

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

EAST BUFFET AND RESTAURANT, INC.

and

318 RESTAURANT WORKERS' UNION

**Case Nos. 29-CA-28302
29-CA-28399
29-CA-28457
29-CA-28484
29-CA-28599
29-CA-29071**

Sharon Chau, Esq., Counsel for the General Counsel.
Yvonne Brown, Esq., and *Hollis Pfitsch, Esq.*, Counsel for the Charging Party.¹

DECISION

Statement of the Case

Howard Edelman, Administrative Law Judge: This case was heard by me in Brooklyn, New York on July 15, 16, 17 and October 20, 2008 in Brooklyn, New York. The Consolidated Complaint herein issued on December 21, 2007² and was based upon unfair labor practice charges that were filed by 318 Restaurant Workers Union, herein called the Union, on May 17, July 19, August 21, August 22, October 25, and July 9, 2008. The Union began an organizing campaign at the Respondent's restaurant beginning in about August 2005. The Complaint alleges that East Buffet and Restaurant, Inc., herein called the Respondent, engaged in numerous violations of Section 8(a)(1) and (3) of the Act, including, in about December 2006, implementing a policy prohibiting employees from speaking to customers about its service charge policy and threatening to discharge employees who violated the policy; from December 2006 to February 2007, discouraged customers from tipping employee Yu Chuan Chu ("Chu" and/or "Michael") and Yat Hung Li ("Li" and/or "James") because of their Union activities; on various dates between February and June directed employees not to speak with other employees who supported the Union; on April 1, directed profanities at employee Ping Yuan Wu ("Wu") because of her activities on behalf of the Union, and on about April 1, discharged Wu on April 1 because she engaged in protected concerted activities of complaining to the Respondent about the employees' wages, hours and working conditions. The Complaint further alleges that on about April 26 the Respondent interrogated employees about their Union activities; in about May harassed employees Song Qing Chen ("Chen"), En Morse ("Morse"), and Siu Fang Chen ("Chen") by subjecting them to more difficult working conditions by giving them too many or too few customers, preventing customers from tipping them, subjecting them to closer supervision, and requiring them to punch out prior to their scheduled quitting time, thereby causing them a monetary loss, and disparately prohibited them from taking food from the buffet table. Finally, the Complaint alleges that the Respondent discharged Chen on about June 5 and threatened to have her arrested, on about August 20, it issued a written warning to Morse, and discharged Morse on June 28, 2008, all due to their Union and protected concerted activities, and on July 16, 2008 threatened employee Ming Chan ("Chan") with discharge or loss of employment

¹ The Respondent was represented by counsel for the first three days of hearing. Prior to the final day of hearing, counsel withdrew from its representation of the Respondent and asked to be removed from the service list and the notice of appearance.

² Unless indicated otherwise, all dates referred to herein relate to the year 2007.

because he wished to honor a Board subpoena to testify in a hearing.

Findings of Fact

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I. Jurisdiction

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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II. Labor Organization Status

Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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III. Background

On August 4, 2005 the Union filed a petition with the Board to represent the Respondent's dining room employees, wait staff and busers. On August 20, 2005 some of the employees engaged in a strike and picketing at the restaurant, distributing flyers complaining of low wages and saying that they were on strike against unfair labor practices. On April 24, 2006 the Union sent the Respondent a letter with an unconditional offer for the ten strikers to return to work. On August 22, 2006 the Respondent sent letters to all except two of the employees, offering them employment.

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On July 31, 2008, the Board issued a Decision and Order involving the Respondent at 352 NLRB No. 116, finding that the Respondent interrogated employees about their letters of protest as well as their Union and protected concerted activities, threatened employees with transfers to different assignments and closure of the restaurant, threatened to examine their immigration documents and said that it would be futile for them to join the Union. The Board further found that the Respondent directed the employees not to speak to their co-workers while on duty, told the employees that they had to eat in two groups, rather than together, and prohibited them from making or receiving cell phone calls while on duty, all because of their Union and protected concerted activities. Finally, the Board found that the Respondent had discriminated against five employees by discharging David Lee ("Lee") because of his Union activities, and by failing and refusing to reinstate four unfair labor practice strikers after they made an unconditional offer to return to work. The Respondent was also ordered to reimburse them for the losses that they suffered due to the discrimination against them. The above conduct was found to have violated Section 8(a)(1) and (3) of the Act. In this case, as well as the instant matter, "Susan" Kong ("Kong") was, and is, the owner of the Respondent together with her husband ("Mr. Kong"). Her son, Kevin Kong ("Kevin") was, and is the manager of the restaurant, and they are both admitted to be supervisors within the meaning of the Act. In addition to Kong and her son, the instant Complaint alleges that Raymond Mui ("Mui"), Manager, and Nam Tak Li ("Duk"), Kitchen Supervisor, are supervisors within the meaning of Section 2(11) of the Act and/or agents of the Respondent.

IV. Supervisors and Agents

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It is not in dispute that Kong and her son Kevin are supervisors within the meaning of the Act. The supervisory and agency status of Mui and Duk are disputed. Mui has been employed at the facility as the manager since about 2003, although he was not present at the facility from April through September 2005. The uncontradicted testimony is that he is the principal person who handles problems that occur at the facility: he handles complaints from customers and,

whenever possible, directs employees to correct the problems. If there are complaints about the quality of the food, he discusses the problem with the kitchen staff. Further, he orders supplies for the Respondent. He also assigns work to the waiters, waitresses and buspersons at the facility. At a meeting conducted on April 1, Kong told the employees that there were two people who were supposed to supervise them- Mui and Duk: "Whatever they told you to do, you have to follow." Duk was in charge of the kitchen employees. Chen testified that he had a friend who was acquainted with Duk who arranged for them to meet. After a brief discussion between the two of them, Duk told Chen that he could start working for the Respondent on February 5: "He only told me that the East Buffet need to hire a cook and he just asked me if I would like to work there, that's all I know. I have no knowledge if he has to talk to Mrs. Kong or not." About a week later, Kong asked him for identification and his Social Security card. Duk told him what work to do, and he has observed him ordering food supplies. Chan testified that Duk instructs the kitchen employees about the work that they are to perform. Ping Zhang testified that Duk is responsible for managing the kitchen staff, and Wu testified that Duk is in charge of the staff in the kitchen. In the prior Decision, the Board affirmed the judge's finding that while captains were not supervisors within the meaning of the Act, they were agents of the Respondent.

The evidence establishes that both Mui and Duk engage in the responsible direction of the work of the restaurant's employees, Mui in the front and Duk in the kitchen. In addition, the evidence establishes that Mui handles problems that occur and is in charge in the absence of Kong or Kevin. The evidence further establishes that Duk has the authority to hire employees on his own. I therefore find that Mui³ and Duk are each supervisors within the meaning of the Act.

V. The Facts

The principal issue that created many of the problems herein was gratuities, and the service charge rule that the Respondent instituted in about August 2005. Apparently, the Respondent believed that this would simplify its pay system and mollify the employees. This belief turned out to be incorrect. The new system, together with the rules that the Respondent established to go along with the change, only caused more problems. Kong testified that she instituted the new system in order to raise the employees' wages and to prevent difficulties that had previously ensued wherein the employees didn't properly share the tips left by the customers. Under the new plan, a 12% service charge was added to all customers bills and a card was placed on every table at the facility stating: "A 12% service charge will be applied to all guest bills. All Service Charges supplement Food Service employees' wages. Thank you for your cooperation." No part of this service charge went directly to the employees, although this service charge enabled the Respondent to raise the wage rate of the waiters and waitresses to \$12.00 or \$13.00 an hour, and to raise the wage rates of the other employees at the facility as well. On the other hand, the implementation and rules surrounding this new policy caused numerous problems. While Kong's stated intention in establishing this policy may have been benign, the implementation was anything but. One reason is that the notice left on the tables was so uncertain that it invited questions from the customers, which caused many of the problems herein. To make matters worse, on December 3, 2006, the Respondent distributed a memo to the wait staff on this subject, stating:

It has come to our attention that certain wait staff have been telling customers that they do not receive any portion of the service charge billed to the customer. This is not true.

³ There is no allegation that Mui committed any Section 8(a)(1) violations. Counsel for the General Counsel stated that she wanted to establish his supervisory status in order to establish the Respondent's knowledge of employees' Union activities.

5 Prior to April 2005, waiters were paid \$3.85 per hour plus tips. In August 2005, East Buffet replaced the tip practice with a service charge of 12%. At the same time, waiter's hourly rate increased to \$12.00/\$13.00, depending upon their experience. Bus boy's/girl's hourly rate increased to \$7.00/\$8.00 per hour at the same time.

10 The service charge is used to pay this large increase in the hourly wage rate. Without the service charge, the restaurant could not afford to pay these higher wages. Therefore, telling customers that the waiters or bus boys/girls do not receive any portion of the service charge is not true and making this statement is only intended to harm the business of the restaurant. Effective immediately, the following rules shall be in effect:

15 Employees are forbidden from responding to any customer questions concerning the service charge, including whether any employee receives any portion of the service charge. If an employee is asked any question regarding the service charge, including whether any employee receives any portion of the service charge, the employee must immediately notify the manager, so the manager can respond to the customer's question.

20 It is also forbidden for any employee to voluntarily tell a customer whether or not the employee receives any portion of the service charge, regardless of whether the customer asked a question about it or not.

25 It is also forbidden for an employee to disagree with a manager in the presence of a customer, or otherwise show their disapproval, while the manager is answering a customer's questions, including explaining the service charge to a customer.

30 **This is a very serious matter. All employees are warned that ANY violation of this policy shall result in immediate termination of employment.**

35 Kong testified further that she instructed the wait staff that if a customer asked if they could leave an "extra" tip on the table, meaning in addition to the 12% service charge, for good service, the waiter/waitress could respond that they would be happy to accept it and would appreciate such an extra tip, and that is what Kong told customers who asked about leaving tips. However, when distributing this memo to the employees, she told them that if any of them asks a customer for a tip, she would fire that person.

40 Michael was employed by the Respondent as a waiter from March 2005 to August 2005, when he participated in the strike, and then from October 2006 until February 2007. He made the initial contact with the Union in 2005, got some employees to sign cards for the Union, participated in the strike and testified on behalf of Counsel for the General Counsel in the prior Board hearing.⁴ He testified that when he returned to Respondent's employ after the strike, on "many" occasions, about three or four times a night, after a customer left a tip on his table, Kong or Kevin told the customer that a service charge was already included in the bill and that there was no need for them to leave tips on the table. He observed them doing the same thing to James, also a Union supporter. Chen testified that she was employed as a waitress at the facility beginning in March 2006 and on one occasion before Michael returned to work at the facility, Kong told her that Michael was a member of the Union, was irresponsible and a "crazy

50 ⁴ The Section 8(a)(3)(4) unfair labor practice charge relating to Michael's discharge was withdrawn.

man” and that she should not talk to him.

James began his employment with the Respondent as a waiter, became a captain, and in about November 2006 became a waiter again when Kong told him that business was slow. In about September 2006 Kong told him that some of the strikers may come back to work and “...please do not talk to them anything other than work related issues.” Shortly thereafter, she repeated this statement about not speaking with returning strikers. One of the strikers she specifically referred to was Michael. He did not follow Kong’s request and when Michael returned he spoke to, and ate his meals with Michael. Chen testified that about a week after he began his employment with the Respondent, Duk told him that Michael, Wu, Zhang and Ming were all Union people, and that he should not talk to them because they carry a recorder with them. He told him to only talk of work related issues with them. Xiufang Chan (“Jessica”) testified that on three or four occasions, the first shortly before Michael returned to work after the strike, Kong told her not to talk to him because he was a bad person and not a good employee. Chan testified that in February he overheard a conversation between Kong and Duk in the kitchen, with a few kitchen employees nearby. Kong told him that during break times the kitchen staff should not sit with the Union people. Subsequently, he heard Duk tell the kitchen employees on a number of occasions that if they sat with the Union people, or spoke to them the boss would not be happy. According to James, Duk also said, “If you sit together with the Union people, then you will be fired just like the bell pepper fried with the squid.”⁵ On another occasion in February, he overheard Duk telling kitchen employee Fai Chan that he should not sit with the Union people because it would not be good if Kong saw him doing that. In addition, in December 2006 and January James and Michael spoke to the other employees about the Union. He went to the Union office in January and, about two days later, he told Mui that he had been to the Union office with four other named employees and asked him if he wanted to join the Union. In February he signed an authorization card for the Union and a few days later he told Mui that he had done so. During this period he observed that Kong was following them and watching them closely.

James also testified that Kong gave him the memo in about December 2006, but he was familiar with the subject because the Respondent instituted the service charge about a year and a half earlier. As to what Kong told them to tell the customers about the policy, he testified:

She told us many different versions at different times. In the beginning, she said that we can explain the service charge as something that would be shared with everybody working in the restaurant, including the waiters and captains, and the waiters would be...paid 13 dollars...and the bus boys would be eight dollars an hour.

And soon after that she started to change the way of explanation. She said that we should explain that only waiters and bus boys would have a share of the service charge, but later on she changed the explanation again. And, eventually, [when the Respondent distributed the memo] she just said do not explain, instead we should refer customers to speak to the management...

James also testified that Kong interfered with his receipt of tips on at least one occasion. In December 2006 he had four customers at one table and after paying the check they left money on the table. Kong picked up the money and approached the customers who were on their way out of the restaurant and gave them the money back and said that tips were not required. James was very upset: “I gave very satisfactory service, and the customers were willing to pay

⁵ He testified that this phrase means to discharge someone.

the tips, how could she do that?" On other occasions, he noticed that the customers left money on the table and when he returned from serving other customers, he saw Kong speaking to the customers and the money was no longer on the table.

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Wu, Michael's mother, was employed by the Respondent as a bus girl from May 2003 to August 2005, when she joined the strike against the Respondent, returning to work on October 3, 2006. She was one of the unfair labor practice strikers that the Board, in its Decision, ordered the Respondent to offer full reinstatement to, if it had not already done so, as well as backpay, and make her, and the other strikers, whole for any loss that they suffered. She joined the Union in July or August 2005 and testified as a witness for Counsel for the General Counsel in the prior hearing. Shortly after she returned to work, Kong told her, "No matter what, I should not use the cell phone inside the restaurant." At the same time, Wu observed "Evelyn" and certain busboys using their cell phones inside the restaurant. They had not joined the Union or participated in the strike against the Respondent. Wu testified further that in about the middle of November Kong told her and other busgirls that they would be required to do steamwork in the kitchen. Wu told Kong that she worked in the dining room and did not know how to do the steamwork, and that it could be dangerous. On March 30, she and Ping Zhang ("Zhang"), who did the steamwork, were told to go to the basement to obtain items from the refrigerator. When they returned, Duk started to scold Zhang and told Kong that Zhang didn't perform the steamwork properly. Zhang told Duk that steamwork was not her responsibility and that she was downstairs obtaining supplies. Later that day, Kong came to the area and Wu tried to explain the situation to her when Duk interrupted her, cursed her loudly, and asked Kong to fire her. Kong didn't say anything and walked away.

On April 1, at about 12:45 p.m., while Wu was walking near the buffet table, she observed Duk using his hands to pick up food from the table. She said to him, "Big Brother (since he is the big brother or boss in the kitchen), how come you don't know basic hygiene rules? How could you put you hand in the food tray?" She testified that the Department of Health regularly inspects the restaurant and Kong has told her that they can be fined \$500 for a problem. Duk responded that when she spoke, her saliva went into the food tray. Duk then said, "fucking your mother..." Wu asked what he said, and he repeated the curse about her mother. Wu asked how he could curse her, as her mother was 87 years old and living in China. At that point, Mui approached them and told them to stop quarreling, as it could be heard by the customers. That evening, Kong asked Wu to come to the basement to talk to her and Duk. Kong told Wu to sit down and placed a tape recorder on the desk and asked her to explain what happened between her and Duk earlier that day. Wu said that Duk should speak first and Kong said, no need for that as Duk already told her what happened. Wu then explained about seeing Duk using his fingers to pick up the food from the tray, and that after she told him that he was wrong to do that, he scolded her and cursed her mother. Kong and Duk then said that Wu had spit on Duk and Wu said that she did not spit on him. Wu then insisted on getting a witness to the afternoon's altercation and although Kong said that she didn't want any witnesses, Wu brought in James who said that Duk had scolded Wu and that Wu had not spit on him. Wu then told Kong that it was Duk who was in the wrong and she wanted an apology from him. Duk continued to insist that Wu had spit on him and threatened to sue her for it, and Wu said that if he sued her, she would file a claim with the Department of Health that he picked up food with his hands from the bar. At dinner time that evening, Kong held a meeting with five busgirls. Kong began by saying that from then on the dining room would be under the supervision of Mui and in the kitchen, Duk would supervise everyone: "Whatever [Duk] asks you guys to do, you have to follow." Wu then asked Kong who was right and who was wrong in the incident the prior day. Kong told her that she should not have told Duk that what he did was wrong, she should

have told her, and she would have spoken to Duk. Wu then said that she had told the employees that everyone had the responsibility to watch out for health violations, "...and the way you handled this no wonder the employees wanted to sue you." Kong then said, "...just do the job. If you don't want, just leave." Wu said, "Do you mean to fire me?" Kong said yes, and
5 Wu asked for a letter of termination and Kong said that she would have to wait a couple of days.

Zhang testified that on April 1, Kong held a meeting with the busgirls, as well as Duk. Kong started by saying that there were two people who were supposed to supervise them, Mui and Duk, and whatever they told them to do, they should follow. Wu then said that Duk had
10 scolded her that afternoon, and she demanded an apology. Kong said that she didn't know what was going on, and Wu said something about she was not acting like a boss and that she would like to sue her. Kong told her, "If you don't like the work at this restaurant anymore, you can just leave. Wu asked, "Do you want to fire me?" Kong answered yes. Kong then told her to leave, and Wu left.

15 James testified that he overheard the argument between Wu and Duk. He saw that Duk had his hand in the food and Wu told him that he was not supposed to do that because it could cause the restaurant to have a problem with the Health Department. Duk responded, loudly, "Fuck your mother's ass." Duk then said, "Don't think that people around here are afraid of the Union, that's why I want to fuck you now." Wu responded that if he wanted to fuck her mother, he would have to go to China where she lived, and was very old. Later that day Wu asked him to come into the basement to be a witness for her. Kong and Duk were there and James explained what he saw earlier that day with Wu and Duk. Later that evening there was a meeting between Kong and the busgirls; James could not see or hear what was said, except
20 that he heard Kong say: "You are fired" and he heard Wu say: "Give me a ticket." Chen testified that on March 31, she heard Wu complain to Duk that it was not a busgirl's job to do steam work in the kitchen, and Duk disagreed with her. On the following day, he observed that Duk touched the food with his hands and Wu told him that he shouldn't have contact with the food with his hands and Duk said that he would have sex with her mother. Wu walked away and Duk started
30 to walk toward her like he was going to attack her and Chen stopped him, but Duk said, "I am going to put shit for her to eat." He did not observe Wu spitting at Duk. Chen testified further that after this incident, Duk told him that Kong had fired Wu and that she didn't like the Union people and would not like to see them around. James testified that during the argument between Duk and Wu on April 1, he heard Duk say, "Don't think that everyone is afraid of the Union, and I'm here and I'm not afraid of the Union." After this argument, Kong told Wu that she was fired and
35 Wu asked for a "ticket," which James understood to mean a dismissal letter.

It is next alleged that on about April 26 the Respondent , at 3000 Marcus Avenue Lake Success, New York, interrogated employees regarding their Union activity. This allegation
40 relates to a deposition taken of Lee by counsel for the Respondent in a lawsuit brought on behalf of certain of its employees alleging that Respondent did not pay proper wages to the employees. In the course of his questioning of Lee, counsel asked him whether James joined the Union and attended meetings with Union officials. Lee answered that he heard from other employees that James had joined the Union. Although not specifically alleged, Zhang testified that at the end of January, Mui asked her if Jessica, Linda, James and Ella had joined the Union. She testified: "I did not want to tell him everything, I just told him that I heard about that, but I was not sure."

It is next alleged that beginning in about May, Respondent harassed Chen, Morse and
50 Chan by subjecting them to more difficult working conditions by giving them too many or too few customers, preventing customers from tipping them, subjecting them to closer supervision, requiring them to punch out before their scheduled quitting time causing a monetary loss and

disparately prohibiting them from taking food from the buffet tables. Jessica testified that she and the other employees took their food regularly from the buffet table at certain allowed periods of the day. However, shortly after she joined the Union, Kevin told her, Morse, also known as “Linda”, and Song Qing Chen, also known as “Ella,” that they could not take food from the buffet table for their breakfast. However, she saw other employees continue to take food from the buffet table for breakfast. These employees had not joined the Union. Chen testified that after she signed a Union authorization card, and after James was fired, Kong and Kevin told her that she could no longer get food from the buffet for her breakfast. Morse and Wang were also prohibited from taking their breakfast from the buffet, but Evelyn was not. Wang also testified that after she, Morse and Chen signed cards for the Union, Kong and Kevin told them on a number of occasions to punch out on their time cards before the actual quitting time. If they did not tell her, she waited until her customers had paid their bills, then she would punch out. She observed that Evelyn and Hugo, who had not joined the Union, were not told to punch out early. Chen also testified that after James was fired, Kong and Kevin told her, Morse and Wang to punch out before their scheduled quitting time “every day.” They did not tell Evelyn to clock out early. She also testified that shortly after James was discharged, they changed the way they assigned customers to their stations: “It frequently happened that they would suddenly bring a big group of customers to our station and also for a long time they wouldn’t even bring one customer to my station.” During this period she also heard Kong and Kevin telling customers at their stations that the 12% service charge was split and distributed among the wait staff and there was no need to leave any tip on the table. She never heard them say that to Evelyn’s customers.

It is next alleged that on about June 5, the Respondent discharged Chen, who had been employed by the Respondent as a waitress since March 2006, due her Union and protected concerted activities, in violation of Section 8(a)(1)(3) of the Act. She testified that shortly before Michael returned to work, Kong told her that he was a member of the Union, and was irresponsible and “a crazy man” and that she should not speak to him. She did not speak to him until after James returned to work for the Respondent: “Since James was getting along well with Michael and we get along with James very well, so because of that I started to learn that Michael is not such a bad guy as described by the boss lady.” In January she went to the Union’s office with James, Michael, Linda, Jessica and Ah Fen, and signed a Union card the following month. She was fired on June 5 by Kong, who accused her of taking money from the Respondent. When she arrived for work on that day, Kong accused her of taking money and told her to watch a video taken by a surveillance camera in the restaurant. It showed her carrying two checks with the customers’ cash and giving them to the cashier to ring up, although she was not paying attention to the cashier at that time. As she was returning to the tables from the cashier she went to print a receipt for the customers. In order to do that, she took out a “company card” from her pocket and printed out receipts. While watching the tape, she noticed that the cashier did not put the money in the cash register, although she does not know whether it was intentional. After watching the tape, Kong told her, “Look, this is the money you stole.” Chen responded, “Do not falsely accuse me of stealing money. You should not discriminate against us, the Union members.” Kong told her to leave. When she returned to work, Linda told her that the Respondent said that she should not return to work, and she did not. Instead, she joined the picket line at the facility.

It is next alleged that on August 20, the Respondent issued a written disciplinary warning to Morse, also known as “Linda” and on June 28, 2008 discharged her in violation of Section 8(a)(1)(3) of the Act. She had previously been employed by the Respondent in 2003 and in August 2005 she was asked by Kevin to return to work for the Respondent because there were a crazy group of people disrupting the restaurant’s operation and he asked her to start immediately. At about that time, he told her that the pickets were crazy and greedy, and that he

would not pay them any money. Rather, he would hire lawyers "...to play with them slowly." In about August 2006, Kong told her about the strikers, "Do you know that these former people who were Union members they decided to walk out from here and to have a strike, and now they want to get back to work?" She also said that many of them lack legal identity, and "...I will not let them come back so easy." In January, she went to the Union office with Michael, James, Jessica, Ella and Ah Fen. On the following day she was with James when he told Mui that the group (but not Evelyn) joined the Union. Mui said that he didn't believe it, and James said that if he didn't believe it, he could ask Linda, and Linda nodded her head.

Linda testified further that after Ella was fired, she was on a picket line outside the restaurant. Kong told Linda, "How can she be outside. She stole my money. If she continues to harass me like that, I'm going to call the police." Kong asked Linda to tell Ella that she didn't want to see her anymore and that she would call the police to arrest her. After joining the Union, Linda joined the picket line at the restaurant every Friday, her day off. In October 2006, a customer asked her if she received the service charge, and she said no, the service charge went to the restaurant and they pay the employees \$13 and \$7 an hour, and that they don't ask for tips because they are paid an hourly rate. The customer then asked Kong about the service charge and Kong told them that the service charge is shared by the staff, and the customer told her that the waitress told them that the charge does not go to the employees because they are paid an hourly wage. Kong then said that the restaurant instituted the service charge because the employees were greedy and would not share the tips, but if the customer felt that the service was excellent, they could leave an extra tip. Kong asked if Linda had asked for a tip, and the customer said that she had not. Kong gave Michael a warning at that time for a similar offense, but she did not give Linda a warning, at that time, because: "...she just want to stage the scene so no one can accuse her for discriminating against Union members." In August, Linda was given a written warning for allegedly asking for tips from a table that she was serving. She had two tables, both of which asked about the service charge and she testified: "I didn't say anything not true to them about the tips policy." One table, apparently, complained about her response and Linda spoke to the customers at the other table who said that she hadn't asked for a tip. Kong asked the complaining table to give her a written statement and that evening, Kong gave her a written warning about the incident. Kong told her that the patron had complained that she was asking for tips, and Linda denied it and said that the people at the adjacent table agreed that she did not ask for tips. Kong asked if she had a written statement from them, or their telephone number and Linda said that she didn't, but that they had told Kevin and her husband that she had not requested tips. Kong said, "I don't know anything about that" and she said that she was the boss. Linda said that she could do whatever she wanted, but she should be fair, that there were a number of complaints about Evelyn, a non-Union employee, but nothing was done to her. Kong said, "I don't need for you to tell me what to do" and Linda said, "I just want to remind you to be fair and do not discriminate against Union workers."

Linda was discharged on June 28, 2008. The genesis of the problem on that day was, again, the service charge. The customer initially asked if the tip is included in the service charge, and she answered no, but there was a 12% service charge. The customer asked what the service charge was, and Linda said that it was used by the restaurant to pay the wages to the employees. She took the check and overheard somebody at the table saying that 12% was not much, maybe they should leave something extra. She then saw the customer ask Mui if the service charge was considered tips for the wait staff and he asked where they sat, and the customer pointed to the table they were sitting at. Mui then called Kong to speak to the customer, who told Kong that the food and service were fine, but they wanted to know if the service charge included tips and if it was given to the wait staff. Kong said yes, and the customer became angry. Kong asked who their waiter was and Linda walked up and said that she had served the customer. When Linda said that she had honestly told the customer about

the service charge, the customer said, “Your boss said that tips is included, but you said the other way that tips were not included in the service charge. How come you are trying to cheat us.” Linda then said that she had told them that the 12% was included in the bill, was used to pay wages to the staff, and that they need not give anything extra, but if they did it would be greatly appreciated. That evening Kong told her that she had a written complaint from the customer, and Linda said that she had told the customer what Kong and Kevin had told her to say. Kong said that she didn’t want to argue with her, but “...I just want you to know that you have no need to come back to work the next day.” Linda asked if she was being fired and Kong said: “No, I didn’t say that I want to fire you, I just want you not to come back to work tomorrow, so that I have time to investigate further about this incident.” Kong never called her to return to work, and about a week later she called Kong to ask what was going on, and Kong replied that she was very busy and that she should wait for her phone call. Kong never called her. Shortly thereafter, Linda went to the facility to pick up her pay check and Kevin gave it to her without saying anything about returning to work.

The final allegation is that on about July 16, 2008 the Respondent, by Kong, threatened employee Chan with discharge or loss of employment because he wished to honor a Board subpoena to testify in a hearing, in violation of Section 8(a)(1) of the Act. Chan testified at this hearing on July 17, 2008. On the prior day he showed the subpoena to Mr. Kong, who told him to speak to Kong about it. He called Kong, told her of the subpoena, and asked her about taking off to testify the following day. Kong told him to call her later in the day. He called again at about 10:30 and asked her, “Tomorrow, will I be allowed to take one day off?” Kong said that he already had taken two days off that week and asked if he wanted to take off a third day. Chan said that it was not his intention to take another day off; he received a subpoena from the Board and needed to appear in court to testify. Kong then said, “If you do not intentionally want to speak in the Court, you should not have received the subpoena.” Chan again asked if he could have the day off and Kong replied, “Think about that. Do you think that going to testify in the Court is more important or to keep your job would be more important?” When Chan said that if he did not appear to testify others will, Kong again said that it was “...your choice to go to testify in the Court or to have your job.”

VI. Analysis

The Board’s Decision, together with the record herein, leaves no doubt of the animus that the Respondent harbored toward the Union and the employees who supported the Union. In the prior matter the Respondent did everything it could to isolate, threaten and interrogate its employees who supported the Union, unlawfully discharged one employee, and did not offer reinstatement to the four unfair labor practice strikers until four months after the Union unconditionally offered to have them return. The record in the instant matter reveals a similar strain of animus. Because of the numerous allegations herein, wherever possible I will indicate the paragraph of the Consolidated Amended Complaint that is involved in each.

It is initially alleged, at Paragraphs 8 and 9, that beginning in about December 2006 the Respondent implemented the service charge policy prohibiting employees from speaking to customers about its charge policy and threatened its employees with discharge for failing to comply with this policy, in violation of Section 8(a)(1)(3) of the Act. As stated above, although the 12% service charge may have been instituted with the best of intentions (it enabled the Respondent to raise waiters and waitresses wages to \$12 or \$13 an hour), in December 2006, the Respondent distributed a memo to the employees setting forth the rules about talking to customers about the service charge, and the rules placed the wait staff in an impossible situation. The required response of, “I can’t talk to you about the service charge policy; you will have to talk to a manager about it” could be considered rude and foreclose any chance of

receiving a tip over and above the 12% service charge. Pursuant to the memo, any other response, whether true or not, could be grounds for termination. I agree with the argument of Counsel for the General Counsel, in her brief, that the December 3, 2006 letter to the employees unlawfully restricts their right to seek assistance from third parties, the customers, in order to improve their terms and conditions of employment by explaining the service charge and, possibly receiving an additional gratuity. In *Kinder-Care Learning Centers, Inc.*, 299 NLRB 1171 (1990), the Board had to determine the legality of a rule prohibiting teachers and employees from discussing their "...terms and conditions of employment..." with parents of the students. The Board stated that along with the employees' right to engage in activity for their mutual aid and protection, employees have a right to speak to others about their terms of employment and "...employees do not lose the protection of the Act if their communications are related to an ongoing labor dispute and are not so disloyal, reckless, or maliciously untrue as to constitute, for example, ' a disparagement or vilification of the employer's product or reputation.'" The December 3, 2006 rule was an absolute prohibition against discussing the service charge policy with customers; the memo provided that employees who violated the rule would be terminated. The promulgation and implementation of the rule, together with the threat to discharge employees who violated this unlawful rule therefore violated Section 8(a)(1) of the Act.

It is next alleged, at Paragraph 10 and 11 that from December 2006 to May the Respondent discouraged customers from tipping employees James and Michael because of their Union activities, and the evidence clearly supports these allegations. Michael participated in the strike, was belatedly reinstated by the Respondent, and testified on behalf of Counsel for the General Counsel in the prior hearing. James was told by Kong that Michael was a Union man, was irresponsible and a crazy man and he should not talk to him, but James did not follow her orders and spoke to, and ate his meals with, Michael. The uncontradicted testimony establishes that on a number of occasions Kong and Kevin discouraged customers from leaving tips for Michael and James and, on one occasion, removed the tip from the table, and returned it to the customer saying that tips were not required. The only possible conclusion for these unexplained actions is that it was done in retaliation for their Union activities, in violation of Section 8(a)(1)(3) of the Act.

It is next alleged at Paragraph 12 that between February and June, at the restaurant, Duk directed employees not to speak to other employees who supported the Union. This allegation is supported by the uncontradicted testimony of James, Chen and Chan that Kong and Duk told employees not to sit with, or speak to the Union employees. This is an unlawful limitation on employees' Section 7 rights, and violates Section 8(a)(1) of the Act.

Paragraphs 13 and 15 allege that on April 1 the Respondent, by Duk, directed profanities at Wu because of her membership in, and activities on behalf of the Union, and on the same day fired her in order to discourage employees from engaging in protected concerted activities, in violation of Section 8(a)(1) and (3) of the Act. Wu testified for Counsel for the General Counsel at the prior hearing and was one of the unfair labor practices who the Board ordered the Respondent to reinstate with backpay. Shortly after returning to work, Kong told her that she was not allowed to use her cell phone in the restaurant, while there was no similar restriction on the non-Union employees. When she complained about her work assignment together with fellow employee Zhang, Duk cursed her and asked Kong to fire her. When she criticized Duk for engaging in unsanitary practices, which could have resulted in the restaurant being fined, he cursed her again, in a more obscene manner. For no valid or lawful reason she was fired later that day. Counsel for the General Counsel has sustained her burden under *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980) that Wu's Union and protected concerted activities were a motivating factor in the Respondent's actions toward her

on March 30 and April 1, and the Respondent presented no evidence to support its burden of establishing that it would have done as it did even absent her Union and protected concerted activities. Respondent's cursing at, and discharging Wu therefore violated Section 8(a)(1) and (3) of the Act.

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It is next alleged at Paragraph 16 that on about April 26 the Respondent interrogated employees regarding their Union membership and activities in violation of Section 8(a)(1) of the Act. This allegation relates to the questioning of Lee by counsel for the Respondent in a deposition relating to a Wages and Hours case brought by employees against the Respondent. In this deposition counsel asked Lee, who had been previously discharged by the Respondent and is not a part of this case, if James ever met with Union officials or attended Union meetings. There are strong confidentiality interests of privacy on the part of employees relating to their union activities, and whether they signed authorization cards for the Union under Section 7 of the Act. In these situations, the Board initially looks to whether the questioning was relevant and whether it had an illegal objective. Because there was no relevance to the questions asked of Lee, there is no need to look any further. This questioning took place at a Wage and Hour lawsuit brought by some of the Respondent's employees. Whether James attended Union meetings could have absolutely no relevance to this lawsuit. The questioning therefore violates Section 8(a)(1) of the Act. *Wright Electric, Inc.*, 327 NLRB 1194 (1999); *Guest?, Inc.*, 339 NLRB 432 (2003).

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Paragraph 17 alleges that beginning in about May, the Respondent harassed employees Morse, Chen and Chan by subjecting them to more difficult working conditions by giving them too many or too few customers in their section, by preventing customers from tipping them, by subjecting them to closer monitoring and supervision, requiring them to punch out before their scheduled quitting time, resulting in a monetary loss, and disparately prohibiting them from taking food from the buffet tables, because of their activities on behalf of the Union, in violation of Section 8(a)(1)(3) of the Act. There was no evidence supporting the allegation that they were subject to closer monitoring and supervision. With that exception, these allegations are supported by the Respondent's undisguised Union animus and the uncontradicted testimony of Wang and Chen and established that the Respondent discriminated against these employees, while not subjecting its non-Union employees to a similar degree of harassment. By these actions, the Respondent violated Section 8(a)(1)(3) of the Act.

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It is next alleged at Paragraph 18 that the Respondent discharged Chen on June 5 because of her support for, and activities on behalf of, the Union, in violation of Section 8(a)(1)(3) of the Act. She disobeyed Kong's order not to speak to Michael, whom Kong referred to as a Union member and a "crazy man" and signed a Union authorization card in about February. She was fired on June 5 for allegedly stealing money from the Respondent by keeping the money paid by two customers rather than giving it to the cashier. Counsel for the General Counsel has satisfied her burden under *Wright Line* that Chen's Union activities were a motivating factor in the Respondent's decision to discharge her. It was easy for Kong and Kevin to see that she disregarded Kong's instruction not to speak to Michael. In addition, her credible and uncontradicted testimony establishes that the surveillance camera showed her handing the checks and the money to the cashier. As the Respondent presented no evidence to support its *Wright Line* burden, I find that the discharge of Chen on June 5 violated Section 8(a)(1)(3) of the Act.

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Paragraph 19 alleges that on June 10, at the restaurant, Kong threatened to have Chen arrested because of her protected concerted and Union activities, in violation of Section 8(a)(1)(3) of the Act. This is supported by Morse's testimony that after Chen was fired, both participated in the picketing of Respondent. In about late June Kong told Morse, while she was

5 picketing, to tell Chen that she didn't want to see her anymore and that she would call the police to arrest her. At the time, Chen, and the other pickets were engaging in protected concerted activities and there is no evidence that any of the pickets' actions were unprotected. Kong's statement to Morse constituted a threat to Chen if she continued to engage in these protected concerted activities, and this threat therefore violates Section 8(a)(1) of the Act.

10 Paragraphs 20 and 21 allege that on August 20 the Respondent issued a written disciplinary warning to Morse, and on June 28, 2008 discharged Morse because of her Union and protected concerted activities, in violation of Section 8(a)(1)(3) of the Act. Morse's credible testimony, on its own, clearly establishes Union animus and knowledge of her Union activities. Before she became an open Union supporter, Kevin told her that the Union pickets were greedy, that he would not pay them any money and would "play with them slowly." Similarly, Kong told her that the strikers wanted to return to work, but that she would "not let them come back so easy." After she joined the Union, she was with James when he told Mui that they had
15 joined the Union. When Mui said that he didn't believe it, Morse nodded her head in agreement. Further, after joining the Union, Morse participated in the picket line on her day off. Morse was given a written disciplinary warning for an incident that occurred on about August 17. This incident, and her subsequent discharge on June 28, 2008, involved an alleged violation of the Respondent's service charge policy as discussed above. As discussed above, this service
20 charge policy was so nebulous that it was easy and convenient means for the Respondent to use in order to act against employees that it did not like, or employees that it felt were supporting the Union. Morse's situation is another example of that policy. Morse testified credibly that she was asked about the policy by patrons at two tables, and answered as truthfully as she could. Kong told her that one table had complained that she had asked for tips and when Morse denied having done so, and Kong asked her if she had a written statement
25 from the other table saying that she had not asked for tips. When Morse replied that she did not, but that the patrons had told her husband and Kevin that she had not asked for tips, Kong replied that she was the boss and, "I don't know about that." When Morse told her that she should be fair and that there were a number of complaints about Evelyn, a non-Union employee, Kong replied, "I don't need you to tell me what to do."

30 The events leading to her discharge on June 28, 2008 are very similar. She answered the patron's question about the service charge as truthfully as she could, but was contradicted by Kong, who said that the charge was given to the wait staff. The customer became angry with
35 Morse, claiming that she was trying to cheat them, resulting in Kong never calling her to return to work. Both the August disciplinary warning and the June 2008 discharge were clearly in retaliation for her Union activities and violated Section 8(a)(1)(3) of the Act. Before they knew of her support for the Union, Kong and Kevin expressed told her of their Union animus. They knew that she supported the Union from James' statement to Mui and her participation on the picket
40 line. Kong's anger at her was clear in her response to Morse's complaint that she should be fair as nothing had been done to Evelyn, although there were a number of complaints about her: "I don't need you to tell me what to do." An analysis under *Wright Line* establishes that Counsel for the General Counsel has satisfied her initial burden, whereas the Respondent, which produced no evidence to establish that it would have issued a written warning to, and fired,
45 Morse absent her Union activity.

50 The final allegation, at Paragraph 22, is that on about July 16, 2008 the Respondent, by Kong, threatened employee Chan with discharge or the loss of employment because he wished to honor a Board subpoena to testify in a hearing, in violation of Section 8(a)(1) of the Act. Chan testified at this hearing on July 17, 2008. On the prior day, when he told Mr. Kong about the subpoena that requested that he testify at the hearing, Mr. Kong told him to speak to Kong. He called Kong, told her of the subpoena and asked about taking off the following day so that he

could testify, and Kong told him to call her later in the day. He called later that day and asked, “Tomorrow, will I be allowed to take one day off?” Kong told him that he had already taken two days off that week, and asked if he wanted to take a third day off. Chan replied that it wasn’t his intention to take an additional day off, but that he received a subpoena from the Board ordering him to appear to testify. Kong replied, “If you do not intentionally want to speak in the Court, you should not have received the subpoena.” When Kong again asked about getting off the following day to testify, Kong asked, “Do you think that going to testify in the Court is more important or to keep your job would be more important?” When Chan replied that if he didn’t testify, others would, Kong said that it is “...your choice to go to testify in the Court or to have your job.”

In *Mr. F’s Beef & Bourbon*, 212 NLRB 462 at 466 (1974), Administrative Law Judge Walter Maloney succinctly stated the applicable law in these situations:

As Congress has never invested the Board or its examiners with contempt powers, a notion occasionally arises in the minds of some that subpoenas issued by this agency to compel the attendance of witnesses at formal hearings do not impose upon the recipient an obligation to comply, unless and until the subpoena is enforced by an Order issued by a United States district judge. The Board long ago laid this notion to rest in *Winn Dixie Stores, Inc.*, 128 NLRB 574, when it issued an admonition not to confuse the legal obligation to honor a Board subpoena with the procedure spelled out by Congress for enforcing that obligation. Hence, when an employer informs an employee that he does not have to comply with a Board subpoena, or when it tells him that he is free to suit himself in deciding whether to go or not to go to a Board hearing in response to the commands of a subpoena, such statements constitute unlawful interference with Section 7 rights and are a violation of Section 8(a)(1) of the Act.

In *Tufo Wholesale Dairy*, 320 NLRB 896 904 (1996), after an employee told his boss that he had received a subpoena from the Board, his boss told him that the Board never enforces subpoenas and would not do anything to him if he failed to appear, and “I can’t tell you what to do, but I would appreciate it if you would skip it.” This was found to violate Section 8(a)(1) of the Act. In the instant matter, Kong initially blamed Chan for receiving the subpoena, and then stated that he had to make a choice between appearing pursuant to the subpoena, or keeping his job, clearly a violation of Section 8(a)(1) of the Act.

Conclusions of Law

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

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

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following acts:

(a) Threatening its employees with discharge if they failed to comply with the Respondent’s rule prohibiting them from speaking to customers about its service charge policy.

(b) Directing employees not to speak to other employees who supported the Union.

(c) Directing profanities at its employees because of their membership in, or activities on behalf of, the Union.

(d) Interrogating its employees about the Union activities and membership.

(e) Threatening to have its employees arrested because of their Union, or protected concerted activities.

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(f) Threatening an employee with discharge or the loss of employment because he wished to honor a Board subpoena to testify at a hearing.

4. The Respondent violated Section 8(a)(3) of the Act by engaging in the following acts:

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(a) Implementing and enforcing a rule prohibiting its employees from speaking to customers about its service charge policy.

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(b) Discouraging its patrons from tipping its employees because of their membership in, and activities on behalf of, the Union.

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(c) Discharging employees Ping Yuan Wu, Song Qing Chen, and En Morse, and issuing a written disciplinary warning to Morse, because of their membership in, and activities on behalf of the Union.

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(d) Harassing its employees by subjecting them to more difficult working conditions by placing too many or too few customers in their sections, preventing customers from tipping them, requiring them to punch out before their regular scheduled time causing them a monetary loss, and disparately prohibiting them from taking food for their own use from the buffet table.

The Remedy

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Having found that the Respondent violated Section 8(a)(1) and (3) of the Act, I recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action necessary to effectuate the policies of the Act. In that regard, I recommend that the Respondent be ordered to rescind its rule prohibiting its employees from discussing policy with its patrons, that it offer immediate reinstatement to Wu, Chen and Morse to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, and to make them whole for any loss of earnings and other benefits that they suffered, as set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), along with interest as computed in *New Horizons for the Retarded*, 289 NLRB 1173 (1987). I also recommend that the Respondent remove from its files any reference to the discharges of Wu, Chen and Morse, as well as the written warning to Morse.

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On these findings of fact, conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

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The Respondent, East Buffet and Restaurant, Inc., its officers, agents, successors and

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⁶ 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.

assigns, shall

1. Cease and desist from

5 (a) Threatening its employees with discharge if they failed to comply with the Respondent's rule prohibiting them from speaking to customers about its service charge policy.

(b) Directing employees not to speak to other employees who supported the Union.

10 (c) Directing profanities at its employees because of their membership in, or activities on behalf of, the Union.

(d) Interrogating its employees about the Union activities and membership.

15 (e) Threatening to have its employees arrested because of their Union, or protected concerted activities.

(f) Threatening an employee with discharge or the loss of employment because he wished to honor a Board subpoena to testify at a hearing.

20 (g) Implementing and enforcing a rule prohibiting its employees from speaking to customers about its service charge policy.

25 (h) Discouraging its patrons from tipping its employees because of their membership in, and activities on behalf of, the Union.

(i) Discharging employees Ping Yuan Wu, Song Qing Chen, and En Morse, and issuing a written disciplinary warning to Morse, because of their membership in, and activities on behalf of the Union.

30 (j) Harassing its employees by subjecting them to more difficult working conditions by placing too many or too few customers in their sections, preventing customers from tipping them, requiring them to punch out before their regular scheduled time causing them a monetary loss, and disparately prohibiting them from taking food for their own use from the buffet table.

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

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

40 (a) Rescind its rule prohibiting its employees from discussing the service charge policy with the restaurant's patrons.

45 (b) Within 14 days from the date of the Board's Order, offer Wu, Chen and Morse 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 and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth above in the remedy section of this Decision.

50 (c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and written warnings, and within 3 days thereafter notify

the employees in writing that this has been done and that the discharges and warnings will not be used against them in any way.

5 (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 under the terms of this Order.

10 (e) Within 14 days after service by the Region, post at its facility in Huntington Station, New York, or at any other location where it operates a restaurant, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 December 1, 2006.

25 (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 allegation contained in Paragraph 17(c) of the Complaint is hereby dismissed.

30 **Dated, Washington, D.C. , March 13, 2009.**

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Howard Edelman
Administrative Law Judge

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⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT implement or enforce a rule prohibiting our employees from speaking to customers about its service charge policy.

WE WILL NOT threaten our employees with discharge if they fail to comply with our rule prohibiting them from speaking to customers about our service charge policy.

WE WILL NOT order employees not to speak to other employees who support the Union.

WE WILL NOT direct profanities at our employees because of their membership in, or activities on behalf of, the Union.

WE WILL NOT interrogate our employees about the Union activities and membership.

WE WILL NOT threaten to have our employees arrested because of their Union, or protected concerted activities.

WE WILL NOT threaten employees with discharge or the loss of employment because he/she wished to honor a Board subpoena to testify at a hearing.

WE WILL NOT discourage our patrons from tipping our employees because of their membership in, and activities on behalf of, the Union.

WE WILL NOT discharge, or otherwise discriminate against employees Ping Yuan Wu, Song Qing Chen, En Morse, or any other employee, or issue written disciplinary warnings to Morse, or any other employee, because of their membership in, and activities on behalf of the Union.

WE WILL NOT harass our employees by subjecting them to more difficult working conditions by placing too many or too few customers in their sections, preventing customers from tipping them, requiring them to punch out before their regular scheduled time causing them a monetary loss, and disparately prohibiting them from taking food for their own use from the buffet table.

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

WE WILL offer Wu, Chen and Morse 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 and privileges previously enjoyed, and **WE WILL** make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any interim earnings, and plus interest.

WE WILL immediately rescind our rule prohibiting its employees from discussing the service charge policy with our patrons.

WE WILL remove from our files any reference to these unlawful discharges and written warnings to Wu, Chen and Morse, and within 3 days thereafter notify them in writing that this has been done and that the discharges and warnings will not be used against them in any way.

EAST BUFFET AND RESTAURANT, INC.
(Employer)

Dated _____ By _____
(Representative) **(Title)**

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

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.