over the operations of Commercial Envelope Manufacturing. Commercial Envelope began preparation for operations in Kirksville in October 2005 and actually began operating early in 2006. Todd Geiger was hired as the Plant Manager of Commercial Envelope in early October 2005, and he oversaw all operations. After the purchase by Cenveo, he continued in the same position with the title of General Manager.

The Company currently has approximately 51 employees. It operates three shifts, five days a week. The Production Supervisor, who also supervises the first shift, is Don Harker. Valerie Robins is supervisor of the second shift, and Sherri Trauernicht is supervisor of the third shift. Employees classified as adjusters operate the envelope machines. Adjuster Tom Newton explained that adjusters oversee the maintenance of the machines, perform changeovers when the size, configuration, or print on the envelopes being produced is changed, oversee the quality of the envelopes being produced, and operate the machines "at the highest rate of speed possible … [consistent with] good quality." Employees classified as operators remove the envelopes being produced and pack them. General Manager Geiger explained that "one of the quirks of the envelope industry" is that operators do not operate the machines.

The Union's organizational activity began in September. In late September, General Manager Geiger learned that authorization cards were being signed. He informed Paul Garcia, who at the time was Senior Director of Human Resources and who is now Vice President of Labor Relations and Human Resources. Vice President Garcia, whose office is in Lincoln, Nebraska, came to Kirksville where he met with the management team and instructed all supervisors not to make threats or promises. He stated that he would "actually prefer if we didn't even have conversation about it [the Union]." On October 3, when employees were issued their paychecks, the Company enclosed a letter that, inter alia, states that it felt that "a union in the plant would hurt the Company and all of our employees."

The issues herein relate to several Section 8(a)(1) allegations, the suspension and discharge of Karla Stansberry, and the discharge of Tom Newton.

B. The Independent Section 8(a)(1) Allegations

1. Interrogation and Threat of Closure

a. Facts

Employee Teaira West was hired in about mid-October. During a conversation at a break table, West informed employee Karla Stansberry that, when being hired, she was told she "could possibly make $10.00 an hour." Stansberry responded that there was currently a freeze on wage increases. Stansberry then spoke with West about the Union. After work, outside the plant, either that day or a few days later, West signed an authorization card. Third shift supervisor Sherri Trauernicht learned that this had occurred and informed Production Supervisor Don Harker. Whether from Trauernicht or someone else, Harker heard that West purportedly had concerns "about signing a card and losing her job." After receiving the foregoing information, Harker intercepted West in the hallway because he "wanted to start the conversation before she actually went to the machine," and invited her into his office.

West recalls that, after asking her how her job was going, Harker reported to her that he had been informed that she "was being harassed to sign a union card and he was wondering if that was true." She told him that that it was not true. Harker then asked whether she had signed "the union card," and she replied that she had. Harker then asked whether Stansberry was "the one that asked me to sign," and West replied, "[Y]es." West then stated that she did not know "what it was when I first signed the union card," that she had heard it was "supposed to be good and beneficial and that it was supposed [to] help all of us out." Harker replied that "the doors would close if the Union came in." He then asked whether West knew that the Union "can make you pay a bigger fee than what you think that you're going to pay?" On cross examination West acknowledged that Harker also told her that she had the right to sign a union card if she wanted to and that, if an election were held, she would have the right to vote as to whether she wanted to be represented by a union.

Harker claims that he invited West into his office because it was noisy. He claims that his purpose was to reassure West that "she would not lose her job for signing a union card." He denied asking whether she had signed a union card, claiming that he believed what he had been told by third shift supervisor Trauernicht. He admitted learning that Stansberry had given the card to West, and he did not deny asking West whether Stansberry gave her the card. He denied making any statement relating to plant closure.

b. Analysis and Concluding Findings

The complaint, subparagraphs 5(a) and (b), alleges that, on or about October 24, Production Supervisor Harker interrogated employees about their union activities and the union activities of other employees and threatened plant closure if employees selected the Union as their collective bargaining representative.

The Respondent, in its brief, argues that Supervisor Harker, having attended the training given in early October, was aware of the "dos and don'ts" relative to the organizing campaign and should "not get involved in discussions with employees about the Union." The Respondent's brief does not reconcile the latter instruction with Harker's admission that he initiated the conversation in which he learned that Stansberry had given the union card to West. As already noted, Harker did not deny asking West for that information. I do not credit his denial that he asked whether West had signed a card or his denial that he threatened plant closure if the employees selected the Union as their collective bargaining representative.

I am mindful, as the Respondent argues, that West's employment was terminated, but I did not find that her testimony was colored by her termination. I reject the assertion in the brief of the Respondent that "West was neither a credible nor an intelligent witness." I credit West. If, as Harker claimed, his purpose was to reassure West, he could have engaged in a conversation lasting less than one minute. With no reference to whether West had signed a union card, he could have told her that it had been reported that she had concerns "about signing a card and losing her job." He could then have told her that she need not have any such concerns because she would not lose her job for signing a union card.

The totality of all of the circumstances relating to the foregoing conversation establishes that it was coercive. *Rossmore House*, 269 NLRB 1176, 1177 (1984). West, a new employee who had engaged in no open union activity, was requested to come into the office of Production Supervisor Harker, her direct supervisor. Harker informed her that he had been told that she "was being harassed to sign a union card" and asked whether that was true. When West denied being harassed, Harker inquired further, asking whether she had signed a card. When West acknowledged that she had, he probed further, asking whether Stansberry had asked her

to sign. West confirmed that fact and then plead ignorance, saying she really did not know what it was but heard it was "supposed [to] help all of us out." Harker disabused West of any thought that the Union could help employees by threatening that "the doors would close if the Union came in." Counsel for the Respondent did not seek to place Harker's statements regarding West's right to sign a card and right to vote in any context. Notwithstanding his informing West of those rights, Harker did not retract the threat of closure if employees' exercise of those rights resulted in selection of the Union. This conversation was coercive. The Respondent, by coercively interrogating West regarding her union activities and the union activities of other employees and threatening plant closure, violated Section 8(a)(1) of the Act.

2. Distribution Rule and Confiscation of Prounion Literature

a. Facts

The Company maintains the following rule in its Employee Handbook:

> You are not permitted to place handbills or literature of any type in or on automobiles parked on Company premises. You may not distribute non-work-related literature of any kind on Company premises other than in non-work areas of Cenveo during non-working time.

The Company provides a break area for employees in an area where vending machines are located. Notwithstanding the existence of that area, many employees typically take their breaks at two picnic tables located some 20 to 25 feet from the machines. Although second shift supervisor Valerie Robins acknowledged that the tables had been placed there so that the employees "can take a break and still be able to watch their machines," she claimed that the tables were not "really a break area." Employees are permitted to smoke at one of the tables. Robins admitted that employees regularly have newspapers and magazines at the tables as well as sign-up sheets for potluck dinners.

On an unspecified date in October, prior to the beginning of the second shift, Robins observed several employees on her shift sitting at the break tables, "something that they normally do." On this occasion, Robins states that there was "a distraction" because additional employees were standing, "leaning over," reading a document. Robins estimated the total number of employees involved at from 10 to 12.

Robins walked up to the table and observed that the employees were reading a handwritten document. Employee Karla Stansberry admits that she was the author of the document, explaining that she wrote it in response to a typed antiunion document that was on the break table. She wrote a prounion response and left it on the table. After Robins "saw what this [the prounion response] was," she requested that the documents be given to her. She delivered them both to General Manager Geiger. Robins testified that she took the documents pursuant to the Company policy on distribution of literature on the work floor.

The Company presented no evidence of any business justification for the restriction concerning placement of union literature upon automobiles or of any practice of confiscation of literature or other documents being read by employees at the break tables.

b. Analysis and Concluding Findings

The complaint alleges, in subparagraph 5(c), that the foregoing rule is unlawful and, in subparagraph 5(d), that Robins' prohibition of the placement and distribution of union literature

in a mixed-use break area unlawfully interfered with employee Section 7 rights.

An employer may not prohibit employees from distributing union literature in nonworking areas on nonworking time. Absent evidence of a valid business justification, such as litter, an employer may not prohibit an employee's placement of literature on automobile windshields when the employee is on nonworking time and the vehicle is in a nonworking area. *St. Luke's Hospital*, 300 NLRB 836, 837 (1990). The Respondent presented no evidence of any business justification for the prohibition relating to placement of literature on vehicles. The Respondent's rule unlawfully restricts the right of employees to distribute union literature in nonworking areas on nonworking time in violation of Section 8(a)(1) of the Act.

Although supervisor Robins was unwilling to concede that the break tables constituted a break area, it is obvious that, although employees are able to observe their machines from the break tables, when at the break tables they are not actively performing production work. Employees are permitted to smoke at one of the tables. Robins conceded that employees have newspapers and magazines at the tables and, on occasion, sign-up sheets for potluck dinners. There is no evidence of any prior occasion when a supervisor removed literature from the break tables. The foregoing evidence establishes that, whether designated as a break area or not, the break tables are a nonwork area or, as alleged in the complaint, a mixed use area. Employees have historically had literature there with no claim or evidence that the literature created any hazard to production. *United Parcel Service*, 327 NLRB 317 (1998). Robins' confiscation of union related literature prior to the beginning of second shift, after she "saw what this [the prounion response] was," unlawfully interfered with employees' right to distribute union literature in nonworking areas on nonworking time in violation of Section 8(a)(1) of the Act.

C. The Suspension and Discharge of Karla Stansberry

1. Facts

Karla Stansberry began working for Commercial Envelope on June 26, 2006. In 2008, the Company had imposed a wage increase freeze; however, it had also established a higher starting wage rate that was being phased in. This resulted in relatively new employees receiving incremental increases in order to assure that a newly hired employee would not be earning more than a recently hired current employee. Stansberry was upset with recently hired employees receiving incremental wage increases while her wage rate was frozen.

In early October, Stansberry learned of the organizational campaign of the Union from employee Tom Newton, an adjuster on third shift. Stansberry was an operator on first shift. She began soliciting authorization cards from her fellow employees. As explained by Newton, he was more concerned with "structure" than wages. He and Stansberry would refer employees to each other regarding questions about the Union. By late October, the Company was aware of the union sympathies of Stansberry as confirmed by Production Supervisor Harker's asking Teaira West whether Stansberry had given her the authorization card that she had signed.

On October 30, prior to the beginning of first shift, Newton informed Stansberry that the recently hired employees on third shift had been informed that they were "getting another raise," which was consistent with the phasing in of the incremental increase in the starting rate. After the shift began, operator Debra McElroy, a friend of Stansberry, told her that the Company was going to have a production meeting of first shift employees. To quote McElroy, "[S]he [Stansberry] kind of went berserk. She was mad, she was yelling, she was pointing her finger at me." Stansberry did not mention the production meeting, she was "talking about money, the raises, … that new people were making more money … getting raises and she wasn't."

Stansberry admits that she was loud and angry, and does not deny that she may have used profanity during her outburst because "cussing is an everyday part of my vocabulary." Although Stansberry estimated that her outburst lasted 10 minutes, I credit McElroy that the outburst lasted "a couple of minutes." The supervisors who observed the outburst would not have let it continue for 10 minutes.

Third shift supervisor Sherri Trauernicht was filling out production reports in the supervisors' office when she heard yelling on the floor and observed Stansberry pointing her finger at, and moving towards, McElroy. Production Supervisor Don Harker was speaking with two third shift employees when he heard Stansberry yelling. He also observed her pointing her finger at, and moving towards, McElroy. Although both Trauernicht and Harker claim that, in addition to pointing, Stansberry raised her fist, both Stansberry and McElroy denied that this occurred. Whether it did or not is immaterial. McElroy credibly testified that she was not threatened, that Stansberry "was not mad at me." Shortly after the incident, she informed Harker that "it was no big deal," and later told him that "we were not into it." Harker, in testimony, did not deny or address his two conversations with McElroy.

Harker called Stansberry to the office and asked what was going on. Stansberry responded that she had heard about the raises for the newer employees and that she did not get a raise, that the Company was doing this "because of the Union." Harker replied that they were not talking about the Union, that the issue was "the inappropriate behavior … out on the production floor." He informed Stansberry that "she would be written up for this, that there would be some corrective action," but that, for now, she should return to work.

Stansberry's recollection of the substance of the conversation is similar. She recalls asking why, in view of the freeze on wage increases, new employees were getting raises. Harker explained about the increase in the starting wage and then stated that "he wasn't going to allow me to put my finger in anybody's face." The absence of any reference to a fist is consistent with the testimony of Stansberry and McElroy. Stansberry answered that the Company seemed to think that she was "the one that brought the Union in." Harker answered that he did not "know anything about a Union" and stated that he was going to "write me up" but to go back to work and he would "come get me."

Harker informed General Manager Geiger, who was driving to an out-of-town meeting and was reached on his cellular telephone, of the incident. Geiger directed Harker to get in touch with Office Manager Julie Truitt, who handles personnel matters, and regional headquarters, the corporate level that must approve suspensions and terminations. Harker contacted Truitt, stating that he had observed Stansberry yelling and advancing upon another employee. Truitt spoke to Geiger who stated that he wanted Stansberry suspended immediately and that he would prefer termination. Truitt called regional headquarters, but her contact was unavailable. She then called Vice President of Labor Relations and Human Resources Garcia and verbally passed on the report that she had received. Garcia requested documentation.

Harker prepared a memorandum that reported his observations and his conversation with Stansberry. The memorandum reports Stansberry's yelling and finger pointing and her walking towards another employee. It also states that Stansberry was shaking her fist. The memorandum does not state that the other employee was McElroy. From the report, Garcia concluded that Stansberry had been "aggressively moving towards another employee."

Harker called operator McElroy into his office and apologized for Stanberry's conduct. He did not question her as to whether she had been threatened. McElroy informed Harker that "it was no big deal."

Notwithstanding the preference of termination expressed by General Manager Geiger, Vice President Garcia approved only a three day suspension.

About 10 a.m., having received approval to suspend Stansberry, Harker called her to the office where he and Office Manager Truitt were present. Harker informed Stansberry that she was being suspended for inappropriate behavior on the production floor and that she should return on Monday, November 3, to talk with Truitt and General Manager Geiger. As Stansberry was leaving, Harker informed her that the Company also had "another complaint that we were investigating." Stansberry replied, "of course you are." Although Stansberry recalled that Truitt was the speaker at this meeting, Truitt and Harker agree that Harker did the speaking. Stansberry did not dispute the content of the foregoing conversation.

Having observed that Stansberry had been sent from the plant, employee McElroy was concerned that she had been fired. She approached Harker again and informed him that if Stansberry was "getting fired … there was no reason for it because we were not into it." So far as this record shows, Harker never reported either of his conversations with McElroy to anyone.

The complaint that was mentioned when Stansberry was suspended was from Diane Davidson who, on Tuesday, October 28, complained to Harker that she had "constantly been harassed" by Stansberry because all she "wants to talk about is the Union." Davidson cited two instances, one in which Stansberry had, while Davidson was on break, "asked her how much she was making." Davidson replied that she did not want to tell her, and that Stansberry later asked whether she was "making $9.00 an hour," to which Davidson replied, "Hell no." Davidson reported that she "started altering her breaks and lunch periods" in order to avoid Stansberry. Harker told Davidson that he did not know what he could do to help.

At no point did the Company advise Stansberry that Davidson had made a complaint of harassment or give her the opportunity to respond to what Davidson reported. At the hearing herein, Stansberry acknowledged that she had spoken with Davidson about wages. Stansberry was at the smoking break table, and Davidson was at the nonsmoking table. Stansberry, referring to the raises being given new employees, commented that the new people "were going to surpass the ones that had been there a year or more." She turned to Davidson and asked, "[A]re you even making $9.50 yet?" Davidson replied, "Oh, God no."

Davidson was an operator. Operators' breaks are dependent upon production demands. Harker admitted that, on first shift, there are no prescribed break periods. When an operator takes a break is between the operator and adjuster. Davidson did not testify.

Production Supervisor Harker typed up the report of employee Davidson on the evening of October 28. Although Harker testified that Davidson complained that she was tired of "every day being harassed about signing … this union card," there is no mention of signing an authorization card in the typed report. So far as the record shows, nothing occurred relating to the complaint on October 29. After Stansberry was suspended, Davidson was asked to sign the document that Harker had prepared. As pointed out in the brief of Counsel for the General Counsel, Harker claims that he was present when Davidson signed the document, but Office Manager Truitt testified that only she and Davidson were present.

After obtaining the signed document from Davidson, Truitt again contacted Garcia to whom she explained that the Company had received a complaint that Stansberry had been harassing another employee and that local management was recommending termination. Garcia requested that Truitt forward whatever documentation she had. Truitt sent the

suspension form and the document that Davidson had signed. Harker's initial report that had been sent prior to Stansberry's suspension was not supplemented to reflect his two conversations with McElroy, the conversations in which McElroy told Harker that the incident was "no big deal," that they "were not into it." Garcia was unaware as to whether local management had spoken with Stansberry regarding Davidson's complaint.

By email, Garcia gave local management approval to terminate Stansberry on the morning of November 3.

On November 3, when reporting as she had been requested to do, Stansberry met with General Manager Geiger and Office Manager Truitt. Truitt informed Stansberry that the Company had a statement that she had been "interrogating employees about their wages and this is causing a hostile work environment" and that she was being terminated because of "inappropriate behavior." Stansberry took the documents that she was given and, as she was leaving stated, "I'm not the one making it a hostile work environment, you are."

The termination notice, which both Harker and Truitt signed on October 30, before approval to discharge Stansberry had been given, states that Stansberry was discharged for "harassing, intimidating, and attempting to coerce coworkers for personal gain."

The Company contested Stansberry's claim for unemployment compensation. Her claim was initially denied based upon findings that she "created a hostile work environment when inquiring about co-workers wages and writing negative comments about the Company in favor of a Union." The only writing by Stansberry revealed in the record is the prounion response to the antiunion document which she wrote and which was confiscated by supervisor Robins.

2. Analysis and Concluding Findings

The complaint alleges that the Respondent informed Stansberry that she was being discharged for engaging in protected concerted activities in violation of Section 8(a)(1) of the Act, and suspended and discharged her because of her concerted discussion and complaints regarding wages and her union activities in violation of Section 8(a)(1) and (3) of the Act.

The analysis prescribed in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). cert. denied 455 U.S. 989 (1982), is applicable with regard to the suspension of Stansberry. I find that the Respondent was aware of Stansberry's concerted discussion and complaints as well as her union activity. Animus is established by Harker's threat to West of plant closure if the employees were to select the Union as their collective bargaining representative. The suspension of Stansberry was an adverse action that affected her terms and conditions of employment. Harker's interrogation of West regarding whether it was Stansberry who had given her a union card establishes a motivational link between Stansberry's union activity and the Respondent's action. Thus it was incumbent upon the Respondent to "demonstrate that the same action would have taken place even in the absence of the protected conduct."

Stansberry agrees that, when Harker sent her back to work after her outburst on October 30, he advised that she would be "written up." Harker's memorandum reflects that he told Stansberry that she would be "written up." Although Geiger had stated that he wanted to discharge Stansberry, Regional Vice President Paul Garcia directed that she be suspended.

Counsel for the General Counsel argues that the punishment, suspension, constituted escalation of Harker's initial statement to Stansberry that she would be "written up."

Suspensions are documented in writing, thus the fact that the discipline imposed was a suspension rather than a written warning is not inconsistent with Harker's initial comment.

The outburst that Harker and Trauernicht observed was unacceptable workplace behavior, notwithstanding that to McElroy it was "no big deal." Garcia had, on the basis of the report he received, considered the incident as workplace violence, defined in the Employee Handbook as "intimidation, threats, or violent acts, … or any other act, which, in management's opinion, is inappropriate to the workplace." The conduct of Stansberry was disruptive. Insofar as such an outburst was unprecedented, there is no evidence either of prior condonation of or discipline for such conduct. The discipline imposed was not completely disproportionate to the offense. In the absence of totally disproportionate discipline, I find that the Respondent has established that Stansberry would have been suspended notwithstanding her union activity. Thus, I shall recommend that the complaint allegations relating to her suspension be dismissed.

With regard to the discharge of Stansberry, analysis pursuant to *Wright Line*, supra is inapplicable insofar as there was no dual motive. Vice President Garcia confirmed that the "decision to discharge" was based upon the complaint of Davidson. After being advised of Davidson's report of alleged harassment, he was sent the statement which she signed on October 30. With no further investigation, Garcia concurred with the recommendation to discharge Stansberry. Davidson's complaint, which was the basis for the discharge, related to conduct protected by Section 7 of the Act. *Saia Motor Freight Line*, 333 NLRB 784, 785 (2001).

Stansberry was suspended for her outburst. Her discharge was predicated upon the complaint of Davidson relating to alleged harassment. The Respondent made no investigation of that complaint. It simply accepted the statement of Davidson and acted.

Garcia had concluded from Harker's report that Stansberry engaged in aggressive behavior. Garcia's impression of aggression was never corrected because Harker never reported that McElroy had specifically informed him that Stansberry's rant was "no big deal" and that she and Stansberry "were not into it." The failure of Harker to have reported that McElroy stated that the rant was "no big deal" and that she and Stansberry "were not into it" reflects more than indifference. It suggests a discriminatory intent on the part of the Respondent to build a case against Stansberry and carry out its intention of termination. The Respondent's brief does not mention McElroy's two conversations with Harker.

Davidson did not testify. Although claiming that she told Stansberry that she did not want to tell her what she was making, she admits that she responded when asked whether she was making $9 an hour. Although Davidson asserted that she altered her break and lunch periods, Harker explained that, on first shift, there are no prescribed break periods. When an operator takes a break is between the operator and adjuster without any approval by management. Because Davidson did not testify, there is no evidence confirming how she altered a nonexistent schedule that had no prescribed break periods and was dependent upon production needs and agreement of the adjuster with whom she worked. Her desire to avoid Stansberry because all she "wants to talk about is the Union" does not establish harassment. Her complaint cited no misconduct on the part of Stansberry. Whatever personal break schedule Davidson purportedly followed was of her own making.

Local management reported the complaint of employee Davidson without noting that Stansberry had not been given an opportunity to address the assertions in that complaint. Regional Vice President Garcia was unaware whether local management had spoken with Stansberry. He assumed that they did "when they met on Monday." His assumption was wrong. Stansberry was never advised of the identity of the employee she allegedly harassed or given

the opportunity to respond to the allegation of interrogation about wages.

The Respondent's failure to obtain a response to Davidson's complaint from Stansberry confirms the Respondent's discriminatory intent. "The failure to conduct a meaningful investigation or to give the employee [who is the subject of the investigation] an opportunity to explain" are clear indicia of discriminatory intent. *K & M Electronics*, 283 NLRB 279, 291 fn. 45 (1987). An employer may not assert a reasonable belief that an employee has engaged in misconduct when the employer has failed to conduct a fair investigation. *Midnight Rose Hotel & Casino*, 343 NLRB 1003, 1005 (2004). In the instant case, there was neither any report of misconduct nor any investigation. Davidson made no claim that Stansberry had threatened her in any way, interrupted her work, or otherwise engaged in activity that would cause Stansberry's protected activity to lose the protection of the Act. Davidson reported that she was asked about her wages and that she did not want to hear any more about the Union.

An employer may not prohibit discussion relating to wages. As stated in *Scientific – Atlanta, Inc.*, 278 NLRB 622, 625 (1986), citing *Jeannette Corp. v. NLRB*, 532 F.2d 916, 919 (3d Dir. 1976), "dissatisfaction due to low wages is the grist on which concerted activity feeds. Discord generated by what employees view as unjustified wage differentials also provides the sinew for persistent concerted action." Stansberry was concerned about wages and was seeking support for the Union. Her asking whether Davidson was making $9.50 an hour was made in the context of her seeking to demonstrate what she perceived as an unfair wage differential due the wage freeze. Davidson responded to Stansberry. Employees are permitted to exercise their Section 7 right to engage in union solicitation even when such solicitation is so persistent that it "annoys or disturbs the employees being solicited." *Ryder Truck Rental*, 341 NLRB 761 (2004). An employee's question about wages and speaking favorably with regard to unionization does not constitute harassment.

When an employee is disciplined for an alleged violation of a lawful rule while engaging in activity protected by Section 7 of the Act, the employer is not privileged to act upon a reasonable belief if, in fact, the employee is innocent of any wrongdoing. *Ideal Dyeing & Finishing Co.*, 300 NLRB 303, 319 (1990). In this case, there was no rule, and the Respondent did not cite violation of a rule as a basis for the discharge. As stated in *NLRB v. Burnup & Sims*, 379 U.S. 21, 23 (1964), "A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith." The Board, in *Keco Industries*, 306 NLRB 15, 17 (1992), repeated longstanding precedent that, "[w]here an employee is disciplined for having engaged in misconduct in the course of union activity, the employer's honest belief that the activity was unprotected is not a defense if, in fact, the misconduct did not occur."

Stansberry engaged in no misconduct in her interaction with Davidson, which was the basis for her discharge. The Respondent informed Stansberry that she was being discharged for "interrogating employees about their wages and this is causing a hostile work environment." The Respondent has no rule prohibiting discussion regarding wages. If such a prohibition existed, it would be unlawful. *Automatic Screw Products Co.*, 306 NLRB 1072 (1992). Stansberry asked Davidson whether she was making $9.50 an hour, and Davidson answered her. Discussion relating to wages constitutes protected concerted activity. Davidson complained that she did not want "to hear anymore [sic] about the Union." One employee's annoyance regarding a subject that another employee continues to address does not constitute harassment or create a hostile work environment. The Respondent, by discharging Stansberry because of her protected concerted activity, violated Section 8(a)(1) of the Act. Insofar as that activity also constituted union activity, the discharge violated Section 8(a)(3) of the Act.

The complaint, in subparagraph 5(e), alleges that the Respondent violated the Act by informing Stansberry that she was being discharged for engaging in protected concerted activities. The Board holds that coercive statements made contemporaneously with unlawful discipline independently violate the Act. *TPA, Inc.*, 337 NLRB 282, 283-284 (2001). The Respondent, by equating protected conversation regarding wages with creation of a hostile work environment justifying discharge, independently violated Section 8(a)(1) of the Act.

D. The Discharge of Tom Newton

1. Facts

Tom Newton was hired as an adjuster by Commercial Envelope on October 24, 2006. He and Mike Herbert, who was hired on the same day, were the two most senior adjusters at the Company. Newton had 28 years experience as an adjuster at Mead/Westvaco, a similar facility in St. Charles, Missouri, that had ceased its envelope operation. Both Newton and Herbert had been leadmen at Mead/Westvaco. Commercial Envelope sent Newton and Herbert to Carlstadt, New Jersey, and Altoona, Pennsylvania to learn about the machines and process that Commercial Envelope was going to use. Cenveo purchased and took over the operations of Commercial Envelope in September 2007.

Herbert testified that Newton was an excellent adjuster, noting that, when management at Commercial Envelope wanted certain envelope machines to run faster than their specified speed, Newton made adjustments to the machinery to meet that goal. Commercial Envelope obtained a used 249 envelope machine that produces larger “high end” envelopes in May of 2007. The adjusters initially assigned to the machine were unable to get it run reliably because of the condition of the machine, worn gears and prior modifications that made the schematics inapplicable. Newton was assigned to the machine and, according to Herbert, devised some flippers and a blow air pipe which resulted in the machine operating reliably, although at slower speeds than management had hoped. Newton pointed out that the duct rollers were worn, thus reducing print quality. His 2007 annual evaluation notes “print quality constantly substandard.” Newton’s employee comment states, “I do the best with what I have to work with.”

Herbert recalled that the Company disposed of the 249 in about May 2008. Thereafter, Newton was assigned to run two 102 machines, designated by the Company as machine numbers 124 and 125. Third shift supervisor Sherri Trauernicht confirmed that Newton was the only employee on her shift running two machines at the time he was discharged. Although it was for “more than a month,” she did not recall for how long he had been doing so.

Newton assisted in training of both adjusters and adjuster trainees upon machines with which they were unfamiliar

In September, Newton became involved in the organizational effort of the Union, passing out authorization cards and answering questions about the Union. Supervisor Trauernicht became aware of Newton’s support of the Union one evening when an operator named Venita, who was an operator on one of the machines that Newton was running, began crying because she had not received a raise. Trauernicht approached her to find out what the problem was, and, according to Trauernicht, Newton tried “to butt in,” saying, “Well, this is why we need the Union.” Trauernicht told Newton that the matter was between “me and Venita.” Trauernicht reported Newton’s comment to General Manager Geiger.

On October 23, a Thursday, general managers for the Company’s Central Region met with Regional Vice President Mike DelSignore who informed them that a reduction in force was

necessary. At the Kirksville facility, one envelope machine was to be taken out of service and one crew per shift, an adjuster and operator, would be eliminated. The foregoing instruction was verbal. No documentary evidence relating to the reduction in force was offered. Despite the instruction, at Kirksville, no operator was terminated pursuant to the reduction in force.

In October 2008, the Company employed 15 adjusters and 6 adjuster trainees. Adjusters receive annual evaluations. Adjuster trainees are evaluated every 90 days until they reach full performance level, a process that takes a year or more. Employee Bill Blakely, who had formerly worked in quality control and had "just gotten into the program" had received no evaluation as an adjuster trainee. Newton's annual evaluation was due on October 24, but he did not receive one.

The annual evaluation forms have five categories of evaluation: ability; quality; performance; attendance/punctuality; and attitude, teamwork, cooperation and safety.

The Cenveo Employee Handbook provides that selection for layoff will take into account such factors as "classification of work, individual qualifications, any documented disciplinary action, quality of job performance, attendance record, cooperativeness, work habits, length of service, and behavior and ability to do the job in a satisfactory, safe and dependable manner."

Vice President Garcia suggested that Kirksville management create an evaluation tool, which he referred to as a matrix, that would provide a point rating system for selection for layoff. He provided an example, suggesting that local management adapt it. General Manager Geiger did so in consultation with Production Supervisor Harker and supervisor Robins.

The matrix omitted factors that the Handbook stated would be taken into account with regard to layoffs. The matrix had eleven categories: attendance, willingness to work overtime, attitude, receptiveness to criticism, cooperation, communication, productivity, troubleshooting capabilities, quality, ability to run multiple machines, and initiative. Geiger testified that he "wanted to make sure that we kept the best employees and the best performers of the plant and I wanted to assure it was based on an assessment like the matrix." He gave no explanation for why individual qualifications and length of service were not considered.

Pursuant to the ratings given by the supervisors to the adjusters on their shift, as reviewed and concurred with by Geiger, the Company selected the three lowest scoring employees for layoff. Cyle Kelly, who had recently become an adjuster trainee, was returned to his former position as an operator. David Koch, who had been an adjuster trainee for a year and was ineligible for a raise because he had accumulated 61 attendance points, was terminated. Adjuster Tom Newton was terminated. Adjuster trainee Bill Blakely was retained.

Third shift supervisor Trauernicht rated Newton at 1, the lowest rating, in six of the matrix categories: attitude, receptiveness to criticism, cooperation, productivity, quality, and initiative. General Manager Geiger testified that he concurred in those ratings.

When questioned regarding those ratings, Trauernicht testified that "he [Newton] had an attitude," that when she approached him about quality, he would argue. As already noted, she cited Newton's comment about needing the Union as an attempt to "butt in," although the employee, Venita, was the operator on one of his machines. Regarding cooperation, Trauernicht said that she did not "feel that he was cooperating with me … whenever we would talk to him about a basic quality issue." When questioned about productivity, Trauernicht stated that Newton "could never get his machines up and running," that he "couldn't trouble shoot the problems." Trauernicht, who is not trained as an adjuster, acknowledged that she was aware

that the length of time necessary to correct a problem would be dependent upon the nature of the problem. When asked how an adjuster would solve the problem of "a hooking window" on an envelope, she admitted, "I don't know." With regard to her productivity rating, Trauernicht testified that she "went off memory … I see the reports every day." Trauernicht testified that on one occasion Newton fell asleep on the job. Newton flatly denied doing so, noting, "I may get fired there." I credit Newton.

Newton thought that he had a good relationship with Trauernicht. She had told him she was "thankful I was on her shift." He pointed out that, although an adjuster, he was willing to work overtime as an operator packing envelopes, but that the Company did not want him to do so because he was at the higher end of the pay scale. Regarding quality, he stated that Trauernicht "was really good about quality," that she would throw out a bad run and "do a new one," that "whatever she wanted me to do was fine with me." He denied that Trauernicht ever told him that she thought that he had a bad attitude.

The Respondent, at the hearing, presented production reports for the period July 28 through October 24. The machines operated by Newton, 124 and 125, produced a total of over 28.6 million envelopes during that period. Two similar machines produced 17.4 million and 19.5 million envelopes respectively, but one adjuster was assigned to each of those machines. General Manager Geiger testified that, at the time the supervisors were rating the adjusters, he prepared a handwritten scale for productivity levels. Whether he did so is questionable in view of the fact that supervisor Trauernicht did not mention or use any such documents; she "went off memory." As already noted, the Company expects its machines to run faster than the specified speed. When questioned regarding the failure of Newton to have achieved acceptable production levels, Geiger testified that the rating was "per machine." He claimed that adjuster trainee Jeremy Robins was more productive than Newton. There was no claim that adjuster trainees Troy Kite, Mike Truitt, Cyle Kelly, David Koch, or Bill Blakely were more productive.

Trauernicht asserted that Newton was "one of the worst adjusters" on third shift. Geiger, who reviews production reports "everyday" and spent time on the floor observing the adjusters, felt that Newton "had a very negative attitude, wasn't receptive, wasn't cooperative, and his production left a hell of a lot to be desired." Although Geiger claims to have observed Newton "leaning on the machine … or not even at his machine, off somewhere else visiting with his friends," he does not claim to have spoken to Newton with regard to that conduct.

On the morning of Thursday, November 6, Newton noticed that Production Supervisor Harker had come in early. Shortly thereafter, Trauernicht informed him that he needed to go to the office. He did so. Harker, General Manager Geiger, and Office Manager Truitt were present. Trauernicht was not present. General Manager Geiger informed Newton that "he was sorry but due to the downturn of the econom[y] they were going to have to let me go." Truitt explained the termination paperwork to Newton, and he left.

2. Analysis and Concluding Findings

The complaint alleges that employee Newton was unlawfully discharged because of his union activity. The General Counsel does not allege a violation with regard to the reduction in force, only the selection of Newton.

Pursuant to the analysis prescribed in *Wright Line*, supra, I find that the Respondent was aware of Newton's union sympathies. Animus is established by the Section 8(a)(1) violations found herein and the discharge of employee Stansberry. The discharge of Newton was an adverse action affecting his terms and conditions of employment. As hereinafter

discussed, I find that Newton's discharge was motivated by his union activity. Thus it was incumbent upon the Respondent to demonstrate that the same action would have taken place even in the absence of the protected conduct.

The Employee Handbook lists various factors, several of which are demonstratively objective, that are to be taken into account with regard to layoff decisions. The matrix did not consider the factors of individual qualifications and length of service. An employer's failure to follow its established policy with regard to layoffs with no credible explanation for the deviation is evidence of discriminatory motivation. *Intermet Stevensville*, 350 NLRB 1270, 1275 (2007). As the brief of the General Counsel points out, insofar as the criteria used in an evaluation system place a premium upon subjective factors such as attitude, they can be "scored so as to obtain desired results." *Huck Store Fixture Co.*, 334 NLRB 119,121 (2001).

The only objective categories on the matrix are attendance and productivity. The objective criteria of qualifications and length of service are not present. Thus, contrary to the stated policy of the Respondent, no consideration was given to the training that Newton had received in New Jersey and Pennsylvania or his 28 years of experience at Mead/Westvaco. Similarly, no consideration was given to Newton's seniority which was equal to Herbert's and greater than all of the other adjusters and adjuster trainees.

Newton's attendance was satisfactory. Although he had accumulated 34 attendance points, the threshold for any action according to the attendance policy is 40 points, at which time the employee's supervisor is notified and the employee is counseled.

Regarding production, the documents produced at the hearing reflect that Newton, who was assigned to operate two machines, produced more than any other adjuster on third shift. Nevertheless, Trauernicht, who "went off memory," rated his production on the matrix at "1." Geiger sought to justify that rating by claiming that the matrix rating with regard to production was "per machine."

The Respondent sought to obtain the most production possible. If Newton was one of the worst adjusters on third shift, Trauernicht would not have assigned him to two machines. Geiger testified that he spent time out on the floor and reviewed production reports daily, thus he knew that Newton was assigned to operate two machines. If, as Geiger testified, Newton's production "left a hell of a lot to be desired," he would not have allowed that to continue.

Newton was assigned two envelope machines because he was the most competent adjuster and produced more envelopes than any other adjuster on third shift. I do not credit the testimony of Trauernicht and Geiger relating to dissatisfaction with Newton's production or attitude. It defies both logic and belief that competent management concerned with production would assign an adjuster with a bad attitude, who "could never get his machines up and running," did not communicate, and who was not productive, to operate two machines if someone equally or more competent was available.

The failure of the Respondent to complete Newton's October 24, 2008, annual evaluation suggests that his fate was determined prior to completion of the matrix. After going through the charade of rating employees pursuant to a matrix that deviated from the factors that the Respondent's Employee Handbook states would be considered with regard to a layoff, the Respondent carried out its predetermined decision to discharge Newton. The Respondent returned adjuster trainee Cyle Kelly to his position as an operator, discharged adjuster trainee David Koch, and discharged adjuster Tom Newton. Adjuster trainee Bill Blakely, who had "just gotten into the program," was retained. An employer's choosing to retain a trainee but to lay off

a senior employee who has "superior experience, proficiency, and service … when the senior employee is a union activist, supports the inference that the actual motive for the layoff was unlawful." *Pacific Southwest Airlines*, 201 NLRB 647, 655, enfd. 550 F.2d 1148 (9th Cir. 1977). Newton's discharge resulted from his belief that the employees needed the Union.

Application of the matrix, which gave no credit for qualifications established by training and experience or for length of service, assured the Respondent that it could rid itself of Newton based upon subjective categories that included attitude, cooperativeness, and initiative. Geiger's complaint that Newton would be away from his machine "speaking with friends," conduct for which Newton was not disciplined, establishes that Geiger was aware that this senior employee had a potential base of support in the plant. Newton had stated that "we need the Union." The Respondent had informed its employees on October 3 that it felt that "a union in the plant would hurt the Company and all of our employees." The support of this senior employee for the Union established, so far as the Respondent was concerned, that Newton, although assigned to run two machines, had a bad attitude, was uncooperative, and lacked initiative insofar as his initiative was being expressed by his support of the Union.

The Respondent has not established that Newton would have been selected for layoff and discharged in the absence of his union sympathies. By discharging Tom Newton because of his support of the Union, the Respondent violated Section 8(a)(1) and (3) of the Act.

Conclusions of Law

1. By interrogating employees regarding their union activities and the union activities of other employees and threatening employees with plant closure if employees selected the Union as their collective bargaining representative, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By restricting the right of employees to distribute union literature in nonworking areas on nonworking time by prohibiting placing literature upon vehicles and by confiscating union literature from employee break tables, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

3. By informing employees that they are being discharged because they engaged in concerted activities protected by Section 7 of the Act, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By discharging employees because of their protected concerted activities and union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

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.

The Respondent, having discriminatorily discharged Karla Stansberry on November 3, 2008, and Tom Newton on November 6, 2008, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the dates

of their respective discharges to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent must also post an appropriate notice.

In view of the Board's decision in *Glen Rock Ham*, 352 NLRB 516 at fn. 1 (2008), I need not address the request of the General Counsel regarding compound interest.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Cenveo Corporation, Kirksville, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Interrogating employees regarding their union activities and the union activities of other employees and threatening employees with plant closure if employees selected the Union as their collective bargaining representative.

(b) Restricting the right of employees to distribute union literature in nonworking areas on nonworking time by prohibiting placing literature upon vehicles and by confiscating union literature from employee break tables.

(c) Informing employees that they are being discharged because they engaged in concerted activities protected by Section 7 of the National Labor Relations Act.

(d) Discharging or otherwise discriminating against any employee because of that employee's participation in activities protected by Section 7 of the Act or membership in and activities on behalf of United Steelworkers of America, AFL-CIO, or any other labor organization.

(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.

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

(a) Within 14 days from the date of this Order, offer Karla Stansberry and Tom Newton full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Karla Stansberry and Tom Newton whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges in the manner set forth in the remedy

[2] 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.

section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify Karla Stansberry and Tom Newton in writing that this has been done and that the suspension and layoff will not be used against them in any way.

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

(e) Within 14 days after service by the Region, post at its facility in Kirksville, Missouri, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 24, 2008.

(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.

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

Dated, Washington, D.C., May 6, 2009.

George Carson II
Administrative Law Judge

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

APPENDIX

NOTICE TO EMPLOYEES

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

The National Labor Relations Board 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 interrogate you regarding your union activities or the union activities of other employees and WE WILL NOT threaten you with plant closure if you select the Union as your collective bargaining representative.

WE WILL NOT restrict your right to distribute union literature in nonworking areas on nonworking time by prohibiting placing literature upon vehicles and by confiscating union literature from your break tables.

WE WILL NOT inform you that you are being discharged because you engaged in concerted activities protected by Section 7 of the National Labor Relations Act.

WE WILL NOT discharge or otherwise discriminate again any of you because of your participation in activities protected by Section 7 of the Act or membership in or activities on behalf of United Steelworkers of America, AFL-CIO, or any other labor organization.

WE WILL, within 14 days from the date of the Board's Order, offer Karla Stansberry and Tom Newton full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Karla Stansberry and Tom Newton whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges in the manner set forth in the remedy section of the decision.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges, and within 3 days thereafter, notify Karla Stansberry and Tom Newton in writing that this has been done and that the suspension and layoff will not be used against them in any way.

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

CENVEO CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

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

8600 Farley Street, Suite 100, Overland Park, KS 66212-4677

(913) 967–3000, Hours: 8:15 a.m. to 4:45 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (913) 967-3005