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

NEW ERA CAP COMPANY, INC.

and

Cases 3–CA–21227
3–CA–21274

VALERIE BALDWIN, An Individual

and

CWA, PPMW SECTOR

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DECISION

Statement of the Case

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Buffalo, New York, on January 25 through 28, 1999. Subsequent to an extension in the filing date briefs were filed by the parties. The proceeding is based upon a charge filed April 3, 1998 by Valerie Baldwin, an individual and on April 23, 1998, by Communications Workers of America Printing and Media Workers Sector. The Regional Director's amended consolidated complaint dated November 3, 1998 alleges that Respondent New Era Caplo, Inc., of Buffalo, New York, violated Section 8(a)(1) and (3) of the National Labor Relations Act by engaging in surveillance of employees engaged in Union activities, interrogation of employees about their Union activities, coercing employees to divulge their positions concerning the affiliation election threatening employees at closure of the facilities should affiliation be successful, issuing a letter to its employees urging them to vote against affiliation with the Union as well as promising them paid time off for work and free transportation to vote in the affiliation election; providing employees with paid time off from work provided employees with free transportation to the poles in order for them to vote in the affiliation election, and by suspending employee Valerie Baldwin because she actively supported affiliation.

Upon a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following:

Findings of Fact

I. Jurisdiction

Respondent is engaged in the manufacture, of baseball caps at facilities in Buffalo and Derby, New York. It annually ships goods valued in excess of 50,000 from its Hamburg, New York, distribution facility to points outside New York and it admits that at all times material is has been an employer engaged in operations affecting commerce within the meaning of Sections 2(2), (6) and (7) of the Act. It also admits that Communications Workers of America, Local 14177, AFL-CIO, CLC and the New Era Cap Co., Inc., Buffalo Plant Independent Union, each are a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

The Respondent is a family owned company that has for manufactured baseball style caps for 60 years and 55 percent of its business comes from contracts with the Major League Baseball. It has two manufacturing plants, Derby and Buffalo, and a distribution plant in Hamburg, New York near Buffalo. Additionally, it operates a new manufacturing plant employing approximately 200 employees in Annapolis, Alabama, that became operational approximately 9 months prior to the hearing. The Buffalo, Derby and Hamburg plants have unionized work forces. The Buffalo and Hamburg employees are a part of the same bargaining unit and are represented by the Buffalo Plant Independent Union. Generally, there are between 450 and 500 production employees at the Buffalo plant (where there is a distinct multi-cultural work force including several different Asian and Latin ethnic groups), and between 30 and 75 employees at the Hamburg facility. The Derby plant employs approximately 550 production employees and prior to July 1997, they were represented by an independent union of plant employees. In July 1997, after two elections, the Derby plant employees voted to affiliate with the CWA.

David Koch is the Respondent's CEO and Chairman. He does not get involved in day to day operations as he used to and is principally concerned with maintaining his and the company's long standing relationship with major league baseball associations and in negotiating contracts with them. At Buffalo, Vincent Farallo is the plant manager, Janine Nowak personnel manager, and Brian Friedmann production manager, Jeremy Tirado is a floor supervisor and Frank Zieminick was production manager until June 1998, Michael Selinski, John Farallo, Raymond Walker, and Steve Heinrich (until about August 1998) also held positions as supervisors.

A few weeks after the successful affiliation election at the Derby plant, Robert Rozler, CWA's Staff Representative, was contacted by employees expressing an interest in having the CWA represent the production employees at the Buffalo plant. Actual meetings regarding affiliation stared in October of 1997. An affiliation committee of approximately 12 to 15 employees was established, which included Cecilia Quiros, Paul Kulbacki, Carmen Santiago and later Valerie Baldwin, among others. In October this committee was designated by Independent Union president Nancy Burkhard to bring information back to the union members on affiliation. Burkhard solicited volunteers for this committee, which also included Sheila Burnett, and John Trippi and Hamburg plant employees Pam Fuller and Gene Kloder.

The affiliation committee began to keep regular contact with representatives of the CWA, and held meetings at its district office right until the date of the affiliation vote, March 25, 1998.

Meanwhile, on September 17 the Respondent's management met with CWA representatives Al Rudy and Robert Rozier in order to get to know each other and to discuss the future plans of the Company and the Derby plant. One of the many subjects discussed was the Company's ongoing negotiations with major league baseball to obtain a new five year agreement to be the exclusive franchise for the manufacture and sale of baseball caps (the existing agreement was due to expire December 31). The Union offered to assist the company in its negotiation by contacting major league baseball, however, CEO Koch said that he did not wish the Union to be involved whatsoever; that such negotiations were very sensitive and that their involvement would not be beneficial and the CWA representatives agreed they would respect his wishes.

Daniel Geary, former president of the Derby independent union that became a local of CWA, testified that in January 1997 Koch sent a letter to the offices of the union expressing concern about the success of the contract negotiations with major league baseball in which described the contract as Respondent's "life blood", and expressed fear of competition from offshore or Mexico. The letter Koch stated:

> "You as union officers have the fate of 600 members in your hands. It is your obligation to work with the company so that you can protect their jobs and their livelihood. . . .

A January 15, 1997, memo to all production employees, which stated, amongst other things, the following:

> I think that you all know that we are fighting for our lives trying to work out a new deal with major league baseball that will insure our futures for the years to come. Part of these negotiations are insuring baseball THAT WE CAN DELIVER CAPS WHEN THEY ARE NEEDED AND WHERE THEY ARE NEEDED. We must prove to baseball THAT THEY CAN DEPEND UPON US. . . .

Geary (who was laid off in May 1997) testified that in late July he was among a contingent of Derby union representatives that went down to Washington to sign the affiliation agreement with CWA. During that time period he met the President of the CWA, Morty Bahr. Geary asked Bahr, amongst other things, whether he could help secure the contract with Major League Baseball and New Era Cap, and Bahr stated that he would see what he could do. At the time that he made this request, nobody in New Era's Cap's management informed him that his assistance in securing the contract was not welcome. Geary said that he did so because:

> "It was very clear that we were in danger of losing the contract, and we were fighting for our lives throughout all the membership."

On September 18, 1997, Koch observed a TV news truck stop and began to "pull out" cameras. Koch personally questioned what the reporter was doing. The reporter said that he understood that they were going to do a story on New Era Cap and their major league baseball negotiation or contract that we were negotiating. Koch asked who told you we were negotiating a new contract? This isn't common knowledge and the reporter said that he understood that they were going to do a story on New Era Cap and their major league baseball negotiation or contract that we were negotiating. Koch asked who told you we were negotiating a new contract? This isn't common knowledge and the reporter allegedly said they got a call from the CWA. Koch ordered the reporter to put his "stuff" back and threatened:

> if in fact you put something on TV that's picked up by the AP, and goes all over this country; and these guys I'm negotiating with get wind of this that I'm playing some hardball, I'm going to sue Channel 2, and I'm going to sue the CWA. Now get the hell out of here.

Koch admitted he actually may have used "more choice words." The next day Koch was called by the local Congressman, who asked if there was anything he could do in Washington to help out. Koch said no. And asked how he get wind of this? and he testified that "they" said "they" were called up by the CWA.

In early October, Koch met with the head of the major league baseball negotiating team to discuss the contract proposal and was told that CWA representatives from Washington, D.C., has contacted major league baseball regarding the ongoing contract negotiations. When he expressed displeasure at this occurrence, Koch apologized for what he presumed to be union pressure tactics and said that such contact was directly contrary to his wishes. Despite Koch's concerns, an 80 million dollar, 5 year contract was reached in April 1998.

In the fall of 1997, the CWA began a campaign to affiliate the Independent union at the Buffalo plant with the CWA. An election to determine the affiliation question was subsequently scheduled for March 25. The Respondent confirms that Koch responded to the affiliation attempt in Buffalo by directing Buffalo plant manager Vice Farallo to address two issues. First, he wanted the employees to be informed of the CWA's interference with the major league baseball negotiations (because Koch felt the CWA's conduct had jeopardized the contract, that such information was of mutual concern to the Company and the employees that the employees had been threatened by the conduct of the CWA, and that they should be made aware of the "reneging of the agreement" which had been reached in September), and second, he wanted the decision to be made by a true majority of the employee population. Accordingly, Farallo was instructed to attempt to encourage as many employees to vote as possible, however, Koch did not give Farallo any specific instructions in terms of what actions should be taken.

As noted, a few weeks after the Derby affiliation election, employees at the Respondent's Buffalo and Hamburg began inquiring about affiliating their Independent Union with the CWA and between October 1997 and March 1998, Rozler and Rudy (administrative assistant to CWA vice-president William Boarman) held a dozen or more meetings with employees concerning affiliation efforts. The employees who generally participated in the meetings were members of the CWA affiliation committee, which was established, with the approval of independent Union president Nancy Burkhard, during a regular union meeting in October. The affiliation committee members including Cecilia Quiros, Carmen Santiago, Paul Kulbacki, Valerie Baldwin and two employees from the Hamburg facility. Burkhard attended one of the affiliation committee meetings, but left after stating that she was not in favor of affiliation.

The Independent Union declined to provide the CWA with names and addresses of members of the Independent and the CWA had to rely on the affiliation committee members to distribute promotional literature that Rudy provided the committee members during the various and in February the CWA provided the affiliation committee members with "vote yes" buttons to distribute to fellow employees.

Cecilia Quiros started with Respondent in 1991. She is a machine operator making eyelets in baseball and earns $11.75 per hour on first shift from 7:00 a.m. to 3:30 p.m. (the Respondent has other shifts from 8:00 a.m. to 4:30 p.m., Monday through Friday and 4:00 p.m. to 2:00 a.m., Monday through Thursday and about 300 employees' work on day shifts). Before April 1998, day shift employees had 2 scheduled 15 minute breaks; a morning break which

could only be taken anywhere from 9:00 a.m. to 9:30 a.m. and an afternoon break that could only be taken between 2:00 p.m. to 2:30 p.m. and a half hour lunch period from 12:00 p.m. to 12:30 p.m. Employees work on five floors and are divided by groups that are called "cells." Quiros' usually works on the fourth floor in cell C-2 under supervisor, Michael Selinski.

In June 1997, Quiros and Carmen Santiago had begun collecting signatures from other employees in an effort to affiliate with the CWA. Quiros thereafter attended about 10 meetings with the affiliation committee. During one of the affiliation committee meetings, members agreed that, because they did not know all of Respondent's employees, it would be a good idea to have employees show personal identification, like a "green card," in order to vote at the affiliation election. In particular, Quiros pointed out that, despite socializing with many employees, she did not know or recognize all of Respondent's Asian employees and noted that some of them did not understand English very well.

Quiros spoke with approximately 200 employees about voting in favor of affiliating with the CWA, generally during her breaks and lunch period in the employee cafeteria located on the second and fourth floors in the hallways or at employees' machines and she observed that supervisors Friedmann and Selinski were often present. Quiros also distributed over 200 pieces of CWA affiliation literature as well as "vote yes CWA" buttons in February 1998, and she posted CWA literature in various places at the facility, with heightened activity between January and March 1998. In March, she also observed supervisor Faltisko making anti CWA buttons available to employees in her cell.

The Independent Union only allowed the CWA to make a presentation to the membership at one meeting. This meeting was held at the Spanish hall in Buffalo, the same location of the subsequent affiliation election. In attendance at this meeting were approximately 75 employees (out of approximately 500 production employees).

Starting in February the Respondent, in the person of plant manager Farallo, held meetings with employees where he stated that employees did not need a union, that the CWA just wanted employees' money and that Respondent did not want a union at the facility to intrude with employees' jobs. Farallo conducted a second meeting in later March and told employees that, before voting at the affiliation election, they should think about the fact that Trico, Mercy Hospital and other local unionized employers moved to other locations because they had unions. Furthermore, Farallo told employees that, since the CWA began representing employees at Respondent's Derby, New York facility, 97 grievances had been filed and 11 employees had been terminated. Farallo ended the meeting by telling employees that if they still wanted to have a job to think carefully about the things he said before voting at the affiliation election. During the meeting, Farallo made a general reference to an incident involving Quiros, when Respondent had terminated her for 3 days in September 1997, and he stated that he had gotten Quiros' job back for her. However, Quiros spoke up and said that she had fought to get her own job back. Kulbacki also spoke up at the meeting.

Quiros testified that, between January and March 1998, she saw various anti CWA affiliation literature posted throughout the facility and Quiros on March 25, supervisor Selinski gave out letters which urged employees to vote against the CWA. The letter also stated that Respondent would provide employees (but not those at the Hamburg facility), with free transportation to the affiliation election site, as well as with paid time off to vote.

The affiliation election was held on March 25, from 2:30 p.m. to 5:30 p.m., at the Independent Union hall located four blocks away from the Buffalo facility. Quiros was an observer and counter of ballots. The Independent Union officials handing out ballots to voters

had a document listing eligible voters' names which they checked as employees came to vote. The CWA lost the affiliation election 325 to 113.

Several other events bearing on the Respondent's conduct that occurred prior to the election will be set forth in more detail in the following discussion, including the facts surrounding the Respondent's decision to discipline CWA supporter Valerie Baldwin for posting a notice just prior to the election (a notice that allegedly constituted racial harassment), and for her denying her participation in the event.

III. DISCUSSION

These proceedings arose after some members of an independent local union sought to have their union become affiliated with the CWA, an international union that recently had become the employees collective bargaining representative at another facility operated by the Respondent. During the course of the affiliation effort it became apparent that the Respondent favored the status quo and that its CEO was adamantly against the CWA and he instructed his managers to get out the message that the CWA had interfered with his negotiation with major league baseball and had jeopardized the reaching of a new contract. The CWA lost the election and it is alleged that the Respondent engaged in various actions that interfered with employees' Section 7 rights in its attempts to discourage the employees from affiliating with the CWA and that it disciplined one employee because of her involvement in support of affiliation. The Respondent on the other hand, contends that its statements and actions were within its free speech rights of Section 8(c) of the Act that permit it to explain its views on unionization to its employees.

A. Section 8(a)(1) Allegations

Surveillance – Affiliation supporters Quiros and Kulbacki both testified that prior to the onset on affiliation activities, supervisor Friedman was generally present in their work area once a week on Thursdays in order to review boxes for orders; Faltisko once a day in the morning posting safety minutes or documents; and Zieminick about once a day going about his normal business. Fridmann acknowledged that, every Thursday, he spent about 20-30 minutes in each cell looking at orders to gauge employees bonuses.

Quiros described how in October, 1997, she and other CWA committee members became involved in affiliation efforts and how thereafter Zieminick, Selinski, and especially Fridmann and Faltisko changed their previous pattern of supervision and began to closely watch and follow them around the facility on an increasing basis. In particular, Quiros noted that several times a day Fridmann would stand close to her anytime she spoke with fellow employees and would not leave her area until Quiros finished her conversation with the employee.

At that time that Fridmann was assistant production manager with duties to ensure that production was being maintained throughout the plant. As a result, he would periodically walk around the plant to inspect the production areas. He admits that between November 1997 and March 1998, he would walk up to the fourth floor more often than he had in the past but asserts that the reason for this is that there seemed to be a considerable amount of tension created by the pro and anti affiliation employees working on that floor, with greater employee loitering. He asserts that his mere presence, as a manager, had the effect of causing the employees to cease their loitering and return to their work without his having to speak to employees. Fridmann asserts that he did this with both pro CWA and anti CWA employees and did not overtly attempt to curtail any employees from engaging in campaign activities. He also

explained that he no longer did this after the election, as he became production manager with duties that required him to be in other areas.

Supervisor Faltisko became safety and health coordinator in November 1997, with general duties in this position including accident prevention, and ensuring that safety rules and regulations are followed. He then began to perform daily walk throughs of every area of the plant in addition to his principal job as supervisor of employees in the sew reinforcement area on the third floor. Faltisko testified that when he does notice a potential safety hazard, he tries to address it as soon as possible, frequently himself, and thus it was not be unusual for him to change electric plugs and light bulbs or sweep up a mess. However, other employees were assigned to assist him and he could have them to do minor repairs or clean up. He also engaged in noise testing of each floor in the plant sometime in late 1997 and early 1998 to ensure that the noise level at the facility did not exceed legal limits.

During his daily walk throughs of the plant Faltisko frequently noticed employees who were not in their assigned cell and if more than 15 minutes would elapse and he saw that same employee again outside of the assigned work area, he would request that they return to their work area. He did this to many employees, including Quiros. Kulbacki[1] recalled that Faltisko increased his presence around Kulbacki's work area by engaging in menial tasks like sweeping the floor and changing switches and light bulbs and that supervisor Selinski would eavesdrop on conversations Kulbacki had with other employees, would insert himself into the discussion, expressing the futility of affiliation with comments like "The Company is going to do what they want with or without a Union." Similarly, Kulbacki's testified that Selinski began taking breaks in the smoke room, when he previously took breaks in another area. Kulbacki also observed that supervisors would follow around other members of the affiliation committee, including Valerie Baldwin and John Trippi.

Here, the Respondent did not make any overt expression of concern about its production or about excessive breaks time in connection with the employees' pre-election activities and therefore its assertion of these generalized reasons as a justification or its extra overt attention to and surveillance employees appears to be pretextual. The employees involved were known to be open supporters of CWA affiliation and the Respondent made no effort to inform any employees of its asserted reasons for increased managerial presence in the work area. It appears that the increase attention by Freedman, Zieminick, Selinski, and Faltisko was not merely coincidental and Faltisko's substantial personal performance of maintenance and janitorial duties (the record shows that, in March 1998, Respondent employed between 7 and 10 mechanics and 3 janitors who were responsible for such duties around the facility and whose working shifts coincided with Faltisko's), reasonably would appear to be a contrived excuse to observe the employees and I find the reasons lack persuasion. Here, several of the Respondent's supervisors changed their style and frequency of their observation of employees' nominal work functions (which discontinued after the election), and I find that the affected employees could objectively and reasonably believe that they were subjected to this increased attention because of their activities in support of CWA affiliation. To uncharacteristically place union activist under close and obvious observation has influence and effect upon employees that illegally interferes with their Section 7 rights, see *Laser Tool, Inc.*, 320 NLRB 105, at 109 (1995). Under these circumstances, the Respondent marked increase in the frequency and time of supervisors' visits to the employees work areas created the impression that its

[1] Kulbacki also was concerned that one of the plant's regular surveillance cameras was focused on his work area, however, other testimony appears to refute this belief and, as the matter is not persuaded in the General Counsel's brief, it will not be discussed further.

employees' union activities were under surveillance and I conclude that the Respondent's supervisors did engage in surveillance in violation of Section 8(a)(1) of the Act, as alleged.

Interrogation – On about March 17, Respondent's supervisors Faltisko and Farallo distributed campaign material (vote no buttons) to employees, and it is alleged that this constitutes form of interrogation because it required employees to divulge their positions concerning the affiliation election citing *Kurz-Kasch,* 239 NLRB 1044 (1978). Farallo and Tirado admitted that Respondent ordered 300 anti-CWA buttons and had them shipped to its facility (which it received on March 17), and that Farallo he and Zieminick both informed supervisors about the "vote no" buttons but told them not to hand them directly to employees.

Faltisko testified that he did not give a "vote no" button to any employees, even though he admitted he wore 6-8 such buttons at a time. Quiros credibly testified that Faltisko distributed "vote no" buttons on about March 17 when he gave some anti-CWA buttons, which he had in a plastic bag, to employees on her line by placing the buttons on their machines and directly handing the buttons to some of them. In particular, Quiros stated that Faltisko gave buttons to employees Carmen Gordon and Kwan (last name unknown) who worked a few machines behind her. Quiros pointed out that the employees who received buttons did not appear to ask Faltisko for the buttons.

Kulbacki also saw Faltisko wearing a "vote no" button and saw him give a "vote no" button to Carmen Gordon, as well as envelope filled with such buttons. Kulbacki then saw Faltisko and Gordon walk to Eunice Bates' machine and saw Faltisko gave Bates a "vote no" button. Kulbacki also noted that he saw Faltisko give "vote no" buttons to a female Asian employee (name unknown) and another named Giovanni (last name unknown). Baldwin also saw supervisor John Farallo hand "vote no CWA" buttons to 2 employees at work and noted that there were no conversations between him and the employees.

At this point I note that my evaluation of the demeanor of the witnesses and the circumstances leads me to conclude that the Respondent's witnesses testimony in denying the actions attributed to them is strained and inherently unbelievable and I find that the General Counsel's witnesses were credible in their corroborative description of the events. However, although I find that the Respondent's supervisors did offer and give "Vote No" buttons to employees, I am not persuaded that the evidence is sufficient to show (by any accompanying words), that the distribution was made in a manner that would pressure employees to make an open acknowledgement of their affiliation sentiments. Accordingly, as there is no proof that the offers were accompanied by any threats or coercion, see *Vemco, Inc.,* 304 NLRB 911, 913 (1991), I find there is no compelling basis to find that the Respondent's action in this respect constituted unlawful interrogation.

Threats – On March 23, plant manager Farallo met with employees in order to discuss the CWA affiliation election. Farallo testified he held a dozen meetings with group of between 3 and 50 employees. Previously, in February, Farallo, Zieminick and Selinski, held a meeting with employees in which Farallo stated that employees did not need a union, the CWA just wanted employees' money and that Respondent did not want a union at the facility to intrude with employees' jobs. Farallo stated that Respondent was ready to open its plant in Alabama, which was getting ready to do the same job as the Buffalo plant, with the same production numbers. Farallo then said that he thought the CWA was a bad idea for Respondent and employees and stated that other unionized local employers had left the Buffalo area. Farallo ended the meeting by reiterating and emphasizing that the Alabama plant was going to be doing the same production as the Buffalo plant.

Quiros described the second meeting in March and how Farallo told employees that. before voting at the affiliation election, they should think about the fact that Trico, Mercy Hospital and other local unionized employers moved to other locations because they had unions. Furthermore, Farallo told employees that, since the CWA began representing employees at Respondent's Derby, New York facility, 97 grievances had been filed and 11 employees had been terminated. Farallo ended the meeting by telling employees that if they still wanted to have a job, to think carefully about the things he had told them before voting.

Kulbacki testified that in the second meeting with Farallo and Selinski, which was a few days prior the election, Farallo said that Respondent did not need the CWA because it already had the Independent Union. Farallo then stated that employees in the Buffalo plant were training to go to the Alabama plant and tied that statement in with the CWA affiliation election. Farallo also told employees that David Koch, CEO and chairman of the board, told CWA representatives not to get involved in Respondent's contract negotiations with major league baseball, but that CWA representatives had done so anyway.

Farallo admitted that he may have told employees, at some point, that many companies are taking their business to Mexico and that he may have stated that Respondent's plant in Alabama was being fitted to do the same work as was being done at the Buffalo facility but denied that he said that Respondent's Alabama plant was performing the same work as Buffalo. Farallo testified about what he "wanted" to do in his 15 minute meetings with the various groups of employees and then, with some prompting from the bench, was asked to state what he actually said. He then testified as follows:

> The first issue led into the second issue. The issue of MLB's interference into our Major League Baseball – I'm sorry, the C.W.A.'s interference into our negotiations with Major League Baseball. The conversation back in September with Dave Kooh and Al Rudy, I explained that to them. I told them about the subsequent visits by WGR Channel 2, the call from Jack Quinn's office. I told them about the meeting with Greg Murphy in October, which was really devastating to Dave Koch, and could have really caused us to lose the Major League Baseball license. We were up against – I know we mentioned some other names, but Nike and Reebok and everybody else, but that was a formidable, formidable foe. Dave's relationships were what was keeping us alive. And when I say alive, I could not stress enough that without Major League Baseball, hundreds of hundreds of people were going to lose their job.
>
> There's no question about it. Plants were going to close; hundreds of people were going to lose their job. It's at least 55 percent of our business, and I let everybody know that that interference almost cost their jobs. I wanted to make sure they realized that.
>
> I also wanted to make sure, my third topic, and I knew that they would get a letter because the Derby employees got this letter. This letter was from the Major League Baseball's Players Association, and even my wife, when she showed me the letter, thought it was from Major League Baseball. She's my wife, a very intelligent woman. You know degree and everything. Thought this was from Major League Baseball.
>
> It was not from Major League Baseball. It was from the Players' Association. The Players' Association is what caused us to have hundreds of people laid off in the year of 1994 because of the strike. The man that signed

that letter was, in my mind, being a baseball fan and everything else – this is what I told people – was the cause of them being laid off for an extended period, and some people never being called back. They had found other employment; their unemployment had run out.

So I pointed that out to them. Don't be fooled by this letter. This letter is coming from the union who, by the way, the owners that vote on our contract, that's who votes on a contract, they don't have a lot of good things to say about the union. Maybe in the papers they do, but they don't in reality. So that's what I pointed out to them. And those were the three topics that I covered.

He denied that he said employees "would lose their jobs and be fired" – "if they voted for the CWA," but admittedly said that "if we lost our Major League Baseball license, jobs would be lost."

Here, I credit the testimony by Quiros and Kulbacki regarding what was said by Faralio at the meetings they attended. Quiros made contemporaneous notes, which corroborate her recall and their testimony tracks Farallo's own version of his speeches. Farallo's testimony seems to be a blend of what he said and what he thought, or what he intended to convey, and I find that the employees recall is more specific, reliable and trustworthy. It also is noted that one concern raised about the affiliation campaign was the ability of various ethnic group employees to understand english, and I find that Farallo asserted explanations were most likely understood by the employees in the manner described by Qurios and Kulbacki, regardless of what Farallo "intended" to convey. Taken together, the statements by the plant's senior official that the company did not want the CWA (rather than the local, independent union), that other local business moved to other locations because of unions, that the Company had a new Alabama plant that could do the work of the Buffalo plant, that the CWA was untrustworthy in the eyes of the company's CEO, that after the CWA had come into the Respondent Derby plant 97 grievances had been filed and 11 employees terminated, and that if the Buffalo employees still wanted to have a job, they should think carefully about what he had told them before voting, meant exactly what the employees interpreted his statement to mean namely: that the Respondent did not want to deal with the CWA and would move or close to the facility if employees did not reject affiliation with the CWA.

Kulbacki also irrefutably testified that supervisor Selinski told him that the Koch family (who own the Respondent) would close the plant down if there ever was a union at Respondent's facility.[2] Statements such as these are threats and they are not protected free speech. Otherwise the comments are not shown to mere personal opinion or objective prediction of a probable consequence beyond the Respondent's control. See *Wallace International of Puerto Rico*, 328 NLRB No. 3, slip opinion pages 1 and 6 (1999). The expression of threats only a few days before the election along with the Respondent's open display of favoritism for the independent Union over the CWA makes the Respondent's action coercive in nature and interferes with employee rights to chose their own collective bargaining

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[2] The Consolidated Complaint did not allege Selinski's statements as violations of Section 8(a)(1) of the Act, however, the matter was fully litigated at the hearing and it is closely related to the Complaint, as amended, which specifically alleged that Respondent made threats to close or move its facility. Accordingly, I grant the General Counsel's motion amending the Complaint to allege Selinski's statements, that it would be futile for employees to seek to affiliate the Independent Union with the CWA and that Respondent would close the plant down if employees selected the CWA or another union, as violative of Section 8(a)(1) of the Act.

representative without the interference of management. Accordingly, I find that the Respondent is shown to have violated Section 8(a)(1) of the Act, in the respect, as alleged.

Futility of Affiliation – Kulbacki's unrebutted testimony showed that supervisor Selinski made statements to employees, including Kulbacki who was an outspoken CWA supporter, as follows: "the Union isn't going to do any good; don't listen to this Union stuff: [Respondent] is going to do what it wants to with or without a Union; and you're wasting your time and efforts." Kulbacki noted that Selinski repeatedly made these remarks in February and March, just prior to the vote. Selinski's statements express Respondent's position of the futility of employees to engage in union (affiliation) activities, and violates Section 8(a)(1) of the Act as alleged, see *Schmidt Tiago Construction Co.*, 286 NLRB 342, 359 (1987).

Benefits for Voting – The Respondent admittedly urged its employees to vote and promised to and provided some of them with the benefits of free transportation and paid time off to vote at the affiliation election. In this regard, Farallo authorized the issuance of a notice to employees, wherein Respondent urged employees to vote against affiliation with the CWA and promised employees the benefits of free transportation and paid time off to vote at the affiliation election (it did not issue the notice to its Hamburg employees and did not offer or provide them with transportation, but did provide them with paid time off). Moreover, this was done despite the fact that Independent Union president Burkhard, who was responsible for running the election, told Respondent's management, including Farallo and personnel manager Nowak, that she did not want any campaign buttons, buses or any interference with the Independent Union's affiliation election and that she hired security as part of her responsibility (I do not credit Nowak testimony that Burkhard did not tell her that the Independent Union did not want buses).

The Respondent argues that it is privileged to urge its employees to vote against affiliation, as well as to promise and actually provide employees with benefits of free transportation and paid time off to vote at the affiliation election relying on *Westinghouse Electric Corp.*, 232 NLRB 56 (1977). In *Westinghouse*, the Board specifically held that the employer's letter to its employees at issue therein, concerned an upcoming vote on whether to call a strike, did not occur in conjunction with any unlawful conduct which might otherwise affect its impact on employees; and was not an attempt to interfere in internal union matters.

The General Counsel, on the other hand, cites *Amoco Production Company*, 239 NLRB 1195 (1979), where the Board held "whatever factors motivate affiliation, affiliation does not directly involve the employment relation. . . . Having no direct effect on the employment relationship, affiliation vote procedures, are internal union matters." In his concurrence, Board Member Truesdale stated, in relevant part: "The question of affiliation is therefore purely an internal union matter and, as such, is of no concern to the employer or to nonmembers of the union. Such offer of assistance reveals conduct violative of Section 8(a)(1) of the Act."

Here, I agree with the General Counsel that has the Respondent interjected itself into the internal affairs of the Independent Union, despite the fact that the Independent specifically informed Respondent that it did not want any assistance or interference with the affiliation election. The Respondent is shown to have sought to obtain favor with the Buffalo facility employees, especially Asian employees (the majority group), whom it apparently perceived would vote against affiliation with the CWA. In particular, Respondent sought to give these employees the impression that it was their guardian by playing an active role during the affiliation campaign and trying to portray the CWA in a negative light.

Here, the facts are different than in the *Westinghouse* case, supra. Here, the Respondent did not adopt a position of neutrality, instead it offered free transportation to

employees, especially the Asian employees at its Buffalo plant a few blocks from its plant, while denying that offer to its apparently more diverse workforce at its Hamburg plant, some 15 miles distant. The Respondent here offered and paid time off to vote while also engaging in overt support for the incumbent union over the CWA challenger, it made other violations of Section 8(a)(1); and it engaged in the overall conduct that interfered with its employees' rights to determine their own union activities and free choice with respect to the affiliation election. This case does not involve a Board conducted representation election and, under these circumstances I conclude that the offering and supplying of benefits in combination with its urging employees to vote against affiliation, goes beyond any demonstrated free speech opinion rights or safety concerns of the employer and clearly infringes on internal union matters in violation of Section 8(a)(1) of the Act, as alleged.

B. The Suspension of Valerie Baldwin

In proceedings involving disciplinary action against employees, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employee's union or other protected concerted activities were a motivating factor in the employer's decision to discipline them. Here, the record shows that Valerie Baldwin was an open proponent of affiliation with the CWA and that the Respondent was aware of the CWA drive and of Baldwin's involvement. The record show that, the Respondent engaged in other conduct, discussed above, that violated Section 8(a)(1) of the Act, that the Company strongly opposed the CWA's affiliation effort and that the Company's CEO held strong opinion's adverse to the CWA, opinions that were communicated to his supervisors and employees.

The basis for Respondent's announced position of mistrust of the CWA because of its unwanted contact with Major League Baseball appear to be inconsistent and arguably irrational or distorted. First, CEO Koch's apparent aversion to potential adverse publicly would seem to be at odds with its post contract (and post affiliation election), willingness to air its problems in the public forum of a Board proceeding. Also, Koch's January 1997 letters to the Derby plant union and its employees reasonably must be interpreted as seeking union and employee support "to prove to baseball," that a new production contract is in everyone's best in trust. Yet in September 1997, after the CWA replaced the Derby independent union, Koch suddenly wanted no union involvement "whatsoever." Here, I credit former Derby union representative Geary's testimony that he was the apparent source of any request that the CWA support the Respondent and that he did so in late July, prior to Koch's change in attitude, because of Koch's past appeal to the Union. Contrary to Koch's inaccurate accusations, the Union did honor his September wishes and Koch apparently made no effort to learn the source or time the comments or reporting contacts. Moreover, in September, New York area CWA representative had merely made a reasonable, good faith offer to help, apparently unaware that Geary already had made a parallel suggestion to the international president in Washington. The Respondent, however, persisted in its condemnation of the CWA's purported "reneging of the agreement" not to "interfer" and made this a center piece of its campaign to prevent the CWA from also succeeding the Independent Union in Buffalo.

Under these circumstances, I find that the record shows specific antiunion (CWA) animus. I also find that the General Counsel has shown that Baldwin was a CWA affiliation committee member and was known to be an aggressive CWA affiliation supporter. Supervisor Tirado acknowledged that he spoke with her about the CWA affiliation issue and observed her speaking with other employees about the affiliation campaign and she apparently was disciplined for conduct connected with the posting or distribution of notices relating to the affiliation election and I find that the General Counsel has met his initial burden by presenting a

showing sufficient to support an inference that the employee's union or other protected concerted activities were a motivating factor in Respondent's decision to discipline her. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

On March 25, the day of the election, Baldwin posted a hand drawn notice that said:

ATTENTION
PICTURE I.D.
AND
GREEN CARD
ARE REQUIRED
TO VOTE!!!

At about 7:00 a.m. Baldwin received the notice, which was on a 3 ½" x 5" or 5" x 7" piece of paper that had visibly been torn out of a spiral notebook, from Kulbacki. Kulbacki told Baldwin that he made the signs and had already posted some, but that they were torn down. Kulbacki also told Baldwin that if she wanted to post them to go ahead, but that she did not have to do so. Baldwin stated that she put Kulbacki's sign together with other CWA signs that she was carrying with her. I credit her testimony that she did not speak with Quiros about the notice or show it to her, did not know whether Quiros saw it and never discussed Kulbacki's intentions in drafting it.

Baldwin testified that she posted one original in the second floor smoke room (and threw others away), and that there were about 10 employees in the smoke room at that time, including Bow Tran, Henry Nguyen and Monique Adams. Bow asked her if he would need identification and Baldwin replied that, if he went to her table, he would not need identification because she knew who he was, but that anyone see did not recognize would need identification. Baldwin testified she didn't read all of her postings and did not realize the word "and" was used and assert that she told employees they would need a New York State driver's license "or" a green card.

The Independent Union assigned Baldwin to hand out ballots at tables "W-Z" which corresponded to the voters' last name. Baldwin stated that she had a list of voter names and that she checked the list before giving voters a ballot. During the election, Baldwin pointed out that she did not recognize a particular employee who went to her table and whom she asked him for identification he showed her his New York State driver's license. Baldwin matched up his name on the voter list and gave him a ballot. Baldwin agreed that, on the day of the election, president Burkhard told employees that identification would not be required, nonetheless, Baldwin said she requested identification of an employee because she could not understand how he was pronouncing his last name.

Henry Nguyen confirmed that he saw Baldwin posting the notice in the second floor smoke room. Contrary to Baldwin, Vanhnalone Ha testified that she also witnessed Baldwin and Cecilia Quiros together posting another copy of the sign in the second floor lunchroom and that a comment was made about immigrations being present, however, she never conveyed any of her information or concerns to management. Otherwise, I find this witness' demeanor and testimony to be confused and untrustworthy and, in view of the lack of timely management knowledge of her observations, I find that her testimony is of no probative value.

Kulbacki admitted that he posted one of the signs in the fourth floor men's room immediately after arriving at work the day of the election, but observed that it was ripped down the next time he went to the men's room. Burkhard, president of the Independent union, was shown one of the signs by Doris Makeyenko and Virgie Adams, who were upset by it. She directed that any remaining copies of the sign that were still posted be taken down and she immediately began walking around the plant telling employees that the sign was not true and that identification would not be needed to vote. Around the same time, a supervisor told personnel manager Nowak about the sign. She said she viewed it as a direct racial attack on the Asian employees at the plant and immediately contacted Burkhard. Burkhard told Nowak that she had nothing to do with it, that it was not authorized, and that she was in the process of informing all the employees that the sign was untrue. Nowak then contacted Farallo, who was at the Alabama plant. Farallo said he viewed the sign as being racist in nature and he instructed Nowak to ensure that all signs were removed. He then contacted the Respondent's attorney, and it was decided that the attorney would transmit a letter to the CWA, condemning the Union for its racist tactics. Nguyen who felt that it was directed at the Asian employees, told Nowak that he had witnessed Baldwin posting one of the signs in the second floor smoke room. She again contacted Farallo who decided that no action should be taken until he returned to Buffalo on March 30.

Meanwhile, supervisors Tirado, Heinrich and Walker held a meeting of employees on the second and third floors, Burkhard arrived, and informing the employees that the sign was not correct and that no picture identification was needed in order to vote. At that point, Baldwin spoke up and proclaimed that as far as she was concerned, identification would be required and that anyone who came to her table to vote had better have picture identification when them. At this point, Mainthone Trieu, a Laotian employee, became involved in a discussion with Baldwin. Trieu testified that she felt the sign was directed at the Asian employees, and that she was yelling at Baldwin, telling her that she was wrong and that she was just trying to scare people off from voting. She stated that, in response, Baldwin kept insisting that anyone who came to her table would need picture identification, such as a green card.

The following day, Tirado and Heinrich told Nowak that Baldwin had been telling employees that if they came to her table, they would need a green card to vote, even after it had been said that there would be no such requirement. Following Farallo's return, Nowak and Farallo called Tirado, Heinrich, and Nguyen into the office where they recounted the events they witnessed involving Baldwin. They then called the Independent union representatives Burkhard and Adams to the office, along with Baldwin. Baldwin apparently had one of the notices with her and Farallo asked her where she had acquired it, but she said she would not reveal her sources. Farallo then asked her if she had ever posted the sign and if she had ever stated that employees would need a green card to vote, and she denied both. Farallo explained that the Company had investigated the matter, and that the investigation did not support her denials. Baldwin continuing to deny all involvement and demanded to face her accusers. Tirado, Heinrich and Nguyen were then brought back in the office, and each one again related the events. According to Baldwin after hearing Nguyen, she "remembered" that she had in fact posted a sign but admitted at the hearing that she continued to lie by stating that she had no involvement with the sign and she replied that the Company was going to believe them anyway, so they should just get on with it.

Farallo then informed her that she was being suspended for three days for racial harassment. Baldwin claimed that she herself had been harassed in 1994, and that nothing had been done about it. Farallo responded that he did not know anything about that and Baldwin subsequently signed her suspension notice and left the office.

The Company maintains an anti-harassment that provides, among other things, that offensive language and behavior regarding an individual's race or national origin will not be tolerated. Farallo, however, had never before suspended anyone for racial harassment. The policy also explains that any complaint of such harassment should be brought to the attention of management, and that management will fully investigate each complaint and take forceful and appropriate remedial measures when necessary to redress any harm done. (The policy is posted in the glass cases found on the second, third and fourth floors, but it was not otherwise distributed to employees).

Here, I find that the issues of racial harassment for which Baldwin was disciplined is based principally on the "Green Card" "Required to Vote" language of the sign she posted and the green card comment she made at the meeting, and, otherwise, I find that other alleged comments attributed to her, principally by Asian witnesses, played no part in the disciplinary process and, accordingly, are not relevant herein.

The Charging Party points out that Baldwin (who is African-American) had no animosity towards Asians and testified that she associated with approximately 50 Asians in the work place. Mainthone Trieu, "Mo", a Laotian employee, testified that she has known Baldwin for 5 years, that she liked Baldwin, thought Baldwin was a nice person and that Baldwin had Laotian friends and everyone was friendly in the plant.

The Charging Party then argues that Baldwin was not motivated by a desire to racially harass employees but to be able to verify the identity of voters before she gave out a ballot. It also points out that the harassment policy was not distributed to all employees, that the employers' Asian witness had not seen the policy, the posted policy was only in English, and that plant manager Farallo had discussed the policy only with supervisors.

The General Counsel points out that the applicable collective bargaining agreement describes a progressive disciplinary procedure to be utilized by Respondent in issuing discipline. In particular, Article 6.01(b) provides "Except in cases of gross misconduct, for which the Employer may vary the disciplinary steps, the employer will issue warning slips in the following orders." Step 1 = written warning; Step 2 = written warning; Step 3 = three (3) day suspension; Step 4 = dismissal. The Respondent, however, argues that it suspended Baldwin for violating its anti-harassment policy, a subject matter failing under the progressive disciplinary procedure, because it determined that Baldwin's conduct was an "overt racist act" and constituted gross misconduct.

While Farallo did not personally know about the harassment Baldwin had complained about in 1994, manager Nowak had received the complaint which involved verbal abuse and name calling at the plant and in phone calls to Baldwins' home by Yvette Smalls who was apparently an acting supervisor (she was made a supervisor after the incident). Norwak was basically dismissive about the significance of the complaints, Zimminack, however, did speak to Smalls, and Smalls asserts she received a verbal warning (apparently not reflected in her personal record).

As pointed out by the Court in *Transportation Management Corp.*, supra:

> an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected concerted activity conduct.

The Company maintains an anti-harassment that provides, among other things, that offensive language and behavior regarding an individual's race or national origin will not be tolerated. Farallo, however, had never before suspended anyone for racial harassment. The policy also explains that any complaint of such harassment should be brought to the attention of management, and that management will fully investigate each complaint and take forceful and appropriate remedial measures when necessary to redress any harm done. (The policy is posted in the glass cases found on the second, third and fourth floors, but it was not otherwise distributed to employees).

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IV. Conclusions of Law

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

2. The Independent Union and the CWA, PPMW Sector, both are labor organizations within the meaning of Section 2(5) of the Act.

3. By suspending Valerie Baldwin because of her union or other protected activity, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

4. By placing employees under close observation and engaging in surveillance of employees, by impliedly threatening to move or close its business if the employees affiliated with the CWA, by implying that it would be futile to chose to affiliate with the CWA and by interfering with internal union matters by urging employees to vote against affiliation in combination with offering benefits the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. Except as found herein, Respondent otherwise is not shown to have engaged in conduct violative of the Act as alleged in the complaint.

V. Remedy

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that the Respondent be ordered to make employee Valerie Baldwin whole for any loss of earnings she may have suffered because of the discrimination practiced against her by payment to her a sum of money equal to that which she normally would have earned, in accordance with the method set forth in *F.W. Woolworth Company*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB No. 181 (May 28, 1987),[3] and that Respondent expunge from its files any reference to her suspension and notify her in writing that this has been done and that evidence of this unlawful discipline will not be used as basis for future personnel action against her.

Otherwise, it is not considered necessary that a broad order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10((c)of the Act, I hereby issue the following recommended:[4]

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[3] Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before 1 January 1997 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

[4] 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.

ORDER

1. Cease and desist from:

(a) Suspending any employee because of or in retaliation for their engaging in union or other activity protected by Section 7 of the Act.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act by placing employees under close observation and engaging in surveillance of employees, by impliedly threatening to move or close its business if the employees affiliated with the CWA, by implying that it would be futile to chose to affiliate with the CWA, and by interfere with internal union matters urging employees to vote against affiliation in combination with offering benefits.

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

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

(a) Make Valerie Baldwin whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the Remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to Valerie Baldwin's unlawful suspension and within 3 days thereafter, notify her in writing that this has been done and that the evidence of the unlawful suspension will not be used against her in any way.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of the records if stored in electric forum, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities in Buffalo, Hamberg, and Derby, New York, copies of the attached noticed marked "Appendix."[5] Copies of the notice in English, Spanish, Laotian and Vietnamese, on forms provided by the Regional Director for Region 3, 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 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 and any time since October, 1997.

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

(e) 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 Respondent has taken to comply.

Dated, Washington, D.C. July 9, 1999.

Richard H. Beddow, Jr.
Administrative Law Judge

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act by placing employees under close observation and engaging in surveillance of employees, by impliedly threatening to move or close our business if the employees affiliated with the CWA, by implying that it would be futile to chose to affiliate with the CWA, and by interfere with internal union affairs by urging employees to vote against affiliation in combination with offering benefits.

WE WILL NOT suspend any employee because of or in retaliation for their engaging in union or other activity protected by Section 7 of the Act.

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

WE WILL make Valerie Baldwin whole for the losses incurred as a result of the discrimination against him in the manner specified in the Section of the Administrative Law Judge's Decision entitled "The Remedy."

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

NEW ERA CAP COMPANY, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

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 with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387, Telephone 716–551–4951.