Satellite Services, Inc. *and* International Association of Machinists and Aerospace Workers, District Lodge 725, AFL–CIO. Case 21–CA–38670

October 29, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On September 23, 2009, Administrative Law Judge Lana H. Parke issued the attached decision. The Charging Party filed exceptions. On May 26, 2010, the Board, by its Executive Secretary, denied the Respondent's Motion to Strike the Charging Party's exceptions, but accepted the Respondent's submission as an answering brief to the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and has decided to affirm the judge's rulings, findings, and conclusions as modified below, and to adopt the recommended Order as modified below.[2]

The Charging Party has excepted to the judge's decision not to order the Respondent to post the remedial notice on its intranet system. In light of our recent decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), we find merit in this exception, and we have modified the Order accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Satellite Services, Inc., Riverside, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c) and reletter the subsequent paragraph.

"(c) Make Raul Trejo whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010)."

2. Substitute the following for current paragraph 2(f).

"(f) Within 14 days after service by the Region, post at its facilities on the March Air Reserve Base, Riverside, California, copies of the attached notice marked "Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 21 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 Respondent at any time since October 10, 2008."

[1] We adopt, in the absence of exceptions, the judge's findings that the Respondent violated Sec. 8(a)(1) by maintaining an overbroad no-solicitation/no-distribution rule in its handbook and violated Sec. 8(a)(3) by discharging employee Raul Trejo.

Regarding the handbook rule, the judge's recommended Order requires the Respondent to rescind the rule, if it has not done so. The Charging Party requests that the Board revise the judge's recommended Order to make "clear that employees can distribute or solicit on government premises." No revision is necessary, however, because the record establishes that the Respondent adopted and communicated to its employees a new policy containing that clarification.

Further, we deny the Charging Party's request that we order the Respondent to notify its Government client, March Air Force Base, of its unfair labor practices in this case.

[2] In accordance with our decision in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), we modify the judge's recommended remedy by requiring that backpay and other monetary awards shall be paid with interest compounded on a daily basis.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. October 29, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) 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 maintain a rule prohibiting any of you from engaging in union or other protected solicitation/distribution during nonwork time and in nonwork areas.

WE WILL NOT discharge any employee for supporting the International Association of Machinists and Aerospace Workers, District Lodge 725, AFL–CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights stated above.

WE WILL rescind any rule prohibiting any of you from engaging in union or other protected solicitation/distribution during nonworktime and in nonwork areas, and we will inform you in writing that this has been done.

WE WILL, within 14 days from the date of the Board's Order, offer Raul Trejo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or to any other rights or privileges previously enjoyed.

WE WILL make Raul Trejo whole, with interest, for any loss of earnings and other benefits suffered as a result of our unlawful discharge of him.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Raul Trejo, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

SATELLITE SERVICES, INC.

Irma Hernandez, Atty., Counsel for the General Counsel, Region 21, Los Angeles, California.

Mark I. Schickman, Atty., Counsel for Respondent, Freeland, Cooper & Foreman LLP, San Francisco, California.

Joe M. Young, Organizer, Charging Party, Ontario, California.

David A. Rosenfeld, Atty., Charging Party, Weinberg, Roger & Rosenfeld, Alameda, California[1]

DECISION

I. STATEMENT OF THE CASE

LANA PARKE, Administrative Law Judge. Pursuant to charges filed by International Association of Machinists and Aerospace Workers, District Lodge 725, AFL–CIO (the Union), the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing (the complaint) on May 27, 2009.[2] The complaint alleges that Satellite Services, Inc. (SSI or the Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). This matter was tried in Riverside, California on July 27–29, 2009.[3]

II. ISSUES

Did Respondent violate Sections 8(a)(3) of the Act by discharging employee Raul ("Rudy")Trejo?

2. Did Respondent violate Section 8(a)(1) of the Act by maintaining an overbroad solicitation/distribution rule in its employee handbook?

III. JURISDICTION

At all relevant times, SSI, a Michigan corporation, has been engaged in the provision of facilities maintenance and base operating support services for the United States Air Force

[1] Mr. Rosenfeld, who did not appear at the hearing, gave written notice of appearance on August 10, 2009.

[2] All dates herein are 2008 unless otherwise specified. The complaint was amended at the hearing to add "AFL–CIO" to the Union's name and "Mark Ditter, Weather Supervisor" to the list of individuals set forth at complaint paragraph 4. The Respondent admitted the amended allegations of paragraph 4.

[3] The General Counsel's unopposed post-hearing motion to correct the transcript is granted. The motion and corrections are received as ALJ exhibit 1. As explained at footnote 5, the General Counsel's post-hearing request to amend the complaint is denied.

(USAF) with its principal office and place of business in Marquette, Michigan and operations located at March Air Reserve Base, Riverside, California (the base). In conducting its business operations during the 12-month period ending December 31, which period is representative of SSI's operations, SSI provided facilities maintenance and base operating support services to the USAF valued in excess of $1 million and purchased and received at its operations facility goods valued in excess of $50,000, directly from points located outside the State of California. I find SSI has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

IV. STATEMENT OF FACTS

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 find the following events occurred in the circumstances described below during the period relevant to these proceedings. Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony.

A. The Respondent's Relevant Business Operations, Policies, and Procedures

Since 2005, the Respondent has provided facilities maintenance and operating support at the base pursuant to its contract with the USAF, employing about 91 workers in various departments situated among the numerous buildings and sections of the base. All SSI departments were assigned government vehicles for work duties, and about 30-35 SSI employees had regular occasion to use them. Employees in the traffic-management office (TMO) were responsible for escorting delivery vehicles on and off the base.

SSI's base operations department (Base Ops) controlled air traffic and vehicle movement within the flight line area, was responsible for airfield safety conditions, and monitored weather information for pilots. SSI employed 18 employees in Base Ops, six of them in the weather division. Because the duties of the weather division required constant communication availability with pilots, weather division employees were on duty during their entire shifts. The Respondent made a refrigerator and a microwave available to those Base Ops employees who ate or took breaks while they worked. During the employees' on-duty lunch periods, they were permitted to make personal telephone calls, talk to other employees about non-work issues, and/or read non-work related materials. In short, they were permitted to do anything they could do during a normal work break as long as they were available to respond to work-related communications. SSI employees other than Base Ops employees were provided break periods and had access to break facilities. Given the geography of the base, employees did not generally have time to leave the base during breaks.

The Respondent's employee rules of conduct included the following prohibitions: unauthorized use of government property, use of vulgar or abusive language, and sexual or other illegal harassment or discrimination. The Respondent had no progressive discipline policy.

In connection with the services the Respondent provided to the USAF, the Respondent subcontracted with Environmental Management, Inc. (EMI) to provide fuel and mobility services. EMI employees were also situated on the base. EMI employees occasionally wore navy-blue shirts at work with the letters "EMI" on the left breast.

The individuals named below, holding the stated positions with the Respondent, were supervisors within the meaning of Section 2(11) of the Act and comprised the Respondent's management hierarchy at the base:

James A. Rossi (Mr. Rossi)	Project Manager
Bradley S. Potter (Mr. Potter)	Airfield Manager
Grady Massey (Mr. Massey)	Quality Control Safety and Security/Deputy Project Manager
Mark Ditter (Mr. Ditter)	Weather Supervisor

B. The Respondent's No-Solicitation/Distribution Rule

At all times material hereto until early July 2009, when SSI revised its no-solicitation/distribution policy, SSI maintained the following provision in its employee handbook (the no-solicitation/distribution rule), copies of which were distributed to employees:

> To avoid disruption of the workplace and potential embarrassment for our employees, no solicitations, collections, and circulation of petitions or distributions of literature by employees are permitted during working time or in working areas. "Working time" refers to the work time of the employee soliciting, collecting, circulating or distributing as well as the employee to whom such action is directed. It does not include breaks, meal periods, or other times before or after work. "Working areas" includes all SSI or Government premises. In addition, no person from outside SSI is allowed on SSI's premises at any time for these or related purposes. If an employee observes someone who is not an employee engaging in any of these activities at any time, the employee should notify management immediately.[4]

C. Union Organizing Campaign

In 2008, the Union engaged in an organizing campaign among EMI employees. EMI employee Darell Blanford (Mr. Blanford) shared union organizational information and materials with SSI employees, including Raul "Rudy" Trejo (Mr. Trejo) and created union flyers for SSI employees to disseminate.

In March, Mr. Blanford in company with EMI employee, Andrew Isom (Mr. Isom), took union literature to the SSI weather division office. Mr. Blanford asked Mr. Ditter if he could leave the union literature in the SSI employees' lunch or break room. Mr. Ditter said that employees ate lunch as they worked and did not have designated lunch breaks or a lunch

[4] On July 11, 2009, the Respondent revised this policy, notified all SSI employees of the revision, and thereafter issued an employee handbook containing the revised policy. The General Counsel does contend the revised policy is unlawful.

room. According to Mr. Blanford, Mr. Ditter told him that Mr. Rossi had told him to confiscate literature and to report literature disseminators. Mr. Blanford testified that Mr. Ditter said that although employees were free to solicit or distribute literature in SSI parking lots, they could not do so in any SSI work areas or discuss union matters in any SSI work areas or during any SSI work time. Mr. Ditter denied saying he had been directed to confiscate literature and report solicitors, but he admitted telling Mr. Blanford and Mr. Isom that employees could not discuss or pass out union literature anywhere at SSI or in its buildings except for the parking lots. Mr. Ditter denied SSI management had ever instructed him to record the names of people organizing for the Union. He said Mr. Rossi, at management meetings, had told SSI managers that employees could not engage in union organizing on "company time or in the building, that they had to do it during off-duty times."[5]

On May 15, the Union was certified as the collective bargaining representative of a unit of EMI employees, after which Mr. Blanford and Mr. Isom were appointed union stewards to the unit. Sometime prior to June 20, an EMI employee made a complaint against a government employee. Dan Hanson (Mr. Hanson), EMI project manager, investigated the complaint and then referred the matter to Mr. Rossi, as the overall project manager and the liaison with the USAF. Mr. Rossi directed SSI personnel to conduct an additional investigation of the matter in which both the complainant and the government employee were interviewed. Thereafter, on June 20, in their capacity as union stewards, Mr. Blanford and Mr. Isom attended a meeting that included Mr. Hanson and Mr. Rossi to discuss the status of the complaint. According to Mr. Blanford, after discussion of the employee issue was concluded, Mr. Rossi reminded Mr. Blanford and Mr. Isom that they were at-will employees, that he was the project manager at the base, and that if they continued union activity or solicitation on base, they would end up on the unemployment line. Mr. Hanson denied Mr. Rossi made any such statement; Mr. Rossi did not testify about the meeting. Mr. Blanford testified in a clear, direct, and sincere manner, and I credit his testimony in this regard.

D. Circumstances Surrounding the Discharge of Raul Trejo

Employed by the Respondent in July 2007, Mr. Trejo worked in TMO, processing cargo for the USAF. As part of his duties, Mr. Trejo escorted outside vendor delivery vehicles onto the base.[6] At work, Mr. Trejo generally wore street clothes. Mr. Trejo was furnished with but not required to wear a gray short-sleeved T-shirt with "SSI" on the left breast.

Beginning in mid-April and continuing to about mid-May, Mr. Trejo solicited employee signatures in support of the Union, obtaining 12–15 signatures. Mr. Trejo solicited during lunch breaks or after work, driving his personal vehicle to some SSI areas on the base.

In mid-May, Mr. Trejo asked Mr. Blanford to create a pro-union flyer that Mr. Trejo could distribute to SSI employees. The resulting flyer (pro-union flyer) read:

> To All SSI Hourly Employees Only:
>
> As some of you are already aware that we SSI hourly employees are organizing ourselves to better our working conditions. What do we mean by better working conditions? We mean better pay, a C.O.L.A. every year, better 401K plan (pension), paid sick leave, 2 weeks paid vacation after first year, and 3 weeks paid vacation after 3rd year, Paid overtime instead of forced comp time (which is illegal), And a whole lot more. If you are interested in this; and need these things to be done please contact Rudy at [Mr. Trejo's cell phone number] immediately.

Sometime in mid-May at the commencement of his lunch break (11:00 a.m.), Mr. Trejo drove to Base Ops in his personal vehicle with copies of the pro-union flyer. Entering the Base Ops office, Mr. Trejo approached two men sitting behind a counter and asked if they were SSI hourly wage employees. When they said they were, Mr. Trejo asked when they took their lunch breaks. The two men said they were at lunch break at that time, and Mr. Trejo observed one of the men eating. Mr. Trejo understood the men to be working during their lunch break. Mr. Trejo handed each man a flyer and asked them to call him if they were interested in work benefits. As Mr. Trejo spoke to the men, their supervisor, Mr. Potter, entered the office whereupon Mr. Trejo thanked the men and left. Shortly thereafter, Mr. Potter told Mr. Rossi of Mr. Trejo's visit to the Base Ops employees and gave him a copy of the pro-union flyer.

Within an hour after Mr. Trejo returned to his work station, Mr. Rossi summoned him to his office where Mr. Massey was also present. Mr. Rossi told Mr. Trejo he had received a report that Mr. Trejo was passing out union leaflets at Base Ops, which was against company policy.[7] Mr. Trejo's account of the meeting is as follows: Mr. Rossi told him he was not supposed to solicit for the Union on base, and that he could be terminated for it. Mr. Trejo said he had the right to organize,

[5] In the post-hearing brief, based upon Mr. Ditter's admission, the General Counsel moved to amend the complaint to allege the Respondent maintained a rule discriminately forbidding employees from talking about unionization. The Respondent opposed any such amendment, arguing that it would be highly prejudicial to SSI, as the amendment's timing does not afford SSI an opportunity to defend itself. While it is unclear just how SSI might counter Mr. Ditter's admission, it is true that the Respondent was not put on notice of the proposed allegation until well after the hearing, which raises a due process question. I find it unnecessary to resolve that issue since any remedy for the existing allegation regarding maintenance of an overbroad solicitation/distribution rule would substantially rectify any violation stemming from the proposed allegation. Therefore, I deny the General Counsel's request.

[6] Mr. Trejo worked on the day shift, 7:30 a.m. to 4:30 p.m., Monday through Friday. Additional duties included forklift operation, maintenance of two SSI vehicles, responsibility for office equipment, and forklift training.

[7] Apparently it was the union content of the flyers that was objectionable. Mr. Rossi testified that engaging base ops and weather employees in union discussions while they worked would detrimentally distract them. However, Mr. Rossi said that if Mr. Trejo had given the employees a flyer announcing a softball activity during their on-duty breaks, "there would not have been a concern."

that he had been on his lunch break at the time, and that the people he was talking to were on lunch break also. Mr. Rossi said that although Mr. Trejo had the right to organize, doing so on base was grounds for termination. Mr. Trejo repeated that he had a right to organize, and Mr. Rossi told him not to get into trouble but to do it right, which meant not organizing or passing out union leaflets or anything to do with the Union on base.[8]

Mr. Massey and Mr. Rossi also testified about the meeting. Mr. Massey said Mr. Rossi reminded Mr. Trejo of the no-solicitation policy in the employee handbook but did not tell Mr. Trejo he could not solicit on base. Mr. Massey said Mr. Rossi told Mr. Trejo that if "both [Mr. Trejo and the solicited employees were] on break he could talk to them, or if they're at lunch, or if they're both…not in the work area. In the parking lot, I guess, or wherever is fine but clearly just not in the work area while they're working." Mr. Rossi testified that he showed Mr. Trejo the Respondent's solicitation policy, told him there was a right way and a wrong way to solicit and to be sure he did it the right way: not during work hours or on work time in the company work areas.

Mr. Trejo impressed me as a forthright and sincere witness overall. I also find Mr. Massey's testimony, although not a model of clarity, tended to corroborate Mr. Trejo's version of the solicitation restrictions Mr. Rossi pronounced in the mid-May meeting. Carefully considering all three accounts, I find that in his mid-May meeting with Mr. Trejo, Mr. Rossi told Mr. Trejo that he was restricted from soliciting in work areas, that his attempted solicitation of the Base Ops employees had violated the Respondent's no-solicitation policy, and that such was grounds for discipline if not specifically for termination.

After his meeting with Mr. Rossi, although Mr. Trejo continued to answer telephonic questions about the Union if employees called him, he ceased all organizing activities on the base and "laid low", feeling his union activity was not worth losing his job over.[9]

In June, SSI employees including Mr. Trejo unloaded seven pallets of cargo destined for EMI onto the SSI dock. Later, EMI employee Linda Houston (Ms. Houston) complained to an SSI manager that Mr. Trejo had offensively yelled to her to come and get her "f____material" out of the SSI dock area. In investigating the complaint, Mr. Massey interviewed both Ms. Houston and Mr. Trejo. Following the interviews, Mr. Massey reported the results of his investigation to Mr. Rossi. Mr. Rossi called Mr. Trejo into his office, told him that use of foul language was inappropriate at work, and asked him to furnish a written account of his interaction with Ms. Houston, which Mr. Trejo never did. The Respondent imposed no discipline on Mr. Trejo related to this incident.

On August 11, the Respondent hired Michael Lyon (Mr. Lyon). Mr. Lyon worked in facilities maintenance—a different section than TMO where Mr. Trejo worked—and assisted SSI employee Don Danley (Mr. Danley). In Mr. Rossi's opinion, Mr. Lyon and Mr. Trejo would not normally see each other unless Mr. Lyon was working in the same area as Mr. Trejo.[10]

According to Mr. Lyon, over the next two months he had four or five interactions with a man he believed to be Mr. Trejo (the putative Mr. Trejo),[11] the first four of which went as follows: (1) Mr. Lyon was introduced to the putative Mr. Trejo and SSI employee Jose Cervantes (Mr. Cervantes) on his first or second day of work. On that occasion, the putative Mr. Trejo repeatedly asked Mr. Lyon to "sign for the Union." When Mr. Lyon professed disinterest, the putative Mr. Trejo walked away "huffy and angry." (2) About a week later, while at a gas station with Mr. Danley, Mr. Lyon saw the putative Mr. Trejo in company with Mr. Cervantes. The putative Mr. Trejo and Mr. Cervantes approached Mr. Lyon and Mr. Danley and the putative Mr. Trejo again solicited Mr. Lyon's support for the Union. When Mr. Lyon demurred, the two men walked away, and Mr. Lyon heard the putative Mr. Trejo tell Mr. Cervantes that Mr. Lyon was a "f____ pussy."[12] (3) About two and a half weeks later, the putative Mr. Trejo again approached Mr. Lyon, shook his hand, engaged in social chitchat, and again asked Mr. Lyon to support the Union. Mr. Lyon said he was not interested, but as the putative Mr. Trejo continued to urge him, asked how many signatures were needed. When the putative Mr. Trejo said seven, Mr. Lyon told him to see him again when he had six. (4) Thereafter, on an undated occasion, when Mr. Lyon and Mr. Danley were together in a government vehi-

[8] In a statement Mr. Trejo wrote sometime in 2008 after his discharge, Mr. Trejo omitted any reference to Mr. Rossi's having warned in the mid-May meeting that breach of the solicitation rules could result in termination. When confronted with the omission during cross-examination, Mr. Trejo had no explanation beyond "probably for[getting]" but nevertheless held to his direct testimony. Mr. Trejo's self-prepared account did include an assertion that Mr. Rossi said Mr. Trejo should "be careful and do it [solicitation] right so that [he did not] get into trouble," which constituted an implicit threat of discipline. I do not find Mr. Trejo's self-prepared account of Mr. Rossi's threat of discipline to be so inconsistent or so at variance with Mr. Trejo's testimony of Mr. Rossi's threat of termination as to negatively impact Mr. Trejo's credibility.

[9] In attempted refutation of Mr. Trejo's testimony that he ceased organizing activities on the base, the Respondent adduced testimony from Suanne Parobek who said Mr. Trejo telephoned her on June 25 and asked what she was doing for lunch. When Ms. Parobek asked if it was about the Union, Mr. Trejo said he couldn't discuss that issue at work. There is insufficient evidence to permit me to infer from Ms. Parobek's testimony that Mr. Trejo was engaging in or intended to engage in union solicitation on the base. Rather, I find Ms. Parobek's testimony, which recounts Mr. Trejo's statement that he could not discuss the union at work, tends to corroborate Mr. Trejo's assertion that he became circumspect about his union activity on base after his mid-May meeting with Mr. Rossi.

[10] In a pre-hearing affidavit given to the Board, Mr. Rossi stated, "Lyon does not interact with Trejo at all."

[11] Since a question exists as to whether the individual Mr. Lyon identified as Mr. Trejo was, in fact, the alleged discriminatee, the individual about whom Mr. Lyon testified is referred to as the putative Mr. Trejo.

[12] Mr. Danley's account of this incident is somewhat different from Mr. Lyon's. While Mr. Danley testified that Mr. Trejo and Mr. Cervantes were at the gas station at the same time as he and Mr. Lyon, Mr. Danley did not say that Mr. Trejo interacted with Mr. Lyon. Mr. Danley testified only that he overheard Mr. Trejo say to Mr. Cervantes, "Oh, that's Don Danley, that's the f___ idiot, and [indicating Mr. Lyon] he's a f_____ pussy."

cle that was stopped "in a parking lot or on a road or something," the putative Mr. Trejo, also in a vehicle, "just said hi real quick and asked about the Union." Mr. Lyon said he was not interested, and he and Mr. Danley drove off.[13]

As to his fifth and crucial interaction with the putative Mr. Trejo (the October 6 confrontation), Mr. Lyon testified that on October 6 at about 9:30 a.m.,[14] as he was painting a sign at work, the putative Mr. Trejo, driving a government vehicle, stopped by him. The putative Mr. Trejo again spoke to Mr. Lyon about the Union. Mr. Lyon said he was not interested in the Union and asked the putative Mr. Trejo to leave him alone. The putative Mr. Trejo yelled, "Man you're just a f____ pussy like everyone else" and sped away.[15]

About five minutes after Mr. Lyon's interaction with the putative Mr. Trejo, Mr. Danley came to where Mr. Lyon was working, and Mr. Lyon described the incident to him. Mr. Danley urged Mr. Lyon to report what had happened to management, but Mr. Lyon was disinclined to do so because he did not want to cause a problem.

Three days later on October 9, Mr. Danley told Mr. Rossi that Mr. Trejo had had a conversation with Mr. Lyon, which Mr. Lyon did not want to report.[16] Thereafter, Mr. Rossi called Mr. Lyon into his office.[17] According to Mr. Lyon, Mr. Rossi said he had heard that Mr. Lyon and Mr. Trejo had had a conflict, and he asked Mr. Lyon to provide a written statement of the incident, which Mr. Lyon did. In pertinent part, the statement reads, as follows:

> I, Michael Lyon, was painting facility signs as assigned via RPM work order. I was approached by Rudy Trejo about signing a petition to unionize Satellite Services workers. I courteously explained to Rudy Trejo I could not discuss such matters on work hours and was not interested in signing. Rudy Trejo responded to me from the window of a government vehicle, and I quote, "Yea, that's bullsh__, you're just a f____ pussy like everyone else!" After screaming these obscenities at me, he proceeded to burn out and race North up Graeber Street at an estimated 40 mph.[18]

Mr. Rossi's testimony of his meeting with Mr. Lyon differed significantly from Mr. Lyon's. According to Mr. Rossi, at their meeting Mr. Lyon said that in the morning (on an unspecified date) between 9:30 or 10:00 a.m., while Mr. Lyon was painting a sign by building 1203, an individual Mr. Lyon identified as Mr. Trejo pulled over in a government vehicle and solicited Mr. Lyon's signature for the Union. When Mr. Lyon refused, the individual said, "That's a bunch of bullsh__, and you're a f____ pussy," and sped off. Mr. Rossi said he told Mr. Lyon, "Well, if you're that concerned about it then make a statement out for me," which Mr. Lyon did. Mr. Rossi initially testified that he thereafter attempted to contact Mr. Trejo's supervisor and, in his absence, spoke to Mr. Trejo's coworker, Cliff Law (Mr. Law), who reported that Mr. Trejo had been at work on October 6. According to Mr. Rossi, Mr. Law brought Mr. Rossi a bill of lading showing that Mr. Trejo had escorted a munitions delivery truck on and off the base that morning, signing off on the lading bill at about 9:00 a.m. From that information, Mr. Rossi concluded that Mr. Trejo had been in the area of building 1203 during the morning of October 6.

I give little credence to Mr. Rossi's account of his interview with Mr. Lyon about the October 6 confrontation, as it is significantly inconsistent with the version provided by Mr. Lyon, whom I find to be a more reliable witness to the event than Mr. Rossi. Mr. Rossi's account begs an inference that Mr. Lyon initiated the meeting and pressed for action on his complaint. Mr. Lyon's testimony, which I have credited, shows to the contrary that Mr. Rossi initiated the meeting and that Mr. Lyon had little independent interest in lodging a complaint against the putative Mr. Trejo. I also accept Mr. Lyon's description of the ensuing interview. Finally, I give no credence to Mr. Rossi's account of his later investigation into Mr. Trejo's whereabouts on October 6. When Counsel for the General Counsel conducted voir dire on the October 6 bill of lading signed by Mr. Trejo, Mr. Rossi testified he contacted Mr. Law and obtained the bill of lading prior to October 9 and before he received Mr. Lyon's statement. Mr. Rossi's relevant testimony was as follows:

> Q by Counsel for the General Counsel: When did you get [the bill of lading with Mr. Trejo's signature]?

[13] Mr. Danley did not testify about this incident.

[14] In the affidavit he gave to a board agent at the regional office during the investigation, Mr. Lyon said the incident occurred at approximately 1:30 p.m. Mr. Lyon testified that the time stated in the affidavit was in error because the board agent taking the affidavit took it out of context and that he was tired when he signed the affidavit after having spent several hours at the Region. Mr. Lyon accused the board agent of badgering him and of changing or distorting his words. I cannot accept Mr. Lyon's testimony in this regard. He testified that although he knew his affidavit contained errors, he never contacted the Board to point them out, and there is no evidence he complained to anyone of affidavit errors prior to the hearing. Moreover, Mr. Lyon admitted that he read and corrected several errors in his affidavit before signing it. Not only did I find Mr. Lyon's manner and demeanor during this testimony to be unpersuasive, I find it implausible that if Mr. Lyon believed significant errors existed in his affidavit, he would not have corrected them at the time he corrected others. I find Mr. Lyon was, at best, uncertain as to the time his confrontation with the putative Mr. Trejo took place.

[15] Specifically, Mr. Lyon testified that the putative Mr. Trejo "hit the throttle, the accelerator on the truck and made the tires chirp, burned out, broke traction, kicked dust and gravel all over the sign [he] was painting and took off up the street, probably doing about 40 [mph]."

[16] Mr. Rossi testified that Mr. Danley told him Mr. Trejo had asked Mr. Lyon to sign with the Union, and when Mr. Lyon refused, had used abusive language toward Mr. Lyon before speeding away in a government vehicle. As explained herein, I did not find Mr. Rossi to be a reliable witness. I credit Mr. Danley's account.

[17] There is some inconsistency in Mr. Lyon's testimony as to how his meeting with Mr. Rossi came about. Mr. Lyon initially testified that after Mr. Danley spoke to Mr. Rossi, Mr. Danley informed Mr. Lyon that he needed to report the incident to Mr. Rossi and write a statement about it, which Mr. Lyon did. That testimony suggests Mr. Lyon initiated the meeting with Mr. Rossi. Under cross-examination, however, Mr. Lyon agreed that Mr. Rossi initiated the meeting, calling him into his office to discuss his interaction with Mr. Trejo. In this regard I credit Mr. Lyon's later testimony, which was more detailed and clearer than his initial testimony. I find Mr. Rossi instigated the October 9 meeting with Mr. Lyon.

[18] Although the statement gave the date of the event as Monday, October 6, it stated no time.

A: . . . . It was after the 6th and prior to the 9th that I inquired and talked to [Mr. Law].

Q by Judge Parke: Prior to the ninth?

A: Prior to the ninth.

. . . .

Q by Counsel for the Respondent: Did you receive [the bill of lading] before or after you got the statement from Mr. Lyon?

A: Before.

. . . .

Q by Counsel for the Respondent: Did you receive [the bill of lading] before or after you got the statement from Mr. Lyon?

A: Oh, it was before. This was on the 6th and I inquired about it and Mr. Law advised me or validated that there was a munitions shipment on the sixth.

Q by counsel for the Respondent: Tell you why I'm confused. You're saying you're investigating the complaint—did you receive this during your investigation of the complaint that Mr. Lyon submitted?

[Objection as to leading]

Judge Parke: It's not leading, but there certainly is some confusion surrounding this.

A: Well, I'm sorry. Maybe I'm confused.

Following the above exchange, Mr. Rossi testified that he obtained the bill of lading after he met with Mr. Lyon. I recognize that witnesses may become confused when fixing dates and that such confusion does not necessarily impact credibility. However, the confusion Mr. Rossi evinced was not simply a matter of muddling dates; rather Mr. Rossi misstated a sequence of events that one could reasonably expect him to recall clearly, and Mr. Rossi held to the mistaken sequence until the Respondent's counsel spelled out his confusion. Further, in his Board affidavit Mr. Rossi made no mention of obtaining any document from Mr. Law, and the Respondent neither called Mr. Law to corroborate Mr. Rossi's account nor explained its failure to do so. In sum, I find that Mr. Rossi conducted a cursory and superficial interview of Mr. Lyon regarding his confrontation with the putative Mr. Trejo, and I further find that Mr. Rossi did nothing to corroborate or verify the underlying facts of Mr. Lyon's complaint.

On the afternoon of October 10, Mr. Trejo was called to Mr. Rossi's office where Mr. Rossi and Mr. Massey were present. Mr. Rossi gave Mr. Trejo a pay check and a termination letter dated October 10 that read:

> You are terminated effective immediately for violation of the "No Solicitation Policy" in accordance with Satellite Services, Inc. Employee Handbook. Additionally, you violated Satellite Services' policy in using vulgar language or abusive language to another employee of Satellite Services. You were also in violation of using a government vehicle for solicitation purposes. This is a misuse of a government vehicle.

Mr. Rossi told Mr. Trejo he had gotten a report from Mr. Lyon that in soliciting for the Union Mr. Trejo had used abusive/vulgar language and had misused a government vehicle. Mr. Rossi said he was terminating Mr. Trejo for those reasons. Mr. Trejo repeatedly denied the conduct, insisting that he was not the offender and saying he did not even know Mr. Lyon. Mr. Trejo asked to meet his accuser, arguing it was unfair to terminate someone on the basis of accusations alone. Mr. Rossi said it was his opinion that Mr. Trejo had engaged in the conduct he had been accused of and refused to rescind the termination.

During the period February 2005 to October 9, SSI had discharged only three employees at the base: two for positive drug tests and one for poor performance and safety infractions, including one that resulted in a battery-acid injury to an employee. In all instances of alleged inappropriate employee interaction described in the record, save Mr. Trejo's, the Respondent interviewed the parties involved in the incidents. As described above, in June the Respondent's supervisors interviewed both parties involved in an SSI/government employee dispute. Also in June the Respondent's supervisors interviewed both an EMI employee and Mr. Trejo regarding the EMI employee's complaint of inappropriate behavior. In 2009, an SSI employee complained to management of employee harassment about his height. Mr. Massey interviewed both complainant and the accused before counseling the accused to "cease and desist."

E. Mr. Lyon's Purported Identification of Mr. Trejo

Under cross-examination, Mr. Lyon testified as follows about his contacts with the putative Mr. Trejo: Mr. Lyon rarely saw him at the base. Although the man occasionally greeted Mr. Lyon by name, Mr. Lyon never conversed with him. The first two or three times the man spoke to him, Mr. Lyon had to ask someone else his name, as he could not recall it. Mr. Lyon was not sure whether the man was an EMI or an SSI employee.[19] Mr. Lyon could not remember the putative Mr. Trejo's face the first couple of times that he met him.[20] At the time of the October 6 incident with the putative Mr. Trejo, Mr. Lyon did not know the man's last name.

During the course of his testimony, Mr. Lyon returned from a hearing break and testified that he had seen in the restroom the person who used abusive language to him on October 6. Although Mr. Lyon could not recall whether the individual he saw in the restroom had facial hair or what shirt he was wearing, the Respondent asks me to find, based on Mr. Lyon's restroom identification that the putative Mr. Trejo and Mr. Trejo are one and the same. I cannot do so. The hearing was held in a conference room at a golf course clubhouse, the restrooms of which were open to all clubhouse visitors. There is no direct evidence that the individual Mr. Lyon saw in the restroom was, in fact, Mr. Trejo, and the deficiencies in Mr. Lyon's recall make it impossible for me to draw any reasonable inferences as to the individual's identity.

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[19] In the affidavit he gave to the Board during the investigation, Mr. Lyon said the putative Mr. Trejo was an EMI employee.

[20] Although Mr. Lyon testified that his confusion about the putative Mr. Trejo's identity lasted for only the first couple of meetings, in his Board affidavit, Mr. Lyon said the putative Mr. Trejo was wearing an EMI shirt the first time Mr. Lyon met him, that the putative Mr. Trejo looked like a "different guy" each time Mr. Lyon met him, and that Mr. Lyon could not remember his face because he never really paid attention.

V. DISCUSSION

A. The Respondent's No-Solicitation/Distribution Rule

The complaint alleges that the Respondent's no-solicitation/distribution rule in effect through the relevant period until early July 2009 was impermissibly overbroad and violated Section 8(a)(1) of the Act. The Respondent contends that this complaint allegation is barred because it is untimely under Section 10(b)) of the Act.

On April 29, 2009 the Union filed an amended charge with the Region alleging, inter alia that the Respondent had violated the act by "maintaining and enforcing an overly broad no-solicitation policy." Thereafter, on May 27, 2009, the complaint issued alleging that since July 22, the Respondent had maintained an invalid no-solicitation/distribution rule. The rule at issue was adopted more than 6 months prior to the filing of the April 29, 2009 charge, which first alleged that the rule violated the Act. Nonetheless, the Respondent's untimliness argument fails because the Respondent continued to maintain the challenged provision during the 6-month period prior to the filing of the April 29, 2009 charge and thereafter until July 2009. Section 10(b) does not preclude the Board from finding that a provision or policy maintained by an employer within the 10(b) period is unlawful even if it was adopted more than 6 months prior to the filing of a charge, since such violations are continuing in nature. *Carney Hospital*, 350 NLRB 627, 628 (2007). Accordingly, I find the amended charge and the complaint allegations regarding the Respondent's maintenance of an invalid no-solicitation/distribution rule to be timely.

An employer may lawfully impose some restrictions on employees' statutory rights to engage in union solicitation and distribution. Such restrictions, however, must be clearly limited in scope so as not to interfere with employees' right to solicit their coworkers on their own time or to distribute literature on their own time in non-work areas. *Republic Aviation Corp. v. NLRB,* 324 U.S. 793 (1945): *Our Way, Inc.,* 268 NLRB 394 (1983). The Board considers that an employer's maintenance of a work rule violates Section 8(a)(1) if employees would reasonably construe the language of the rule to restrict the exercise of Section 7 rights.[21] Applying that standard here, I find the Respondent's no-solicitation/distribution rule was unlawful because employees reasonably would construe its prohibition of "solicitations, collections, and circulation of petitions or distributions of literature by employees . . . in working areas . . . [which] includes all SSI or Government premises" to prohibit activity protected by Section 7.

The Respondent essentially concedes that the language of the no-solicitation/distribution rule was overbroad but argues that any violation of the Act has been substantially remedied by its voluntary revocation and replacement of the offending rule. The Respondent rescinded the relevant rule in early July 2009, replacing it with an assertedly lawful policy that it disseminated to all SSI supervisors and employees. The Respondent cites *Contra Costa Times,* 263 NLRB 566, 569 (1982), in support of its position. *Contra Costa* is inapposite to the instant situation. In *Contra Costa*, the Board affirmed an administrative law judge's conclusion that an employer's mere maintenance of a no-solicitation rule rendered unlawful by a change in Board law[22] was substantially remedied by its prompt alteration in the rule's language. The judge further noted the absence of evidence that the unlawful provisions of the former rule had been enforced. Unlike the facts in *Contra Costa*, here the Respondent repeatedly applied the provisions of its pre-July 2009 rule to restrict employees' protected solicitation and distribution activities. In these circumstances, the Respondent's maintenance of the no-solicitation/distribution rule constituted significant interference with and deprivation of employees' Section 7 rights and requires the imposition of an appropriate remedy. Accordingly, I find the Respondent's no-solicitation/distribution rule was unlawfully overbroad and thereby violated Section 8(a)(1) of the Act as alleged in the complaint.

B. The Discharge of Raul Trejo

Section 8(a)(3) of the Act provides that it shall be an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. The complaint alleges that the Respondent violated Section 8(a)(3) by discharging Mr. Trejo on October 10 because he engaged in union activities. The Respondent contends it lawfully discharged Mr. Trejo because of his triple violation of SSI's rules, i.e., the rules against using abusive language, misusing government vehicles, and soliciting employees when and where they were working.

In cases turning on employer motivation, the Board applies the analytical framework established in *Wright Line,*[23] which assigns the General Counsel the initial burden of proving protected activity by an employee, employer knowledge of the activity, and animus on the part of the employer. If the General Counsel meets the initial burden, the burden shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's protected activity. *Wright Line,* supra at 1089.

The General Counsel has met his *Wright Line* burden as to the discharge of Mr. Trejo by showing that Mr. Trejo engaged in union activities, that the Respondent knew of his union activities, and that the Respondent bore animus toward his activities. It is undisputed that Mr. Trejo engaged in union activities during the relevant period. The Respondent's general animosity toward employees' union activities is evidenced by Mr. Rossi's March threat to Mr. Blanford and Mr. Isom that if they continued union activity or solicitation on base, they would end up on the unemployment line. The Respondent's knowledge of and animus toward Mr. Trejo's union activities is evidenced by Mr. Rossi's mid-May meeting with Mr. Trejo concerning Mr. Trejo's distribution of a union flyer to Base Ops employees. At that meeting, Mr. Rossi emphasized to Mr. Trejo the unlawful breadth of the Respondent's no-solicitation/distribution rule by informing him that the rule applied to union organizing on

[21] *Lutheran Heritage Village-Livonia,* 343 NLRB 646, 646–647 (2004).

[22] See *T.R.W. Bearings Division,* 257 NLRB 442 (1981).

[23] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

the base and by threatening him with discipline if he violated the rule.[24] Mr. Rossi further demonstrated his union animus by acknowledging at the hearing that presentation to the Base Ops employees of a non-union-related announcement such as a softball activity would not have generated employer concern. The General Counsel having met the initial *Wright Line* burden, the burden shifts to the Respondent to establish persuasively by a preponderance[25] of the evidence that it would have discharged Mr. Trejo even in the absence of his union activities.

The Respondent argues that it was justified in discharging Mr. Trejo because it had a reasonable belief that he had threefold violated the Respondent's valid workplace rules: he had breached the company's no-solicitation/distribution policy; he had used vulgar or abusive language to another employee; and he had used a government vehicle for solicitation purposes.

The reasonableness of the Respondent's belief that Mr. Trejo had, in fact, committed any of the three acts as charged is a significant issue. In order to meet its shifted *Wright Line* burden, the Respondent "must show that it had a reasonable belief that the employee committed the offense, and that it acted on that belief when it discharged him." *McKesson Drug Co.,* 337 NLRB 935, 936−937 and fn. 7 (2002). After careful consideration of the credible evidence herein, I find Mr. Trejo did not commit the acts he was accused of, and Mr. Rossi, who made the decision to discharge Mr. Trejo, did not reasonably believe that he had done so.

I find that Mr. Lyon's purported identification of Mr. Trejo as the October 6 offending employee was so convoluted and inconsistent that I cannot reasonably infer that Mr. Trejo was the individual who accosted Mr. Lyon on October 6. Without Mr. Lyon's identification, there is no evidence that Mr. Trejo interacted with Mr. Lyon at all on October 6, and I accept Mr. Trejo's denial that he did so. Of course, Mr. Lyon's mistaken identification of Mr. Trejo does not, in and of itself, prevent Mr. Rossi from forming a reasonable belief of Mr. Trejo's culpability; accordingly, Mr. Rossi's belief in the validity of Mr. Lyon's complaint must be examined.

In assessing the reasonableness of Mr. Rossi's asserted belief, I have considered the following: (1) Mr. Rossi failed to conduct a reasonable and objective investigation of Mr. Lyon's complaint. The credible evidence shows that Mr. Rossi did not question Mr. Lyon about what had occurred on October 6, but merely asked him to write a statement. Although Mr. Lyon's statement was cursory at best, Mr. Rossi did not ask for a fuller description of the alleged event. Specifically Mr. Rossi did not ask Mr. Lyon what time the confrontation occurred even though, according to Mr. Rossi, the alleged timing was a significant factor in his belief of Mr. Trejo's guilt and even though superficial inquiry could be expected to reveal Mr. Lyon's uncertainty about the time. Mr. Rossi also did not inquire into Mr. Lyon's reluctance to lodge the complaint, which might have shed light on the incident, and he did not question Mr. Lyon's identification of Mr. Trejo although any meaningful inquiry must have exposed at least some of the inconsistencies revealed by Mr. Lyon's testimony. Further, Mr. Rossi made no effort to obtain Mr. Trejo's version of what, if anything, had occurred, even though evidence of SSI's misconduct investigation procedures shows a practice of interviewing both parties involved in employee clashes.[26] (2) Mr. Rossi's lack of credibility in testifying of the circumstances surrounding the termination.

I find that Mr. Rossi's failure to conduct an adequate investigation of Mr. Lyon's complaint evidences discriminatory motivation in Mr. Trejo's discharge. See *Alstyle Apparel*, 351 NLRB 1287, 1287−1288 (2007) (limited investigation into alleged misconduct without giving employees an opportunity to explain allegations against them support a conclusion that the discharges were discriminatorily motivated); *Midnight Rose Hotel*, 343 NLRB 1003,1005 (2004) (failure to conduct fair investigation before imposing discipline defeats claim of reasonable belief of misconduct). I further find that Mr. Rossi's lack of credibility in explaining the circumstances surrounding Mr. Trejo's termination also evidences an absence of reasonable belief and an improper motive. Inferences of animus and discriminatory motive may derive from false reasons given in defense,[27] and I draw just such inferences from Mr. Rossi's credibility lapses.

In sum, I find the Respondent held no good faith belief in Mr. Trejo's misconduct when it fired him. As a consequence, the Respondent has not met its shifted burden under *Wright Line.* The evidence supports the conclusion that the Respondent's true motivation in discharging Mr. Trejo was not Mr. Trejo's alleged misconduct but rather his union activities. Accordingly, I find the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Mr. Trejo on October 10.

CONCLUSIONS OF LAW

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

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

3. The Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad rule prohibiting employees from engaging in protected solicitation/distribution during nonwork time and in nonwork areas.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging Raul Trejo because he engaged in union or other concerted, protected activities.

[24] The complaint does not allege Mr. Rossi's warning as an unlawful threat, presumably because it falls outside the 10(b) period; it may, nonetheless, serve as evidence of animus.

[25] A "preponderance" of evidence means that the proffered evidence must be sufficient to permit the conclusion that the proposed finding is more probable than not. McCormick, *Evidence,* at 676–677 (1st ed. 1954).

[26] Respondent's apparent argument that Mr. Rossi's knowledge of Mr. Trejo's conflict with Ms. Houston obviated the necessity of deeper investigation is without merit. In a work setting where, as the evidence shows, use of vulgar or obscene words is fairly common, brief instances of vulgarity do not establish a modus operandi sufficient to identify Mr. Trejo as the likely culprit.

[27 *Trump Marina Hotel Casino,* 353 NLRB 921, 931 (2009) (citations omitted).

5. The unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find 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 unlawfully discharged Raul Trejo, it must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed on a quarterly basis from the dates of his discharge to the 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 will be ordered to make appropriate emendations to Raul Trejo's personnel file. The Respondent will be ordered to rescind, insofar as it has not already done so, its overly broad solicitation/distribution rule, and the Respondent will be ordered to inform employees in writing that it has done so. The Respondent will be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[28]

ORDER

The Respondent, Satellite Services, Inc., March Air Reserve Base, Riverside, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a rule prohibiting employees from engaging in protected solicitation/distribution during nonwork time and in nonwork areas.

(b) Discharging any employee for engaging in union or other protected concerted activities.

(c) 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) Insofar as it has not already done so, rescind the overly broad rule prohibiting employees from engaging in protected solicitation/distribution during nonwork time and in nonwork areas and inform employees in writing that this has been done.

(b) Within 14 days from the date of this Order, offer Raul Trejo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Raul Trejo whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Raul Trejo and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(e) 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.

(f) Within 14 days after service by the Region, post at its facilities on the March Air Reserve Base, Riverside, California copies of the attached notice marked "Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 2008.

(g) 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.

Dated: September 23, 2009.

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

[28] 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.

[29] 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."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT maintain a rule prohibiting any of you from engaging in union or other protected solicitation/distribution during nonwork time and in nonwork areas.

WE WILL NOT discharge any employee for supporting the International Association of Machinists and Aerospace Workers, District Lodge 725, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights stated above.

WE WILL rescind any rule prohibiting any of you from engaging in union or other protected solicitation/distribution during nonwork time and in nonwork areas, and we will inform you in writing that this has been done.

WE WILL offer Raul Trejo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or to any other rights or privileges previously enjoyed.

WE WILL make Raul Trejo whole for any loss of earnings and other benefits suffered as a result of our unlawful discharge of him.

WE WILL remove from our files any reference to the unlawful discharge of Raul Trejo and notify him in writing that this has been done and that the discharge will not be used against him in any way.

SATELLITE SERVICES, INC.