**Classic Sofa, Inc. *and* Amalgamated Industrial Union Local 76B, UFWA, AFL–CIO.** Cases 2–CA–34575, 2–CA–35595, and 2–CA–36138

January 12, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On January 11, 2005, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a supporting brief, as well as an answering brief to the Respondent's exceptions. The Respondent filed a reply to the General Counsel's answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions, and to adopt the recommended Order as modified and set forth in full below.[3]

[1] The Respondent contends that the judge's rulings, findings, and conclusions demonstrate bias. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Chairman Battista and Member Liebman do not read the judge as saying that glibness and education are per se qualities that render a witness incredible. They read him as saying that, *notwithstanding* those qualities "However", the witness was not to be credited over the General Counsel's witnesses. See ALJD, p. 226.

Chairman Battista and Member Liebman agree with the judge's discrediting of Supervisor Ephraim Stern and other employees who testified for the Respondent. The judge relied in part on the fact that they were still employed by the Respondent and may not wish to incur the Respondent's disfavor. In crediting employees Rivera and Iri, the judge noted that they were still employed by the Respondent and nonetheless testified against the Respondent. We find no necessary inconsistency. It is not unreasonable to believe that a person employed by an employer would be concerned about giving testimony adverse to that employer. This is particularly true in the instant case where there are multiple discriminatory discharges. The fact that some witnesses may be more courageous than others does not contradict our view.

Member Schaumber notes that specificity in the grounds for crediting or discrediting witnesses facilitates the disposition of subsequent challenges to those credibility determinations, particularly where, as here, the judge has credited *all* of one party's witnesses and discredited *all* of the others. In this case, the judge discredited the Respondent's witness Jeffrey Stone on the grounds that "all of the General Counsel's witnesses are were credible" and because:

> Stone is a highly educated witness, and very glib. However, as set forth above and below, the corroborative and what I consider the entirely credible testimony of the General Counsel's witnesses convinces me without a doubt that Jeffrey Stone is not a credible witness. General Counsel's witnesses simply did not have the imagination or inventiveness to testify in such complex detail.

Though undoubtedly a shorthand response to certain credibility arguments advanced by the Respondent, the resolution, as written, is circular in its reasoning, and sheds little light on why the judge disbelieved Stone.

Similarly, the judge discredited Ephraim Stern and other current employees who testified on behalf of the Respondent on the sole ground that they might be subject to reprisal. However, Francisca Rivera and Mustafa Iri, who testified for the General Counsel, were also current employees subject to potential reprisal, and the judge not only found them to be credible, but even highlighted Iri's status as a current employee as a basis for believing him. Member Schaumber does not disagree that the fear of reprisal may be grounds for discounting a witness's testimony. However, an unexplained disparity in the application of the fear of reprisal principle to one party's current employee witnesses but not the others does not foster confidence in the integrity of credibility resolutions. While his colleagues suggest that the judge's perception of the relative courageousness of the witnesses might explain the disparity, the judge made no such demeanor-based distinction, and we are certainly in no position to supply one. Consequently, Member Schaumber does not rely on the foregoing credibility resolutions in deciding this case. To find merit in the judge's reasoning brushes past the variety of factors a finder of fact must consider in making a credibility determination and effectively excludes any testimony of current employees that happens to favor their employer.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) by discharging employee Musa Iri, we note that the record does not support the judge's statement that "[Respondent President Jeffrey] Stone never reported the alleged theft of the glasses to the police." We find, however, that even if Stone did call the police, this factor is insufficient to change our finding that the discharge was unlawful.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) when Vice President Maurice Stone told employee Musa Iri that if the Union came in he would not call Iri by his first name any more because there would be a wall between the employees and management, we note that the Respondent's exceptions to this finding are limited to credibility issues.

We find it unnecessary to pass on the judge's finding that, in November 2003, Jeffrey Stone unlawfully told employee Mustafa Iri that Musa Iri should drop the unfair labor practice charges, because a finding of a violation in this regard would be cumulative in light of our adoption of the judge's finding that, in July 2003, the Respondent violated Sec. 8(a)(1) when Stone made similar remarks to Mustafa Iri that he should talk to Musa Iri about dropping the unfair labor practice charges.

Member Schaumber also finds it unnecessary to pass on the judge's findings that the Respondent violated Sec. 8(a)(1) when (1) Jeffrey Stone commented to Musa Iri that it looked like the women were talking a lot, (2) Jeffrey and Maurice Stone told Mustafa Iri that employees had betrayed the company by voting for the Union, and (3) Jeffrey Stone asked employee Stanislas Florius what was happening and whether the Union had written him. Member Schaumber observes that such findings would be cumulative of other violations found and would not affect the remedy.

In adopting the judge's finding that the Respondent unlawfully discharged employee Ahmed Altas, we leave to the compliance stage of this proceeding the resolution of whether the Respondent has offered employee Ahmet Altas unconditional reinstatement.

In agreeing with his colleagues and the judge that the Respondent violated Sec. 8(a)(3) by discharging employee Altas, Member Schaumber does not rely on the inferred or generalized knowledge of Altas' union activity cited by the judge or on the judge's discrediting of Denise Hanley on the ground that she was close to Stone. Member

1. The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by delaying employee Francisca Rivera's return from layoff by 1 day, until May 13, 2002.[4] Contrary to the judge, we find that the record does not support this finding.

The record shows that on Friday, May 10, after returning from the Dominican Republic following her grandmother's death, Rivera called the Respondent's president, Jeffrey Stone, about returning to work the following Monday, May 13, as Stone had instructed Rivera to do when they last spoke on May 2 or 3. Although the judge stated that Rivera expressed to Stone her interest in returning to work that day (May 10), the credited testimony establishes that Rivera called to inquire about returning to work on May 13. Further, although Stone initially told Rivera that work was slow, in a subsequent conversation that day Stone informed Rivera that she could return to work on May 13 as requested. In view of this evidence, we shall dismiss the allegation that the Respondent unlawfully delayed her return from layoff until May 13.

2. The judge further found that the Respondent, through its president, Jeffrey Stone, violated Section 8(a)(1) by soliciting employee Musa Iri to persuade other employees to oppose the Union. We do not agree.

The record shows that about a week before the March 29 election Stone asked Iri what the women employees thought about the Union. Iri answered that he did not think they liked it, and Stone responded that under the law he could not talk to employees about the Union.[5] Iri then told Stone that he would talk to the employees for Stone, and Stone replied, "Okay, talk to them." Iri then went to the employees and told them that the Union was bad and that Stone had told him to tell them that the Union was no good.

Contrary to the judge, we find that the above facts do not establish that Stone unlawfully solicited Iri to speak to employees to discourage their activities on behalf of the Union. At the outset, we note that there is no allegation that Stone asked Iri to make unlawful comments to employees or that Iri made any such comments. As noted above, Stone had an 8(c) right to speak to employees about the Union. Thus, there is no basis for finding a violation if Stone speaks to employees through an agent (Iri).

Further, the circumstances here are distinguishable from those in Board cases that condemn an employer for soliciting employees to talk to other employees about the union.[6] In those cases, the employer takes the initiative and asks the employee to speak with other employees. Thus, the employer puts the employee "on the spot" to agree or decline. That is unlawful. However, in the instant case, the employee took the initiative and voluntarily offered to speak to other employees. Stone did not put Iri "on the spot." Rather, Iri volunteered to be "on the spot," and Stone simply said, "OK."

We recognize that Stone asked Iri how the female employees felt about the Union. Although the judge found, and we agree, that this was an unlawful interrogation, Stone did not unlawfully solicit Iri to talk to employees about the Union. Our colleague, in footnote 7, contends that Iri's offer to speak to employees about the Union was involuntary. Stone expressed his (erroneous) view that he could not talk to the employees about the Union. Iri then volunteered that he would talk to the employees about the Union. In sum, Stone did not even ask Iri to do so, much less pressure Iri to do so.

Accordingly, we reverse the judge and dismiss the allegation that the Respondent unlawfully solicited an employee to speak on its behalf to fellow employees.[7]

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Schaumber finds that knowledge was established by Jeffrey Stone's statement to Musa Iri that Altas had brought in the Union and by Maurice Stone's statement to Iri that he knew Altas was the one who brought in the Union.

[3] We shall modify the judge's recommended Order to (a) require the Respondent to restore Mustafa Iri to the assignment of overtime work consistent with the practice existing prior to the Respondent's unlawful discrimination, and to make him whole for any loss of earnings; (b) correct the dates of the unlawful written warnings given to Musa Iri to that of April 19 and 26, 2002, and (c) include our standard cease-and-desist language in the recommended Order and notice.

Further, having found that the Respondent violated Sec. 8(a)(3) by discriminatorily issuing a warning notice and letter to Francisca Rivera on April 17, 2002, we shall modify the judge's recommended Order to include the standard remedial language requiring that both documents be removed from her personnel file, and that Rivera be notified in writing that this has been done and that such actions will not be used against her in any way. Finally, we shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996); and *Ferguson Electric Co.*, 335 NLRB 142 (2001).

[4] All dates are in 2002, unless stated otherwise.

[5] Of course, Stone was incorrect in this regard. As the Respondent's agent, he could tell employees his opinions about the Union. See Sec. 8(c).

[6] E.g., *Hialeah Hospital,* 343 NLRB 391 (2004); see also *Amber Delivery Service,* 250 NLRB 63 (1980), enfd. in relevant part 651 F.2d 57 (1st Cir. 1981).

[7] Member Liebman agrees that the Respondent violated Sec. 8(a)(1) when President Stone interrogated employee Iri about how the female employees felt about the Union. But, for the following reasons, she would also find that the Respondent unlawfully solicited Iri to talk to other employees to discourage them from supporting the Union. There is no dispute that Iri understood that Stone opposed the Union. Iri responded to Stone's unlawful question about how the employees felt about the Union by saying that he did not think they liked the Union. Stone then stated that under the law he could not talk to the employees about the Union. It seems clear that Stone was implicitly asking Iri to do the talking for him. Obviously Stone did not really believe that he could not talk to the employees about the Union—at that very moment

3. We adopt the judge's finding that the Respondent created the impression of union surveillance by (a) the comments of its vice president, Maurice Stone, at a meeting he had with Musa Iri in February 2002, and (b) the comment of its president, Jeffrey Stone, to Iri about a month before the election.

With respect to Maurice Stone's comments to Iri, the credited evidence shows that Stone called Iri into his office and said, "Congratulations . . . [y]ou joined the Union." Iri at first responded, "What Union?" and even protested that he did not like unions. Stone then asked Iri why he had not told them before, and that it was no big deal and that "I could have helped you get a union," to which Iri repeated that he did not like unions.

We agree with the judge that Maurice Stone's statements to Iri reasonably created the impression of surveillance. Stone's comments were not offhand remarks; they were pointed comments in a private meeting called by Stone, and clearly conveyed that Stone knew Iri had "joined" the Union. Further, when Iri attempted to disclaim knowledge of what Stone claimed to know, Stone continued to press the point to Iri. In these circumstances, Iri could reasonably believe from these remarks that the Respondent acquired this knowledge by surveilling Iri's union activity.

Our colleague contends that Stone's comments did not create the impression of surveillance because the Respondent had cameras in the facility and because Iri was an "active" union proponent. Contrary to our colleague's contention, the record does not establish that Iri's union activity at the facility occurred in view of the Respondent's cameras or anywhere in the open. While the record shows that some of Iri's union activity occurred while at work, the record does not establish that Iri joined the Union, or engaged in other activity establishing that he had joined the Union, in full view of the Respondent's cameras, or at any time or place where he was observed by the Respondent's officials. Indeed, our colleague's contention is further belied by the fact that Iri was surprised by Stone's knowledge of his union activity, as evidenced by his attempts to deny Stone's assertions.[8]

For these reasons, we find that record supports the judge's finding that Stone's conversation reasonably created the impression of surveillance.[9]

We also agree with the judge that the Respondent created the impression of surveillance about a month before the election, when the Respondent's president, Jeffrey Stone, entered Musa Iri's workroom and—with no one else present—stated that employee Ahmet Altas had brought in the Union. We disagree with our colleague that a finding of a violation is not warranted in this circumstance because Altas had been discharged by the time the statement was made. The statement clearly conveyed to Iri the Respondent's knowledge that Altas was the employee responsible for initiating the union activity at the facility, and did not suggest that this information was acquired through lawful means.[10] Indeed, Altas had been unlawfully discharged at the time the statement was made. This fact does not militate against a finding that Stone's comment created the impression that the employees' union activity had been under surveillance. Rather, the 8(a)(3) conclusion is based in part on the fact that the Respondent knew of Altas' union activity. That finding of knowledge is quite consistent with a finding of impression of surveillance.

We therefore adopt the judge's finding that Stone's comment violated Section 8(a)(1) by the creating the impression of surveillance of union activity.

4. We adopt the judge's finding that the Respondent's mass layoff of its employees following the March 29 election violated Section 8(a)(3) and (1) of the Act. We agree with the judge that the Respondent's motivation for the layoffs is established by its timing (1 month after the election, which the Union won) and by the Respondent's comments to employee Rivera linking the layoff to the Union's victory. Thus, when Jeffrey Stone advised Rivera of the layoff on April 26, he showed her a paper, saying he had to write everything because of the Union,

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he was talking with an employee (Iri) about the Union. Rather, Stone invoked the supposed prohibition as an excuse to encourage Iri to help him convince the employees to oppose the Union. The suggestion was not lost on Iri, who immediately offered to talk to the employees for Stone. Stone then cemented Iri's offer by saying, "Okay, talk to them." Under these circumstances, the majority errs in describing Iri's offer as voluntary.

[8] The cases cited by our colleague are clearly distinguishable. *SKD Jonesville Division L.P.*, 340 NLRB 101 (2003), involved an employee who had engaged in open and active union activity spanning over a 4-year period, including the filing an unfair labor practice charge the year before. In *Kathleen's Bakeshop, LLC,* 337 NLRB 1081 (2002), enfd. 173 LRRM 2576 (2d Cir. 2003), the union activity of the employee at issue included serving as the union observer more than a month before the alleged creation of surveillance.

[9] The dissent states, "My colleague's assertion that nothing in the record shows that Iri engaged in union activities at any time or place where he could have been viewed by the Respondent's officials is incongruous with the record facts upon which the majority otherwise relies" However, the issue is not whether Iri's union activities "could have been viewed by the Respondent's officials." Rather, it is whether Iri would reasonably believe that knowledge of his action of joining the Union was acquired through surveillance. For the reasons set forth above, we believe that such a belief is reasonable.

[10] We have not shifted the burden of proof so as to place it on the Respondent. The General Counsel bears the burden of proof which he has met here. We have simply rejected any defense that Stone's statement itself suggests that the information was acquired through lawful means.

and admonished her, "I want you to think about what's going on here." We agree with the judge that this could only have referred to the Union's successful campaign. We also find that the Respondent's unlawful motivation is evinced by the fact that on the day of the election, the Respondent's vice president, Maurice Stone, told Mustafa Iri that there would be lots of layoffs when the Union came in.

We further note that although the judge stated that the "Respondent did not offer any documentary evidence at the trial to substantiate its contention that work was slow at the time of the layoff," the Respondent did in fact offer documentary evidence in support of its economic claim. Having considered that evidence, however, we find, contrary to the Respondent's contention, that these documents fail to demonstrate that the layoff would have occurred in the absence of the union activity.

The Respondent's Exhibit 5, one of the three documents the Respondent offered in support of its economic claim regarding the layoff, is a summary of the monthly orders from December 2001 through July 2002. It shows that the Respondent had a higher number of orders in April (292) than in any of the prior 4 months (197,[11] 270, 269, 258, from December 2001 through March 2002, respectively). The document also shows that the monetary value of the April orders ($775,743.46) exceeded those of 2 of the prior 4 months. Thus, the document demonstrates that the layoff was announced in the midst of a monthly increase in orders. Further, the other two documents offered by the Respondent–its Federal tax returns for 2001 and 2002—fail to substantiate the claim that the layoff was necessitated by a slowdown of work. Although these exhibits show a decrease in gross receipts from 2001 to 2002, they do not explain the specific economic necessity that warranted the April 26 announcement of the layoff.

For these reasons, we find that the Respondent's documentary evidence does not establish the economic motive for the April 26 layoff that the Respondent asserts. Accordingly, we adopt the judge's finding that the mass layoff violated the Act as alleged.

## ORDER

The National Labor Relations Board orders that the Respondent, Classic Sofa, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression of surveillance of its employees' activities on behalf of Amalgamated Industrial Union Local 76B and its Divisions, IUE, CWA, AFL–CIO, the Union.

(b) Interrogating its employees concerning their membership in or activities on behalf of the Union.

(c) Soliciting its employees to withdraw unfair labor practice charges with the National Labor Relations Board.

(d) Threatening its employees with less desirable and more onerous working conditions because of their membership in and activities on behalf of the Union.

(e) Threatening its employees with unspecified reprisals because of their membership in or activities on behalf of the Union.

(f) Threatening its employees with layoffs because of their membership in or activities on behalf of the Union.

(g) Threatening its employees with discharge because of their membership in or activities on behalf of the Union.

(h) Issuing oral or written warnings concerning its employees' wages, hours, and other conditions of employment because of their membership in or activities on behalf of the Union.

(i) Laying off its employees because of their membership in or their activities on behalf of the Union.

(j) Discharging its employees because of their membership in or activities on behalf of the Union.

(k) Reducing its employees' overtime hours because of their membership in or activities on behalf of the Union.

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

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

(a) Within 14 days of this Order, make unconditional offers of reinstatement to Ahmet Altas, Musa Iri, and Stanislas Florius to their former positions of employment, or if such positions no longer exist, to a substantially equivalent position of employment, without prejudice to their seniority or other rights privileges previously enjoyed.

(b) Make whole Ahmet Altas, Musa Iri, Mustafa Iri, and Stanislas Florius, and the entire work force, as set forth in the remedy section of the judge's decision, for losses of earnings and benefits suffered as a result of the discrimination against them. Backpay for Ahmet Atlas shall continue from January 31, 2002, the date of his discharge, until an unconditional offer of reinstatement is made. Backpay for Musa Iri shall continue from May 2, 2002, the date of his discharge, until an unconditional offer of reinstatement is made. Backpay for Mustafa Iri shall include his 1-day layoff, November 4, 2003. Backpay for Stanislas Florius shall continue from February 4,

[11] We note that at the hearing Supervisor Ephraim Stern clarified that the correct number of orders in December 2001 was 197, not 201.5 as R. Exh. 5 indicates.

2003, the date of his discharge, until an unconditional offer of reinstatement is made.

(c) Restore, to the extent it has not already done so, the assignment of overtime work to Mustafa Iri as the practice existed prior to its discriminatory reduction of his overtime, and make him whole for any loss of overtime pay he suffered as the result of the discriminatory reduction of his overtime. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Within 14 days of this Order, remove from the personnel files all warnings issued concerning Francisca Rivera, Musa Iri, and Mustafa Iri, as set forth in the remedy section of the judge's decision, and within 3 days thereafter notify them in writing that this has been done and that these unlawful warnings will not be used against them 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 the 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 New York City facility copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2002.

(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.

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

MEMBER SCHAUMBER, dissenting in part.

Unlike my colleagues, I would not find that the Respondent unlawfully created the impression of surveillance when (1) Maurice Stone told Musa Iri: "Congratulations . . . you joined the Union" and (2) Jeffrey Stone told Musa Iri that Altas had brought in the Union.

With respect to the former statement, Maurice Stone made this sarcastic remark to Iri shortly after receiving a copy of the Union's representation petition. As the judge found, it is undisputed that Iri was an active and leading proponent of the Union organizing drive. According to the judge:

> [Iri] not only sign[ed] a Union card, but distribut[ed] cards to and collect[ed] them from, fellow employees. He spoke about the Union both inside and outside the shop, and was the recipient of many anti-Union statements and indications of suspicion from Jeffery Stone. Moreover, he was subject to the camera system of Respondent, which would have shown Stone that Musa Iri was regularly taking [sic] with employees in group settings during the period in question.

The judge also described in some detail the intimate nature of the Respondent's small workplace, the high level of supervisory presence both on the shop floor and in nonwork areas, and the constant monitoring of employee activities through around-the-clock video surveillance:

> [Jeffrey Stone] admittedly spends half the workday up in the factory, making certain that production is steady, and insuring the quality of the work. Jeffrey Stone personally supervises the work, with the help of others, and talks to production workers himself. [He] has what he considers a "close enough relationship" with the employees that he can go directly to employees and ask them if something is wrong. He admits that, "We try to run a factory that's close." . . . Stone asks employees regularly how people are doing and what is going on in the shop, asks them about personal matters, and engages in direct observation to see what is transpiring. [He] has often seen employees eating lunch in person. He is aware that there are certain employees who regularly eat together with certain other employees. Respondent maintains cameras throughout the factory on the third floor, in the basement, and in the showroom in

[12] 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."

> each corner, and they are always constantly recording. The cameras show movement of employees at work, and exits and other places. The identity of workers could be surmised on the camera. Jeffrey Stone has also observed seeing employees eating lunch on the camera.

The judge relied on these very factors to infer that the Respondent knew full well that Musa Iri was engaged in union activities and ultimately discharged Iri because of them. And we have unanimously affirmed the judge's findings. In light of those circumstances, my colleagues' assertion that nothing in the record shows that Iri engaged in union activities at any time or place where he could have been viewed by the Respondent's officials is incongruous with the record facts upon which the majority otherwise relies. Iri was an ardent and active union supporter who, as the judge found, regularly engaged in prounion activities both inside and outside an intimate and closely supervised workplace. In light of those circumstances, Stone's single snide remark would not reasonably lead Iri to believe that the Respondent acquired its knowledge of his activities by unlawful means. See, e.g., *SKD Jonesville Division L.P.*, 340 NLRB 101 (2003) (manager's statement to open union supporter, "I heard that the employees wanted you to organize a union" did not create impression of surveillance); *Kathleen's Bakeshop, LLC*, 337 NLRB 1081 (2002) (manager's statement, "you are the guy that started the union and that's why I'm here," insufficient to create impression of surveillance where employee had been identified as a union supporter earlier).

My colleagues rely on the facts that Stone's remark was made in his office, individually to Iri, and that Stone continued to press the point even after Iri denied any interest in unions. While those factors may add to the coercive atmosphere in which the statements were made, they do not convert what we all agree was an unlawful interrogation into a separate and distinct violation of creating an unlawful impression of surveillance. Similarly, Iri's denial of his leading role in the organizing campaign is hardly shocking, and in no way supports my colleague's utterly speculative assertion that Iri was "surprised" by Stone's knowledge of his activities. In short, while Stone's questioning was unlawfully coercive, I see no reason to stretch for justifications to pile on an essentially cumulative 8(a)(1) impression of surveillance violation.

My colleague's arguments for finding yet another impression of surveillance violation based on Jeffrey Stone's offhand comment to Iri that former employee Atlas brought in the union are equally unpersuasive. As the judge found, Atlas, like Iri, was instrumental in the organizing activities occurring at this intimate, closely supervised, and continuously monitored facility. The judge found, and we all agree, that the Stones were aware of Atlas' activities even before his discharge. Indeed those activities were *the* reason for his discharge. Consequently, while Stone's statement, made well after Atlas' discharge, was coercive—indeed threatening—I see no basis for concluding that Iri would have reasonably perceived that the Respondent acquired its knowledge of Atlas' activities through unlawful means. By arguing that the statement "did not suggest that the information was acquired by lawful means," my colleagues effectively shift the burden of proof to the Respondent. Simply put, under the circumstances of this case, Stone's statement was insufficient to establish an impression of surveillance violation.

## 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 create the impression of surveillance of our employees' activities on behalf of Amalgamated Industrial Union Local 76B and its Divisions, IUE, CWA, AFL–CIO, the Union.

WE WILL NOT interrogate our employees concerning their membership in or activities on behalf of the Union.

WE WILL NOT solicit our employees to find out about, and report to us on, employees' activities on behalf of the Union.

WE WILL NOT solicit our employees to withdraw unfair labor practice charges with the Board.

WE WILL NOT threaten our employees with less desirable and more onerous working conditions because of their membership in activities on behalf of the Union.

WE WILL NOT threaten our employees with unspecified reprisals because of our employees' membership in, or activities on behalf of the Union.

WE WILL NOT threaten our employees with layoffs because of their membership in, or activities on behalf of the Union.

WE WILL NOT threaten our employees with discharge because of their membership in or activities on behalf of the Union.

WE WILL NOT issue oral or written warnings concerning our employees' wages, hours, and other conditions of employment because of their membership in or activities on behalf of the Union.

WE WILL NOT layoff our employees because of their membership in or their activities on behalf of the Union.

WE WILL NOT discharge our employees because of their membership in or activities on behalf of the Union.

WE WILL NOT reduce the overtime of our employees because of their membership in or activities on behalf of the Union.

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

WE WILL, within 14 days of the Board's Order, make unconditional offers of reinstatement to Ahmet Altas, Musa Iri, and Stanislas Florius to their former positions of employment, or if such positions no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights privileges previously enjoyed.

WE WILL make whole Ahmet Altas, Musa Iri, Mustafa Iri, Stanislas Florius, and the entire work force for losses of earnings and benefits suffered as a result of the discrimination against them, as set forth below for a 1-week period commencing April 26, 2002, with interest. Backpay shall continue for Ahmet Altas from January 31, 2002, the date of his discharge, until an unconditional offer is made. Backpay shall continue for Musa Iri from May 2, 2002, the date of his discharge, until an unconditional offer is made. Backpay for Mustafa Iri shall include his 1-day layoff, November 4, 2003. Backpay for Stanislas Florius shall continue from February 4, 2003, the date of his discharge, until an unconditional offer of reinstatement is made.

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| Eustaquio Arvelo | Radames Baez |
| Max Berrezueta | Bhagwandai (Vicky) Brijlall |
| Pausey Brown | Marizol Cabrera |
| Carmen Guerra | Musa Iri |
| Mustafa Iri | Suat Kocak |
| Fernando Lebron | Ana Moran |
| Khemraj Narain | Gloria Naula-Maza |
| Blanca Rincon | Francisca Rivera |
| Wilfredo Sanchez | Raul Seminario |
| Sonia Ubiera | Trinidad Valdez |
| Maria Zumba | Herbert Heyward |
| John Johnson | Stanley Chow |
| Stanley Clerrosier | Lidia Delacruz |
| Carlos Lebron | Eusebia Valdez |

WE WILL, within 14 days of the Board's Order, restore, to the extent we have not already done so, the assignment of overtime work to Mustafa Iri as the practice existed prior to our discriminatory reduction of his overtime, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him, with interest.

WE WILL, within 14 days of the Board's Order, expunge from the personnel files all warnings issued concerning Francisca Rivera, Musa Iri, and Mustafa Iri, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that these unlawful warnings will not be used against them in any way.

CLASSIC SOFA, INC.

*Stephen E. Appell, Esq.,* for the General Counsel.
*Saul D. Zabell, Esq.* and *Elizabeth Urena, Esq. (Frank & Breslow, P.C),* for the Respondent.
*Mark S. Silverman, Esq.,* for the Charging Party.

## DECISION

### STATEMENT OF THE FACTS

HOWARD EDELMAN, Administrative Law Judge. This case was tried on October 20 and 21, November 25 and 26, December 23, 2003, July 7 and August 30, 2004.[1] All trial dates were held in New York, New York. The charges in these complaints allege violations of Section 8(a)(1) and (3) of the Act.

Upon the entire record in this case, including my observation of the demeanor of witnesses, set forth in detail below and a full consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following

### FINDINGS OF FACT

Respondent is a domestic corporation with an office and place of business at 5 West 22nd Street, New York, New York, where it has been engaged in the manufacture and retail sale of furniture. Annually Respondent, in the course and conduct of its business operations, receives gross revenues in excess of $500,000, and purchases and receives at its facility goods and supplies valued in excess of $50,000, directly from suppliers located outside the State of New York. It is admitted that at all times material herein, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is also admitted the Union is a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that at all times material herein, Jeffrey Stone and his father Maurice Stone have been president and vice

[1] The trial was reopened on July 7 to consolidate Case 2–CA–36138 with Cases 2–CA–34575 and 2–CA–35595.

president, respectively, of Respondent, and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent, acting on its behalf. It is also admitted that at all times material herein, Ephraim Stern has been a production manager of Respondent, and a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent, acting on its behalf.

At all material times, Respondent's upholstery factory has been on the third floor of its building, there the frames and down cushions are brought up, and the final product is put together. The basement is used for the wood shop and down room. The first floor of the building includes the showroom.

Jeffrey Stone spends much time, perhaps half a day, on the main floor watching the sales people. But he admittedly spends half the workday up in the factory, making certain that production is steady, and insuring the quality of the work. Jeffrey Stone personally supervises the work, with the help of others, and talks to production workers himself.

Jeffrey Stone has what he considers a "close enough relationship" with the employees so that he can go directly to the employees and ask them if something is wrong. He admits that "We try to run a factory that's close." He is aware of the friendship patterns among his employees in the shop. Stone considers that having a "very close intimate shop" where employees and he can talk "on any level" is as important to the business as the quality of the furniture and Stone's image in the company. Stone asks employees regularly how people are doing and what is going on in the shop, asks them about personal matters, and engages in direct observation to see what is transpiring. Jeffrey Stone has often seen employees eating lunch in person. He is aware that there are certain employees who regularly eat together with certain other employees.

Respondent maintains cameras throughout the factory on the third floor, in the basement, and in the showroom in each corner, and they are always constantly recording. The cameras show movement of the employees at work, and exits and other places. The identity of workers could be surmised on the camera. Jeffrey Stone has also observed seeing employees eating lunch on the camera.

### Credibility Resolutions

I conclude that all of General Counsel's witnesses are credible. They gave very detailed testimony on direct examination, and were consistent on cross-examination. At times they freely admitted to minor inconsistencies. Counsel for Respondent contends that their testimony was not credible because their native language was not English and were not able to understand certain questions or give accurate answers.

I reject this contention. Although their answers were heavily accented, neither counsel demanded that they needed a translator, and by the time their testimony concluded, both counsel for the General Counsel and the counsel for Respondent understood their answers. It is important to note the testimony of these witnesses was complex and detailed. Their testimony had the ring of truth.

I conclude that General Counsel's witnesses were truthful and entirely credible. With respect to Respondent witnesses I find Jeffrey Stone not to be a credible witness. Mr. Stone is a highly educated witness, and very glib. However, as set forth above and below, the corroborative and what I consider the entirely credible testimony of General Counsel's witnesses convinces me without any doubt that Jeffrey Stone is not a credible witness. General Counsel's witnesses simply did not have the imagination or inventiveness to testify in such complex detail.

As set forth above, Maurice Stone, vice president, did not testify. Therefore, testimony of General Counsel's witnesses concerning violations of the Act alleged in the complaint are fully credited.

I find that Ephrain Stern is also not a credible witness. He was fired by Respondent at some point during the course of the union organization. He was rehired by the beginning of this trial, and although a supervisor, as defined in the Act. I find that he and the other employees who testified on behalf of Respondent were placed in the same fear of reprisal as the unit employees. Jeffrey Stone alone ran this shop, and punished employees who did not support his antiunion orientation.

### The Alleged Discriminatees

Ahmet Altas began employment with the Respondent in August 1995, and was employed as an upholstery cutter. He worked under the direct supervision of Jeffrey Stone and Ephraim Stern. At the time his employment ended, he was earning $30 per hour and was working the hours of 8 a.m.–4:30 p.m., 5 days a week. Altas was told regularly by Jeffrey Stone that he did a good job and that customers liked his work.

Respondent's president, Jeffrey Stone, talked to Altas about many matters. Stone would ask him daily many questions about what was going on in the shop, and how people were working, and what they were doing. Sometimes Stone would ask him about personal matters.

Musa Iri began employment with Respondent in mid-1998, as an upholsterer and cutter. He was hired by Jeffrey Stone. Ephraim Stern assigned him his work daily, but sometimes Jeffrey Stone would give him a special job to do. As a cutter he made measurements and cut fabric to fit to measure. He was considered an expert at the job and was so called by Supervisor Stern. He made few mistakes. If he saw a mistake done, he would give it to someone to fix, or he would fix it himself. Stern would frequently come to Iri if someone else made a mistake, and ask Iri to help in fixing them. Stern regularly complimented Iri for his work. Iri regularly produced three pieces a day and sometimes four. He was paid $32 per hour, with pay "on the books" for overtime, but with pay "not on the books" for overtime hours over 10. He did not get time and a half for overtime. He worked in his own workroom.

Francisca Rivera began work with the Respondent in October 1998 as an operator. When Altas was not present, she would cut and sew. She was supervised by Stern and occasionally by Jeffrey Stone who might assign her work. She was employed until July 19, 2002. Rivera was friendly with Altas and Musa Iri. Rivera ate lunch with fellow employee Musa Iri, and sometimes with Mustafa Iri and Ahmet Altas, usually in Musa's workroom.

Stanislas Florius began working for Respondent in or about March 2000. He was hired by Jeffrey Stone as a down man,

filling cushions for sofas and chairs. Stern was his immediate supervisor. He earned $13.50 per hour and worked a 40-hour week. When he started, Florius worked only on the third floor, where he filled cushions. He would also go to the basement, take downs and carry them to the third floor. Later on, Florius checked to make certain fabrics were cut and sewn. He made lists and had to go with a list downstairs, and make sure they still wanted cut downs. They had to be sewn before Florius took them. He would look at names, customers, then take the downs, tie them up and bring them upstairs. Stern told Florius to take all downs and spread them on a chair, and place them on sofas, to inspect them and see if they were good. If there were any mistakes, he had to give them to the sewers or cutters to fix. Florius also did repair jobs for cushions, upon Stern's directions. Further, he filed papers received from the cutters and was often asked to look through files and locate papers. He never received any warnings or discipline. He only received compliments, from Maurice Stone, and Stern. Stern told Florius that Jeffrey Stone liked him because he was a hard worker.

Mustafa Iri began working for Respondent in or about 1999 as an upholsterer. His hours presently were 8 a.m.–4:30 p.m., 5 days a week. When he started, he worked 70 to 80 hours a week. He is indisputably a good upholsterer and is the highest paid upholsterer in the shop, and is known to be a "workhorse."

Union Organization

In 2001, Altas testified he spoke with a former employee of Respondent named Adnan or "Eddie," with whom Altas had worked together for 3 years. Eddie noted that he was working in a union shop, and suggested that Altas speak with people in Respondent's shop and maybe they could join the Union. Thereafter, starting in or about November or December 2001, Altas spoke with fellow employees Mustafa Iri, his brother Musa, Francisca Rivera, and Stanislas Florius. Musa Iri thought it, the Union, was a good idea. Altas and Musa Iri spoke again about the Union in or about January 2002. Altas normally spoke with Musa Iri in his own workroom, after they ate lunch. He spoke with Florius about the Union in their workroom. Musa Iri testified that he discussed the Union with Florius in Iri's workroom in late 2001. Florius said that they should look for a union to help them because Jeffrey Stone was not treating the people well. Musa Iri also talked to Rivera about the Union. Altas testified he then called Eddie, and said he thought that people were going to support the Union, and asked him to make an appointment to meet with the employees, and discuss what the Union could do for them. Thereafter, Eddie advised Altas that they would meet on January 24, 2002.

In or about mid-December 2001, probably in the afternoon, Jeffrey Stone called Musa Iri and noted that Altas, Suat Kocak an employee, and other workers were talking a lot. Stone asked Iri what they were talking about. Stone added that Altas "has some evil idea." Iri replied he did not think Altas had an evil idea, but Stone should let him find out. On or about December 21, Stone gave Musa Iri his paycheck and a bonus, and remarked that Altas "has a problem." Iri replied that this was not the case. Stone noted that he had offered Altas a supervisory position, and Altas would not take it, that he was not interested in the money. Stone told Iri, "I need help," and Iri responded, "Of course."

On January 24, 2002, at 4:30 p.m., a meeting was held at a coffee shop. Present were Union Official Elmo DeSilva, Eddie, Altas, and employee Suat Kocak. DeSilva gave the employees information about the Union and its benefits, and gave them brochures. He also gave Altas about 30 authorization cards for employees to fill out.

On January 25, Altas went to the shop and Musa Iri asked him how the meeting was. Altas told him it was good and that he had gotten a lot of information, and that they had a right to join the Union, that it was protected by law. Altas gave Musa Iri about 10–15 authorization cards, 1 for him to sign and others to give out to other employees. Altas filled out his card at home and signed it on January 26. Altas also spoke to employees about the Union in the shop, including to Musa Iri, Mustafa Iri, Francisca Rivera, Stanislas Florius and "Vicky" Brijlall, in Musa Iri's workroom. Thereafter, employees gave signed cards to Altas. Musa Iri gave him signed cards as well, including his own which he filled out and signed on January 24, and including the card of Mustafa Iri which was dated January 24.

Francisca Rivera was given a card by Musa Iri in front of her home she signed it, dated it January 24, and gave it back to him. Thereafter she spoke about the Union with Iri and Altas. The first time was on Broadway at lunch. She also spoke with Musa Iri in his room, about the Union. She was personally close to Iri, and Jeffrey Stone saw her and Musa Iri talking together.

In this period, Altas met Union Official DeSilva in Greenwich Village and gave him six signed cards. Mustafa Iri also assisted his brother in organizing employees for the Union.

Jeffrey Stone admits that when he heard about the Union, probably between mid-January to mid-February, he was curious as to how the union effort started in the shop. Denise Hanley, his personal secretary, who spent time in the shop and spoke to shop employees, let Stone know what she heard about concerning how the employees felt about the Union, including whether they were for or against the Union. Also, Supervisor Ephraim Stern concluded that Musa Iri was involved with a union. Some time before February 20, he noticed Musa Iri having conversations with employees, especially seamstresses in his rooms, and brought this to the attention of Jeffrey Stone.

Discharge of Altas

On January 30, after 3 p.m., Jeffrey Stone came to Altas, said he had a job of four pieces, and asked Altas if he could cut them. These were to be custom-made pieces, very difficult to work on. Stone replied that he should not worry about that, to cut this stuff, and finish it that day, and should work overtime to do it if necessary. Altas replied that he would do his best to finish, but Stone responded he had to finish it that night, that it was going out. Altas stayed that night until 8 p.m., at which time everyone on overtime was leaving, and the lights were being turned off. Altas credibly testified he tried hard to finish all of this assignment, but it was not easy. He managed to finish about 95 percent, with just a little work to do, but as the shop was closing and the lights were being turned off, he left. Thus, when he went back to work on January 31, the four

pieces were almost finished. Normally Altas would cut two to three pieces in a regular 8 a.m. to 4:30 p.m. day, depending on the style and fabric. As to other cutters, Suat Kocak cut two–three pieces a day, Thomas cut mostly one–two pieces, and Musa Iri two–three, and sometimes only one.

On January 31, Altas reported to work and finished the rest of the last night assignment, in an hour. He put the finished work on a work table about 10 a.m. About 11 a.m., Stone called Altas by phone, and directed him to come to the office downstairs. Stone told Altas to close the door, then said that he had given Altas a job the night before, and asked if it was finished. Altas replied most of the job was finished that night, but in the morning, he had worked another hour to completely finish the job. Stone asked him why he had not finished yesterday, Altas replied that it was hard to finish, that he had tried his best, but that there were four pieces. Stone retorted that he had told him to finish yesterday, and that he was Altas' boss. Stone asked Altas how many pieces he had cut, and Altas replied four. Stone demanded that Altas show him the production ticket. Stone demanded that Altas show him how many pieces he had cut yesterday. Altas said again he had cut the four pieces. Stone demanded that Altas show him the ticket, and Altas replied that he did not have the order, the production manager had the tickets. Stone replied, "Don't tell me about the production manager. I want you to get it." Altas replied that he did not have it, that his job was cutting. Stone complained that Altas' attitude was changing.

Stone then told Altas that he wanted him to cut six or seven pieces everyday. Altas said it was impossible to cut six or seven, that nobody could do that. In fact, he had never cut six or seven custom made pieces before. He said he could cut 10 pieces with one sample, where the same size, style, and fabric were involved. He said no cutter cut six to seven pieces every day. Stone said he wanted seven pieces, that Altas was not cutting enough, and that business was slow. He said he wanted to send people home early to save money. Altas retorted that if business was slow, why was Stone pushing the people so much, and always telling Altas to work harder. Altas then left, slammed the door, went up to the third floor, and returned to work.

About 15 minutes later, Stone came up, and told Altas that he had to give Stone his word that he was going to cut six or seven pieces. Altas replied that he would try his best, that he could not give his word, because normally he cut three pieces. Stone warned that if Altas would not cut six or seven pieces, he was fired, that he did not want to work anymore with Altas. The two men called each other names, and then Altas asked Stone that if he was being fired, he wanted his pay. Stone replied that he would send it in the mail to Altas. Stone told Altas to get out that he did not want him here. Stone contends that he told Altas to cool off and go home for the day. He testified that Altas stated that if he went home he was not coming back. For the reasons set forth above, I do not credit Stone's testimony. Thereafter, Altas was mailed his paycheck, although he got no pay for the overtime he had worked. He was never offered reinstatement to his position of employment nor told by fellow employees that Stone wanted him back to his former position. Stone testified that there was a fight with another employee, which precipitated Altas' leaving his employment as set forth above, I do not credit Stone's testimony. Altas credibly testified an altercation occurred in or about late August or September 2002, months before the termination of Altas' employment. Altas credibly testified that employee Raul Seminario engaged in some hostile body language with Altas. According to Altas, Seminario had come in drunk with his neck cut, and was in the midst of personal problems. Altas asked him if he had a problem, as he had done something behind his back, and Altas wanted to know why, so they could talk about it. Seminario came in front of his face, and Altas asked him to go back, and said he did not want to talk to him any more. Seminario touched Altas' nose with his head, and Altas pushed him back, butting him on the head. Later that morning, Jeffrey Stone came to Altas, and called him downstairs, and asked him what had happened, and why Altas was fighting. Altas explained that Seminario had pushed him, and that he was just defending himself. Stone ordered Altas to go home and think about it. It was at this time that Altas replied, "If I go, I'm not going to come back, because I'm right." He explained that Seminario was always trying to fight with him. That night, Jeffrey Stone called Altas, and said that what had happened was not Altas' fault, that he knew Seminario and he was always making problems with people. Stone instructed Altas to come in the next day and they would talk about it, that he did not want Seminario to come between them. Stone added that Altas was a good worker, and they had worked a long time together.

The next morning, Altas went to the office, and Stone told him that if Altas wanted, Stone could fire Seminario. Altas credibly testified that he did not want Seminario to lose his job, he just wanted Seminario not to fight with him anymore. Altas suggested that Stone just change Seminario's workstation and put him someplace else. Both Altas and Seminario continued to work at the shop. Nothing was said to Altas about the Seminario altercation when Altas was discharged on January 30.

On February 1, 2002, Florius signed a union card. Prior to signing, he credibly testified that he spoke to about five other employees in the basement and about seven on the third floor, and told them that the way things were going, it seemed that Jeff Stone was trying to fire everybody, that employees were not being paid overtime on the books, and that Jeff Stone did not pay time and a half for overtime, and was forcing them to work overtime under threat of discharge, and that this was not right. In fact, Florius did not receive time and a half pay when he worked overtime, and was always paid in cash for overtime except for the last time he was paid for overtime. Florius signed his card in Musa Iri's room and returned it to him. Florius credibly testified that he gave out union cards in the basement to about four employees, and got the cards back signed and gave them to Musa Iri.

### Filing of the Representation Petition

Following Altas' discharge, Musa Iri talked to about 10 other employees, and gave them union cards, usually at their house. Iri told these employees about the Union, and said that with a union they would get time and a half pay for overtime, and have a better situation and benefits. Some of the employees signed union cards and some did not. Iri gave the signed cards

to Altas. Up until about a week before the election on March 29, described below, Iri continued to talk with employees about the Union, inside and outside Respondent's premises.

On February 20, 2003, the Union filed a representation petition with Region 2 of the Board in Case 2–RC–22511, covering a unit of all full-time and regular part-time upholsterers, frame makers and cabinet makers employed at the Employer's facility located at 5 West 22nd Street in New York City, excluding office workers, guards, professional employees, and supervisors as defined in the Act.

In or about the end of February 2002, the Stones called Musa Iri to the office, at about 6 or 7 p.m. Maurice Stone said to Iri, "Congratulations," Iri asked what had happened, and Maurice replied, "You joined the Union." Iri responded, "What Union?" and Maurice again said, "The Union." Iri protested that he did not like unions, and asked Maurice what he was talking about. Maurice asked Iri why he had not told them before, that it was not a big deal. Maurice said, "I could have helped you get a union." Iri reiterated that he did not like a union. Maurice then asked Iri if he had heard anybody talking "up there" for the Union. Iri replied that he had not, that nobody was talking. Iri asked what happened but Maurice Stone did not answer.

On March 7, 2002, pursuant to the Union's representation petition, the Regional Director for Region 2 of the Board approved a Stipulated Election Agreement, for an election to be held on March 29, 2002, in a unit of all full-time and regular part-time upholsterers, frame makers, cutters, sewers, pillow stuffers, maintenance employees, springers, and stock librarians employed by the Employer at its facility, excluding all other employees including sales employees, elevator employees, truckdrivers, guards, professional employees, and supervisors as defined in the Act.

About a month before the March 29 election, in Musa Iri's workroom with no one else present, Iri credibly testified that Jeffrey Stone told Iri that Ahmet Altas had brought in the Union.

About a week before the March 29 election, about noon, Maurice Stone spoke with Musa Iri in Iri's workroom without anyone else present. Iri credibly testified that Stone said that he had been calling Iri by his name, Musa, that they were like a family and they liked each other. Stone warned Iri that if the Union came in there, "I cannot call you Musa anymore, because there is going to be a wall between you guys and us." Stone added that then he was going to call Iri a number, like number 3 or number 4. Iri told him he did not like the Union. Maurice Stone then went to speak to other employees at their work benches.

Later on the same day, Jeffrey Stone spoke to Musa Iri in his workroom. Iri credibly testified that Stone asked Iri what the ladies were thinking about the Union. Iri replied that he did not think they liked it. Stone asserted that it was the law that he could not talk to them about the Union. Iri replied that he would talk for Stone, and Stone replied, "OK, talk to them." Iri testified that he then went to employees at the work benches and sarcastically told them the Union was bad because if they made this change, they were going to get health insurance, time and a half pay, and benefits, and that Stone had told him to tell them that the Union was no good.

A couple of days later, before the National Labor Relations Board (NLRB) election, probably in the afternoon, Jeffrey Stone talked to Musa Iri in Iri's room, with no one else present. Stone noted that employees Vicky (Brijlall) and Francisca Rivera were talking a lot. He asked Iri what they were talking about. Iri said he did not know.

Probably some time in the period before the election, employee Florius credibly testified that Jeffrey Stone told him that he, Stone, was not telling him to join the Union, because the Union took money out of his paycheck. Florius replied that he was not voting and was not joining the Union, and Stone added that the Union was no good.

Pursuant to the Stipulated Election Agreement between Respondent and the Union, an election was held on Friday, March 29, 2002, at the Employer's facility. The vote was in favor of the Union. After the election, Musa Iri went down to the office to get cash payment for overtime work, and asked what had happened. Stone replied, "We lost it." Stone also told Supervisor Stern, "We lost the vote."

Also on March 29, Jeffrey and Maurice Stone called Mustafa Iri down to the office. Only the three of them were present. Mustafa Iri, Musa's brother, credibly testified that Jeffrey said that "they betrayed us," that they had voted "Yes." Maurice Stone then told Mustafa Iri not to worry, that he was going to have lots of money and a lot of hours, but that when the Union came in there were going to be lots of layoffs. Iri did not respond.

A few days after the election, about 1 p.m., Francisca Rivera, an employee credibly testified Jeffrey Stone called her into the office, with no one else present, and asked Rivera if she knew who had voted for the Union. Rivera replied she did not know. Stone asked her if she knew which women voted for the Union. Rivera replied that she did not know that she just knew she had not done so. Stone asked how come the Union won, and Rivera replied that she did not know.

Pursuant to the election of March 29, on April 8 the Regional Director for Region 2 issued a Certification of Representative, certifying the Union as the exclusive representative of the unit which was the subject of the election.

On or about April 11, Maurice Stone came into Musa Iri's room, with no one else present. Iri credibly testified that he stopped to talk about Supervisor Ephraim Stern, who was fired at that time. Stone referred to Stern as "that little brat" and the trouble he had caused. Maurice Stone also said that Stern had left and was never going to come back. Stone then put his finger to his lips, and said that "Ahmet," presumably Altas, "brought the Union here." Iri did not respond and Stone walked away. As set forth above, Maurice Stone did not testify during this trial.

After the election, in response to the union victory, Respondent decided to institute a formal system of written warnings to its employees.

Discriminatory Conduct Against Rivera

Prior to the NLRB election, Francisca Rivera had not had any problems with the Respondent concerning her taking time

off or sick leave. She was regularly given more time, if she needed it. She never previously failed to call in if late or absent, as admitted to by Jeffrey Stone at trial. She had never gotten any warnings regarding absence, lateness, or not calling in. On April 16, Rivera did not work. She was going to the hospital because of illness. At about 7:45 a.m., she called the Respondent, and some woman answered the phone on the third floor. Rivera credibly testified she asked for Stern but was told he was not there. Rivera testified she did not ask for Jeffrey Stone because he never comes in until later. She then asked for Musa Iri, and advised him that she was sick and did not know if she was coming to work. She said that if she finished her appointment early, she would come in, and if not he should talk to Jeffrey Stone and say she was going to be out because she was in the hospital. Iri said he would do so. Iri credibly testified he did tell Ephraim Stern. Rivera returned to work on April 17. Jeffrey Stone arrived at 10 a.m. and called Rivera to his office. Stone told her he thought she was not coming in anymore because she had not called in the day before, and he called somebody else to work. Rivera replied that she had called. Stone said that nobody had told him, and that he had called someone to replace her. Rivera started to leave, at which time Stone told her that he preferred that she sit down and sew.

On April 17, Rivera received a warning notice from Jeffrey Stone, with a checkmark for the violation "No Call / No Show," and then reading: "4/16, Miss Rivera did not report for work today. She did not call or send message through a co-worker."

Stone explained to Rivera that he had to give her this warning because the day before, she had not shown up and had not called. He added that he had to do this "because it is the Union law," and told her to sign it. Rivera asked secretary Denise Hanley what this was, and Hanley replied that it was nothing, it was a paper that did not mean that she got in trouble. Rivera asked Stone if this paper said that he was going to punish her, but Stone said just to sign it and not worry about it, that the paper was union law. Stone told Rivera that he liked her and she should not worry about it, that he knew she was a good worker.

Further, on April 17, a letter was addressed "To Whom It May Concern" from Robert Albergo, who Respondent contends is a supervisor. The letter stated that on April 16, Rivera did not report for work as scheduled, and did not inform the Respondent that she would not be in, by either telephone or message through a fellow employee. The letter concluded: "Miss Rivera has been informed this date, that due to her disregard for our production schedule, the management is currently seeking a replacement for her."

Discriminatory Conduct Against Musa Iri

Prior to April 2002, Musa Iri had never received any warning notices of any kind, and had never been criticized for poor work or told that his work was not good. On or about April 19, however, in the office and in the presence of alleged supervisor Robert Albergo, Iri received a warning from Jeffrey Stone, with an April 17 date on top and April 19 on bottom, with a written "management statement" as follows:

> 4/17 cut only 2 sofas and 2 ottomans complete—never cut skirts for the 2 sofas
>
> 4/18 cut only 1 sofa, I chair and started sectional

Musa Iri credibly testified that Jeffrey Stone told him that he was not doing enough work. Iri tried to explain that he was in fact doing enough work, but Stone would not listen. Mustafa Iri, Musa's brother also got a warning notice about that time. Musa Iri testified he was doing the same amount of work in April as previously, and the amount of work he did on April 17 and 18 was no different than what he had previously performed that month. He usually cut two–three pieces a day. He credibly testified he did not change his production at any time based on his mood, or increase it at bonus times, as stated by Stone at trial.

On April 26, Musa Iri was given another warning notice in the office by Jeffrey Stone, in the presence of Albergo and secretary Denise Hanley, reading as follows:

> His slowdown continues. This is the final warning. Unless work increases to acceptable levels, termination will occur.

The form indicates a previous warning for "slowdown" on April 17, and is signed by Albergo, who claims that Iri "took without signing."

Iri credibly testified that Stone then said that they had put in $60,000 for business and it was getting slow, so Iri was going to be laid off for one week. Stone did not explain what he meant by slowdown, and did not orally state that termination might occur. He told Iri to come back the following Friday, March 2, and Iri was laid off on April 26.

Respondent's Mass Layoff of Shop Employees

On April 26 in the afternoon, Jeffrey Stone went upstairs and told employees that before they left, everyone had to pass by the office. Rivera went to see him at 4:35 p.m. in the office. At that time Stone told her that she had slowed down her job, which Rivera denied. He showed her a paper, and said he had to give this to her, because he had to write everything because of the Union. Stone then told her he was going to give her a week off, and told her that "I want you to think about what's going on here." Rivera was laid off on April 26 along with the other unit employees. Stone told her to return to work the following Friday, May 2.

Also on April 26, at the end of the day, Jeffrey Stone called almost every production employee to the office and advised each of them of a 1-week layoff, and to return the following Friday, May 2. The record establishes there had never been such a mass layoff of 1 week's duration previously in the shop. Rather, there had been a few layoffs of some employees for 2 or 3 days at a time. Thus, virtually the entire group of production employees was laid off, for 1 week. Respondent's records establish that April was not a typically slow month. Generally, the period right after Christmas, and around July 4 holiday, were slow on a regular basis. Indeed, shopwide vacations are always scheduled for the week of July 4 and at Christmas time. As set forth above the records establish there previously were never layoffs of virtually the entire shop.

The employees who apparently were laid off, consistent with the Respondent's payroll records for the week ending May 2 and therefore including April 26, included the following:

Eustaquio Arvelo—cleanup

Radames Baez—cleanup
Max Berrezueta—cutter
Bhagwandai (Vicky) Brijlall—seamstress
Pausey Brown—carpenter in woodshop
Marizol Cabrera—seamstress
Carmen Guerra—cleanup
Musa Iri—upholsterer
Mustafa Iri—upholsterer
Suat Kocak—cutter
Fernando Lebron—cleanup and stock
Ana Moran—seamstress
Khemraj Narain—woodshop
Gloria Naula-Maza—seamstress
Blanca Rincon—seamstress
Francisca Rivera—seamstress
Wilfredo Sanchez—upholsterer
Raul Seminario—upholsterer
Sonia Ubiera—seamstress
Trinidad Valdez—seamstress
Maria Zumba—seamstress
Herbert Heyward—frame shop
John Johnson—foam stuffer
Stanley Chow—frame shop
Stanley Clerrosier—upholsterer
Lidia Delacruz—seamstress
Carlos Lebron—fabric librarian
Eusebia Valdez—upholsterer

Discharge of Musa Iri

Neither Musa Iri nor his brother Mustafa, who were on the 1-week layoff, were at the shop between April 26 and May 2. On Friday, May 2, Musa Iri returned to work, along with his brother Mustafa, and arrived at about 6:30 a.m. The manager, Roman Vasilewski, arrived about that time and told them that they could not go upstairs, that Jeffrey Stone wanted to talk to them and they should come back at noon. Other employees returned to work that day from layoff, at their usual 8 a.m. time. The Iri brothers then went home, and returned at noon. At that time Jeffrey Stone saw them and told him he wanted to talk to them. First Stone told Musa to sit outside, while he spoke to Mustafa, and Mustafa went into Stone's office, where Stone talked angrily to him. Mustafa credibly testified that Stone asked Mustafa where he was on a previous night. Stone then told Mustafa that some production equipment, safety glasses, had been stolen. After about 10 minutes, Mustafa came out, and told Musa that Stone had accused them of robbing the shop.

Musa Iri then went into the office, and Stone asked him where he had been on one of the nights during the layoff, possibly Sunday, Monday, or Tuesday. Iri asked him why he was asking and what had happened, and Stone replied, "You tell me." Then Stone said that the shop had been robbed, and that he had pictures. Stone told Iri he was fired, and gave him an employee/warning termination notice, in the presence of Albergo and Hanley, reading as follows: "Final termination notice for misconduct. The union will be advised." The notice cites two previous warnings, each for failure to complete assigned work. The notice appears to bear initials, probably of Stone, and the initials of a witness, apparently those of Hanley. There was no mention in the termination letter of the alleged robbery.

Stone instructed Iri to go upstairs and get his personal belongings. After this meeting, Musa advised his brother Mustafa not to give his shop key back, as it was evidence that they would not have broken down the door to rob the shop. However, Mustafa insisted on returning it. Musa thereupon advised him to make sure there was a witness present when he returned the key. Musa Iri then retrieved his belongings and said goodbye to other employees. He went downstairs, and asked Stone to see what he was taking, but Stone said, "No." Iri insisted that he wanted Stone to see what he had, whereupon Stone looked at Iri's tools and other belongings. Stone then advised Musa Iri, to "stay away from Mustafa," to let Mustafa work there, that he was working very well. Mustafa then gave Stone the key. Stone instructed Mustafa to return to work on Tuesday, March 6. Thereafter, Mustafa continued to work for Respondent without himself being discharged at that time. Musa Iri was not charged with any crime, nor was he called or visited by the police. Musa Iri credibly testified that neither he nor his brother Mustafa committed any robbery or ever entered the company premises after leaving work, to go back for any reason that was not to work. Musa Iri has not been offered reinstatement to his position of employment. Respondent filed no police report concerning the alleged robbery.

Further Discriminatory Conduct Against Rivera

While Rivera was out on the 1-week layoff, on April 28, her grandmother died, and for this reason she left for the Dominican Republic on April 29. Her husband called the Respondent and left a message to this effect, probably to an office clerical employee. On May 2 or 3, Rivera called Jeffrey Stone, told him she was in the Dominican Republic, that her grandmother had died, and she had to take off 1 more week. Stone replied this was no problem, and that when she came back, she should call him and come back to work on May 13. Rivera returned on May 10, and called Stone that day and said she was ready to come back. Stone told her it was slow, and that he had no job for her right then, that she should call him later on. Rivera then called co-workers, and found out that they were already working. She called Stone back, and asked why she could not go back to work on May 10. Stone replied that she should let him check and he would call back. Rivera protested that she had called other persons and they were going to go to work. Stone said he would check and call back. That afternoon, Stone called back and said it was OK, that she should come back Monday, May 13, and Rivera did return to work May 13.

In or about June 2002, Rivera went down to the office to ask about a wage raise, but Jeffrey Stone told her he was sorry, that he could do nothing "because you guys tied my hands. I have to wait until the Union comes. I cannot change the book." In or about late June, Rivera went to complain to Jeffrey Stone about an employee calling her nasty names, but Stone replied that right then he could not change anything, that everything in the shop had to wait for the Union to come. Rivera protested that the employee had called her names, but Stone said that

when "they" came, they could complain, but until then he could not make the employee do anything.

Solicitation of Employee to Get NLRB Case Withdrawn

In the summer of 2002, Jeffrey Stone gave Mustafa Iri a piece of paper, with his (Stone's) handwriting, indicating the phone numbers of the attorneys for the Union and the Union itself. Stone told Iri to drop the pending unfair labor practice charges.

Layoff of Florius

In or about January 2003, in the morning, Florius was going up from the basement in the elevator, when Jeffrey Stone asked him what was happening and whether the Union had written him. Florius replied that he had not yet gotten any letter. Only nonemployer personnel were on the elevator at this time.

Thereafter in January, about 10 a.m., Florius credibly testified that Jeffrey Stone passed him on the third floor, about 2 feet away with others all around but with their machines running, and Stone exclaimed that he would find out who brought in the Union, and would fire everybody and get new people to work for him.

On or about January 27, 2003, a sofa fell upon Florius' toe, and he informed Supervisor Stern of this. Stern advised him to sit down and put ice on it. Florius asked if he could go home, and Stern agreed. Stern said that if it was better, Florius should come back the next day. The next morning, Florius reported to work but was still in pain. He told Jeffrey Stone that the sofa had fallen on his toe and it was swollen. Stone advised him to sit down, stretch his leg, and take a rest. The following morning, on or about January 29, Florius came in, and Stone passed him by. At the time, Florius was sitting, waiting for a sewing employee to finish a last set of downs. Jeffrey Stone called Florius into the stairway and told him he had seen him sitting a lot these days, that he had to stay upstairs and do his work. Stone added that if Florius had nothing to do, he would find something for Florius to do.

On or about January 31, in the morning, Florius was working in the basement. A woodworking employee, Herbie, presumably Herbert Heyward, listed as a frame shop employee on Respondent records called to him. Florius spun around the desk and was talking to Herbie, who noted that it had been a long time since the vote, and the Union did not write anyone or come to talk to people. Herbie asked what was going on. Florius responded that he did not know anything, but would try to find out, and if he heard anything, he would tell Herbie. Just then Florius observed Jeffrey Stone, about 2 yards away. Stone called Florius aside and took him to the stairs. Stone told Florius that he had warned him already about sitting, and if he did not have anything to do, he should come to Stone. Florius replied that he was doing his work, and that all the work he was doing was going out on time, and that he was working hard. Stone replied, "OK," and went to his office. Florius testified he was not sitting on the desk, but was resting, standing up, and leaning against the desk, to alleviate the pressure on his feet.

On February 4, in the morning, Jeffrey Stone called Florius to the office, after which he told Florius that he had good news and bad news for him. Florius credibly testified that Stone told him he was laying him off, because business was slow, for 2 weeks, and then he would call Florius back. Florius protested that he had bills to pay, that rent was due, and that his wife was not working. Stone responded that he might call Florius back in 1 week, and that Florius should call him the next week. Florius was laid off that day. As set forth above April was not a slow production period. Moreover, there is no evidence that other employees were laid off.

As of the time of the layoff, Florius was the only one who did cushion work, except for supervisors who did it when Florius was not present.

The next week, Florius called Stone but Stone told him that things were still slow and that he should call again the next week. Florius did so but received the same response. In March 2003, Florius called and spoke with Stern and said he wanted to speak to Stone. Florius credibly testified Stern asked him if he was working, and Florius replied, "No." Stern responded that if Florius was not working, it was better that he look for a job, "because Jeff will not hire you back." A week later, Florius credibly testified he called again and spoke to Stone, who stated that business was still slow, he instructed Florius to, "call me after the war."

In April, 2 months after his layoff, Florius called again, because he had heard that the war was over. Stone told him that business was still slow, that he had to fire someone and then he would call Florius back. Thereafter, Florius never called again, and he was never offered his job back.

Discriminatory Conduct Against Mustafa Iri

Around July 4, 2003, Respondent's employees went on vacation. Right before leaving for vacation, in the afternoon, Mustafa Iri went to the office to get his overtime pay. Only he and Jeffrey Stone were present. Iri credibly testified that Stone told him that this court matter was going nowhere. Stone told him that during the vacation Mustafa should talk to his brother, to drop the unfair labor practice charge. Stone told him all the money went to the lawyers. Stone told him that he and his brother would have cash. Iri did not respond.

In or about October 2003, Jeffrey Stone called Mustafa Iri into his office some time after lunch, with no one else present. Iri credibly testified that Stone told him that the employees were making statements, presumably affidavits in connection with the pending unfair practice trial, and he wanted him to sign an affidavit also. Iri replied that he did not want to. Stone directed him to go talk to his attorney, Saul Zabell, and he did this. Zabell told him he had to sign some papers and showed the papers to him. Iri read them but did not completely understand them. Iri returned the papers to Zabell and told him he did not want to be involved, and returned to work.

The following day, perhaps about 11 a.m., and again in the afternoon, Stone talked with Mustafa Iri without anyone else being present. Stone again asked him to make a statement, and said that everyone was making it. Iri replied that he did not want to make a statement, and never did sign one for Respondent.

On November 4, 2003, a supervisor named Howard took Mustafa Iri into the office, where Jeffrey Stone and Supervisor Ephraim Stern were present. Stone said he was going to do this

officially, and Stern handed Iri a warning notice, signed by Stern. It read as follows:

> Mustafa spent all day working on the one job to repair the top seem [sic] on an inside back, after 8 hours the job was completed and is still unsatisfactory. The top seam is supposed to be straight. Mustafa reported that he would be unable to repair the majority of the seem [sic]. Mustafa agreed that he could lower the corners so that they are level with the rest of the back. After 8 hours of work the corners are now lower than the rest of the back.
>
> Mustafa has been unreliable, arriving to work late. On 11/03/2003 Mustafa arrived at about 10:00 and did not punch in our [sic] out. On 11/4/03 Mustafa arrived at 10:15 a.m. without calling a supervisor.

Stern asked Iri to sign this notice, but Iri replied that he would not do so. Stern told Iri it was nothing, that it was not a problem. The "employee refusal to sign this form" was acknowledged by Stern and Albergo as supervisors.

Mustafa Iri was also given two other documents. One, addressed to Iri and signed by Stern as "Production Manager," which read as follows:

> Today, November 4, 2003, you are being sent home for a variety of reasons. Your attendance has become very unreliable. You have elected to start work at 7 am and Classic Sofa accepts that. The factory starts at 8 am and all employees must start working at that time unless prior notice has been given to a supervisor, or in the case of an emergency, you may call in on that day and let a supervisor know that you will be in late.
>
> Yesterday you spent all day repairing one inside back. The purpose of this repair was to straighten the top seem [sic]. After a full day, the seem [sic] is just as bad as it was yesterday. You are welcome to return to work on Wednesday if you feel ready to work to your potential.

Another letter issued to Iri, purportedly by a supervisor and on November 4 which stated: "On Monday, November 3, 2003 your work was inadequate and inexcusable. You are being sent home for 1 day, you can return on Wednesday if you feel ready to work to your potential."

Iri told Stern that the job in question was impossible or difficult and that the job should not have been taken on. Stern, however, would not listen to him. Stern left the office, and came back with a second paper, apparently one of the above last two, and told him he was sending him home. Iri was sent home without being paid for that day. He came back the next day.

Mustafa Iri testified that it was true, he had spent all day working on one job to repair the top seam of an inside back. He testified that the top seam on the job was supposed to be straight, and that he had reported that he would be unable to repair the majority of the seam, but that he could lower the corners so that they were level with the rest of the back. After 8 hours of work, as instructed, the corners were now lower than the rest of the back.

Also, on or about November 4, Stern and Albergo gave Mustafa Iri a written warning claiming that he did not punch in and out on November 3. Iri testified that he did not miss punching in on or about November 3. Iri told Albergo it was not true, but Albergo claimed it was from the hand punch machine.

Iri admitted he did come late because he did not have his car and had to take the train and walk about a mile. He did not call the Respondent to advise of his lateness because he did not have his cell phone.

Before the November 4 notice and letters, Respondent had never criticized Iri for bad work or alleged bad work. He could come in late or early, without ever being criticized about his hours. On the contrary, his work was always complimented by Jeffrey and Maurice Stone and by Stern. Mustafa Iri's work was considered more difficult than that of other employees, and none of them did his exact type of work. It was unique. Iri has done this type of work for about 18 years in the United States and about 13 or 14 years in his native country of Turkey.

In or about the last week of November 2003, in the afternoon, Jeffrey Stone called Mustafa Iri into his office, with no one else present, and told Iri to close the door. Iri credibly testified that Stone again told him that the unfair labor practice case was going nowhere, and that his brother should drop the case, that all the money went to the lawyers. Stone told Iri he "should not attend any of these things." Iri did not respond.

As of the time the NLRB trial started, Mustafa Iri was working about 70 or 80 hours per week. After the trial began, Stone cut Iri's hours, and Iri and his direct supervisor were so advised by Stern. By the end of the year or the beginning of 2004, Iri's hours were cut to about 50. There was still sufficient overtime work, however, for Iri to perform. Stern told Iri the reduction of hours was because his production was down. As of February 2004, Iri was working 50 to 60 hours.

In February 2004, Jeffrey Stone called Mustafa Iri into his office and held $400 in cash, telling Iri this was a bonus. Iri did not want to accept it, but Stone insisted that he do so. On or about February 24, Stern told Iri that his hours were being expanded. Now Iri began to work from 6:30 a.m. to 11 p.m., 3 or 4 days a week, and was also called in for Saturdays.

In or about early March 2004, perhaps March 5, Mustafa Iri went into the office to get his overtime pay. Jeffrey Stone was angry and told him he was again not happy with Iri's work. Iri replied that he was working "good," but Stone disputed it. Iri went upstairs to check his work list, then came down and explained to Stone that some jobs were different than others, involving more details. Stone replied, "Fuck you." Iri stepped back and Stone told him that "[y]ou're conning me." Iri asked what this meant, and Stone replied that he was robbing him and had stolen from him. Iri denied stealing anything from anyone, but Stone said Iri had stolen from him, from a customer, and from an employee named Milton, and continued to swear at Iri. Stone did not testify as to what was allegedly stolen. Stone told him to go up and do his fucking work. Again, Stone told him Iri had conned him, and had stolen from everybody, which Iri denied. Again, Stone did not specify what Iri had stolen. Iri again said his work was different from other work, with its details, and could take more time. Iri went out, came back, and asked for his overtime pay. Stone replied he was not going to pay Iri anything, that he did not have the money, and that he

would pay when he had the money. Eventually, Iri was paid only $650 when he was supposed to get $1050. Iri was never fired for such alleged thefts.

On March 5, 2004, Mustafa Iri received a written "counseling notice." The warning letter read:

> In the week dated 2/23/2004 to 2/27/2004 Mustafa produced approximately 40 pieces. From 3/1/2004 to 3/5/2004 Mustafa produced approximately 20 pieces. This is a 50% decline in production and is unacceptable.
>
> On 3/5/2004 Mustafa was called for a meeting with Jeffrey [sic] Stone the president to discuss his performance. In the meeting Mustafa lost control of his temper and was belligerent, muttering obscenities.

Stern gave the warning letter to Iri, and asked him to sign it, which Iri refused to do. Iri added that he did not trust Stern, who replied that he did not have to sign it if he did not want to. The secretary then signed it as a witness. Stern then read the paper to Iri. Stern told him his hours would be 8 a.m. to 5:30 p.m., and when he stopped stealing Stern would reconsider. Iri replied that Stern was a slanderer. Iri denied the truth of the contents of the paper. He added that he used to work more hours, and now was working much less, yet Stern expected him to do more work.

Iri credibly testified that it was not true that Iri had lost control of his temper in a meeting with Jeffrey Stone or that Iri was belligerent and muttered obscenities to Stone, as alleged in the warning letter.

Thereafter, on May 3, Stern issued a statement indicating that he had refused to give Mustafa Iri overtime working hours due to the fact that his production was below his capacity during regular working hours. He summarized Iri's production on each of the days of April 26 through 29, noting 4-3/4, 4-1/2, 4, 12, and 7 pieces completed on each day, respectively. On May 20, Stern issued a statement asserting that during the week of May 17, he had observed Mustafa Iri's productivity increasing to an average of 6 pieces a day, with 6, 5, 7, and 11 pieces being completed on the days of May 17 through 20, respectively, thus, Stern stated, he would be asking Iri to work overtime hours. Iri testified throughout the period under consideration, his productivity remained substantially constant. If his output went down, it was attributable to the others in the work process who were producing less for Iri to upholster.

Iri was never fired from Respondent. Indeed, he was employed by Respondent when he gave his testimony at this instant trial. This factor and his complex testimony add to what I consider to be entirely credible testimony.

## Analysis

### The 8(a)(1) Violations

I find that Respondent engaged in a myriad of violations of Section 8(a)(1) of the National Labor Relations Act, as alleged in the complaints herein.

The credible facts establish that Respondent's violations began in or about the end of February 2002, when its Vice President Maurice Stone told Musa Iri: "Congratulations . . . you joined the Union." Maurice Stone proceeded to ask Iri why he had not told the Stones before, and that he could have helped get "you" a union. Maurice further asked Iri whether he had heard anybody in the shop talking for the Union. Maurice Stone created the impression of union surveillance when he stated that he knew Musa Iri had joined the Union. He also suggested the employees seek a rival labor organization in suggesting he could secure a different union. Stone also coercively interrogated Iri by asking him why he had not told the Stones before about this and whether he had heard others talking for the Union. Such statements are clearly established by General Counsel's witnesses, who are not contradicted. Respondent did not call Maurice Stone to testify, which justifies an adverse inference against Respondent, i.e., that the General Counsel's witness is testifying truthfully, and that if Maurice Stone had been called as a witness, he would have corroborated the testimony produced by the General Counsel. *International Automated Machines, Inc.,* 285 NLRB 1122 (1987). Respondent is responsible for these utterances by virtue of Maurice's role as vice president, notwithstanding Jeffrey Stone's lame attempts to deny that Maurice had any responsibility for Respondent's affairs. *Soltech, Inc.,* 306 NLRB 269 (1992). Employees certainly attested to Maurice's presence and involvement at the shop. Respondent admitted to his vice president title in these proceedings. Moreover, even assuming arguendo that Maurice individually did not bind Respondent by his conduct, the utterances in question were all in the presence of Jeffrey Stone, the president of Respondent, thus, Maurice's actions were all in effect ratified and sponsored by Jeffrey, and are attributable to Respondent. I find the above statements by Stone to be creating the impression of surveillance and unlawful interrogation in violation of Section 8(a)(1) of the Act.

Respondent engaged in a further unlawful interrogation when on the same day Jeffrey Stone spoke to Musa Iri in the workroom and asked him what the ladies were thinking about the Union, and urged and directed Musa Iri to talk to them on his behalf. By such conduct, I find Respondent engaged in unlawful interrogation. See, e.g., *Cumberland Farms,* 307 NLRB 1479 (1992).

I also find that Respondent engaged in unlawful solicitation by asking Musa Iri to speak to the employees to discourage their activities on behalf of the Union.

I further find Respondent unlawfully created the impression of surveillance when about a month before the March 29, 2002 NLRB election, Jeffrey Stone told Musa Iri that Ahmet Altas had brought in the Union. *Peter Vitale Co.,* 310 NLRB 865, 874 (1993).

Then, about a week before the NLRB election, Maurice Stone warned Musa Iri that employees were like family, but that if the Union came in, he could not call Iri by his first name anymore, because there would be a wall between employees and management. Rather, Iri would be called by a number. I find these statements constituted a threat of less desirable and more onerous working conditions, in violation of Section 8(a)(1). See, e.g., *American Warehousing & Distribution Services,* 311 NLRB 371, 373, 376 (1993).

On or about the same day, Jeffrey Stone talked to Musa Iri, noted that employees Vicki and Francisca Rivera had been talking a lot, and asked Iri what they were talking about. In the context of all the other antiunion statements by Respondent, I

find this statement constituted the creation of an impression of surveillance of union activities, and interrogation about the employees' union activities, in violation of Section 8(a)(1).

On March 29, the day of the election, Jeffrey and Maurice Stone called Mustafa Iri down to the office, accused the employees of betraying them by voting "Yes." Maurice then promised Mustafa that he was going to have lots of money and hours, but when the Union came in there would be lots of layoffs. I find the statement about "betrayal" constituted an implied threat of reprisals because of the vote for the Union in violations of Section 8(a)(1) of the Act. The statement about "lots of layoffs" I find was a direct threat of layoffs if and when the Union became the bargaining representative, also in violation of Section 8(a)(1).

A few days after the election, probably in early April 2002, Jeffrey Stone asked Francisca Rivera if she knew who had voted for the Union, which women had voted for the Union, and how come the Union won. I find all of these inquiries constitute clear coercive interrogation in violation of Section 8(a)(1).

On or about April 11, 2002, Maurice Stone spoke to Musa Iri, put his finger to his lips, and stated that Ahmet (meaning Altas) brought the Union there. In so doing, I conclude he unlawfully created the impression of surveillance, in violation of Section 8(a)(1). *Peter Vitale Co.,* supra.

Respondent next committed further unlawful solicitations a violation of Section 8(a)(1) when in the summer of 2002, Jeffrey Stone gave Mustafa Iri a piece of paper with his handwriting, indicating the phone numbers of the Union and its attorneys, and directed him to drop this unfair labor practice case, and then solicited him to call the Union. *Norbar, Inc.,* 267 NLRB 916, 917 (1983), *Electro-Tec, Inc.,* 310 NLRB 131, 135 (1993). I also find Jeffrey Stone's testimony that somehow he was approached by employees, rather than vice versa, and that this was why he furnished the phone numbers of the Union and its attorney, is implausible given its inherent improbability, and the context of other unfair labor practices. Moreover, the similarity of his contention to his claim is refuted by the credible testimony of many employee witnesses in this case.

In January 2003, Jeffrey Stone asked Florius what was happening and whether the Union had written him. Given the entire context and the absence of assurance against reprisals, I find such conduct constituted further unlawful interrogation in violation of Section 8(a)(1). Further, Jeffrey Stone told Florius at a later point in January 2003 that he would find out who brought the Union in and would fire everybody and get new people to work for him. This statement was not specifically denied by Stone. Accordingly, I find such statement is a clear threat of discharge for union support in violation of Section 8(a)(1).

Right before the July 4 week shop vacation in 2003, Jeffrey Stone directed Mustafa Iri to talk to his brother Musa during the vacation, and induce him to drop the present unfair labor practice charge, and that the two brothers would then get cash. I find such statements constitute an unlawful solicitation, and unlawful direction to get employees to secure the withdrawal of a pending NLRB case, and an unlawful promise of monetary benefit if they did so in clear violation of Section 8(a)(1).

Further, Respondent violated Section 8(a)(1) when in October 2003, Respondent, through Jeffrey Stone told Mustafa Iri that he wanted Iri to make a statement in court, i.e., in the unfair labor practice trial, and directed him to speak immediately with Respondent's counsel, Saul Zabell, who requested him to sign some papers, probably an affidavit. By attempting in effect to interrogate Mustafa Iri about a matter relating to the pending unfair labor practice trial, without any assurances against reprisals, and in atmosphere riddled with antiunion animus and unfair labor practices, Respondent violated Section 8(a)(1). *Johnnie's Poultry Co.,* 146 NLRB 770 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965); *Pioneer Concrete Co.,* 241 NLRB 264 (1979). Indeed, Respondent went further than a mere unlawful interrogation by unlawfully directing Iri to sign papers, which may well have contained a prepared statement of alleged fact.

Finally, I find Respondent violated Section 8(a)(1) in or about the last week of November 2003, when Jeffrey Stone told Mustafa Iri that the case was going nowhere, and that his brother should drop the unfair labor practice case and told him that he "should not attend any of these things," referring obviously to the ongoing trial at the Labor Board. I find such statements constitute unlawful solicitation and direction in connection with the Labor Board proceedings.

The 8(a)(3) Violations

To violate Section 8(a)(3) of the Act, an employer's conduct must discriminate in a manner that discourages membership in a labor organization. Under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *Transportation Management Corp.,* 462 U.S. 393 (1983), the General Counsel has the initial burden of proving that union activity or other employee conduct protected by the Act was a motivating factor in an employer's decision to take adverse action against an employee. A prima facie case of discriminatory conduct under Section 8(a)(3) of the Act requires evidence of the following: (1) that the alleged discriminatees be engaged in union activity, (2) that the employer had knowledge of these activities, (3) that the employer's actions were motivated by union animus, and (4) that the discrimination has the effect of encouraging or discouraging union membership. *Downtown Toyota,* 276 NLRB 999, 1014 (1985), citing *NLRB v. Transportation Management Corp.,* supra; *Wright Line,* supra. Once the General Counsel meets this initial burden, the employer then has the burden to show that it would have taken the same action even in the absence of the protected conduct. *Office of Workers Compensation Programs v. Greenwich Colleries,* 114 S.Ct. 2552–2558 (1994); *Southwest Merchandising Corp.,* 53 F.3d 1334 (D.C. Cir. 1995), *Manno Electric,* 321 NLRB 278 fn. 12 (1996); *Wright Line,* supra. However, when an employer's motives for its actions are found to be false, the circumstances may warrant an inference that true motivation is an unlawful one that the employer desires to conceal. *Limestone Apparel Corp.,* 255 NLRB 722 (1981); *Golden Flake Snake Foods,* 297 NLRB 594 fn. 2 (1990).

I find Respondent engaged in a series of acts against employees designed to discourage them from joining the Union, in

violation of Section 8(a)(1) and (3) of the Act, as alleged in the Complaints herein. The General Counsel's case as to acts of discrimination is strongly buttressed by the intense animus against the Union as demonstrated by the numerous 8(a)(1) violations by Respondent set forth above.

I find that all allegations of the 8(a)(3) violations alleged, and the necessity of proving knowledge of the union activities of the alleged discriminatees, should be looked at in the context of Jeffrey Stone's intense involvement with his shop personnel, and his constantly asking employees about perceived problems, and their personal lives. Stone admits to having a "very close intimate shop" where he and employees can talk "on any level." Moreover, it is significant that he spends much time in the shop, watches employees eating lunch together, and is aware who regularly eats together. Further, there is a camera system throughout the factory and showroom, including at lunch areas, whereby Stone can observe the movements and conversations of employees. Also, Jeffrey Stone's personal secretary, Denise Hanley, who was frequently about the shop, let Stone know what she heard about how people felt about the Union. Supervisor Stern concluded that Musa Iri was a union adherent and advised Jeffrey Stone about conversations he was having with employees, especially the seamstresses. Given these factors, I conclude that Stone was in a particularly strong position to learn of the union proclivities of his employees, and to reach conclusions as to who was active in the Union. I find that based upon Stone's involvement with his employees and the 8(a)(1) violations set forth and described above, I conclude Stone knew who were the active prounion employees from the beginning of December 2001, and at all times thereafter.

As to animus and knowledge of the proactive employees, both criteria were conclusively established by the various warnings which were issued by Respondent. Respondent sought to show at trial that the very system of written warnings was instituted in response to the Union's success in organizing the employees. The warnings, threats, solicitations, interrogations and each and every violation of Section 8(a)(1) establish conclusively the vindictive nature of Respondent aimed at punishing employees for their union activities.

I find, that counsel for General Counsel has conclusively established the first three *Wright Line* requirements, that the alleged discriminatees were engaged in union activity, that Respondent had knowledge of their activities, and that Respondent had intense and vindictive animus toward each alleged discriminatees.

### The Discharge of Altas

Respondent's first discriminatory act was the discharge of Altas. It is undisputed that he was instrumental in contacting the Union and organizing the employees in the shop. Respondent's knowledge of the union activities of its employees and of Altas in particular, while he was still employed, may be inferred by Stone's close observation of shop going-ons, his telling Musa Iri after the drive started that Altas and others were talking a lot, asking Musa what they were talking about, his statement to Musa at the same time that Altas had an evil idea, and his further statement to Musa Iri that Altas had a problem. There is even more direct evidence in the statement by Jeffrey Stone who told Musa Iri that Altas had brought in the Union. There is also further direct evidence, undenied in the record by Maurice Stone, who was not called to testify, that Maurice told Musa Iri that he knew Altas was the one who brought in the Union. While these statements were made after the discharge of Altas and after the NLRB election, I conclude, that given the entire context of this matter, that Respondent had formed that conclusion even before the discharge of Altas.

Respondent's defenses, either as extracted from the General Counsel's case or as actually put forth by Respondent at trial, do not negate a finding of discrimination. If he was in fact discharged as Altas has testified, the discharge was suspect. Altas was indisputably one of the highest-skilled employees in the shop. Given Altas' overall positive record of production, I find that Stone's anger at Altas for not finishing a job seem irrational and pretextual. As to Respondent's contention at trial that Altas had quit, this is not supported by the credible evidence. Given the credibility issues raised about the testimony of Jeffrey Stone and other Respondent witnesses, I find that Altas did not quit, but was in fact discharged. Weakening Respondent's own contention that Altas left of his own volition is the fact that Respondent tried vigorously to show that he had just had a fight with another employee, Raul Seminario, as if to suggest that this would have been a reason for discharge. Failing that, Respondent would apparently contend that such an altercation would explain how Altas then left the place in an angry state. In fact, as credibly testified by Altas, the incident with Seminario had occurred months before, and if anything Stone was sympathetic to Altas in weighing the incident. As Altas credibly testified at trial, it was at that time, not the time of his termination of employment, that he threatened not to come back, after Jeffrey Stone directed him to go home and think about the incident.

I find the testimony of Respondent's witness Denise Hanley, to the extent it was offered to show that Altas quit and was not fired, was particularly unpersuasive. She was close to Stone as his personal secretary, and admitted that she heard Jeffrey Stone tell Altas to go home on a number of occasions. She gave Stone a statement supporting his version of a dispute with Altas after Stone explained to her that it was important to show that Altas was in an altercation with another employee. I find her special relationship with Jeffrey Stone, probably colored her testimony, was particularly unconvincing. Moreover, I found the testimony of all General Counsel's witnesses were absolutely credible for the reasons set forth above. I therefore find no truth in Respondent's contention that Altas quit.

Accordingly, I conclude General Counsel established its *Wright Line's* requirements and established a strong prima facie case. I also conclude that Respondents defense is false. *Wright Line,* supra, *Limestone Apparel,* supra, and *Golden Flake Snake Foods,* supra. Accordingly, I find that Respondent has not met its *Wright Line* burden, and conclude that Altas was discharged in violation of Section 8(a)(1) and (3) of the Act.

### Discrimination Against Francisca Rivera

The credible evidence establishes that Rivera signed a card for the Union and discussed the Union throughout the shop. She was friendly with Altas and Musa Iri, was seen by man-

agement talking with them, so that management would reasonably conclude that she was in league with them concerning the Union. This is established by her being interrogated by management about her Union support. For example, Jeffrey Stone questioning Musa Iri concerning Rivera's conversations with employee Vicky Brijlall, the remark made to her by Jeffrey Stone when the mass layoff was announced, that she should think about what had been going on, while on layoff, and her never having gotten prior written warnings for lateness, absence, or not calling in, before her union activities. The intense and vindictive animus toward all Union supporters as described above, fulfills the animus requirement described in *Wright Line,* supra. The evidence that Rivera was discriminated against includes: (1) Jeffrey Stone telling her that he had called someone else in to work in her place on April 17, 2002, and only allowed her to work after she started to leave. She was subject to this treatment, on the ground that she had allegedly not called in the day before, even though she had called in to Musa Iri the day before to say she would be out that day and Musa Iri did advise Stern. (2) Respondent issuing a written warning against Rivera on April 17 for "no call/no show," even though she had called in, and had never failed to call in before when she was taking off. She was told by Stone that she should not worry about the paper, but that it was issued because of "Union law." This attests to the antiunion intention of Stone in issuing the warning. Not only was it discriminatory retaliation, but Stone was attempting to make Rivera believe that the Union was responsible for his having to issue such warning.

I find that based on the above, counsel for the General Counsel has established its *Wright Line* burden and has established a strong prima facie case.

Respondent's defense that Rivera had a number of attendance problems previously and that Respondent finally decided to address it formally is not credible in view of the credible testimony set forth above. The timing of the written warnings establish discriminatory motivation. Moreover, Respondent's contention that Jeffrey Stone had no knowledge of her Union activities is laughable, and goes to his total lack of credibility. Accordingly, I conclude Respondent has not met its *Wright Line* burden. I find that by issuing written warnings, described above, Respondent violated Section 8(a)(1) and (3) of the Act.

Counsel for the General Counsel further contends that Respondent delayed her return from a week layoff.

The credible evidence establishes Respondent delayed Rivera's return to work at least one workday after the layoff, coupled with her trip to the Dominican Republic. The general layoff of employees was for one week, to end on Friday May 10, but Stone told Rivera things were slow, even though all the other employees had already been recalled and were working. He did not allow her to return to work until Monday, May 13. I find such action can only be explained as rooted in discriminatory considerations. I find that the *Wright Line* requirements were satisfied, and the General Counsel has established a strong prima facie case.

Respondent admits that Rivera was to return on May 10, but was told by Jeffrey Stone not to report until Monday, May 13, which she did. Accordingly, I find Respondent has failed to establish its *Wright Line* burden and further find by the one day delay, Respondent violated Section 8(a)(1) and (3) of the Act.

The Discrimination Against Musa Iri

It is undisputed that Musa Iri was a leading proponent of the union organizing drive, not only signing a union card, but distributing cards to and collecting them from, fellow employees. He spoke about the Union both inside and outside the shop, and was the recipient of many antiunion statements and indications of suspicion from Jeffrey Stone. Moreover, he was subject to the camera system of Respondent, which would have shown Stone that Musa Iri was regularly taking with employees in group settings during the period in question. The evidence establishes that immediately after election, both Jeffrey and Maurice Stone demonstrated a sudden hostility to Musa Iri, indicating that they were angry at him for his support of the Union. In this regard, on April 19, 2002, after never having received any warning notices of any kind or being criticized for poor work, and even though his work output had not in fact diminished, Musa Iri received a warning complaining about his alleged limited cutting work on the prior 2 days. Iri then received a second warning on April 26, alleging a "slowdown." Given the entire context of these warnings, the timing, especially in view of the fact that Iri's work was never criticized before, along with Respondents knowledge of his Union activities and overall intense and vindictive animus, I find the General Counsel has established a strong prima facie case.

Respondent essentially contends the warnings were justified. However, based upon the overall animus, the knowledge of Iri's union activities and the timing of the warnings, I find Respondent has not met it's *Wright Line* burden, and conclude these warnings are violative of Section 8(a)(1) and (3) of the Act.

With respect to the allegation that Musa Iri was discharged in violation of Section 8(a)(1) and (3), the union activity of Iri, the knowledge of such activity, the overall animus, and the specific animus directed toward Iri, as set forth above, coupled with the warning letters and the timing of the discharge establish a strong prima facie case.

I find Respondent's defenses are untenable. Musa and his brother were apparently both being accused of having burglarized the shop, although their credible testimony establishes otherwise. Respondent's evidence in support of such a burglary is not credible. The contention that employee Barrezueta's glasses were missing, and that somehow Musa Iri would have wanted to pilfer them as revenge for fixing mistakes, is far-fetched almost bizarre. Respondent attempted unsuccessfully to enter into evidence a parking stub, for a parking lot adjacent to Respondent's premises which was supposedly to establish their presence during the time of the robbery. The parking stub was placed in the rejected exhibit file because it failed to establish a date and time, or even the correct parking lot. Moreover, the testimony of Respondent's parking-attendant witness Mack Gilard was pathetic, inconclusive, and confusing. Indeed, Gilard could not identify the Iri brothers at the trial as the ones he saw come to his lot on a particular morning. Moreover, there is no evidence that the morning Gilard

allegedly saw two employees park at the lot was the morning of the alleged breakin.

Further, while Stone told Musa Iri that he had pictures of the alleged misconduct, no such pictures were ever shown to Iri, and indeed, none were ever offered at trial in support of Respondent's case. Moreover, Stone never reported the alleged theft of the glasses to the police. I conclude that Respondent utterly failed to establish its *Wright Line* burden, and further conclude that by discharging Musa Iri, Respondent violated Section 8(a)(1) and (3) of the Act.

Respondent's Mass Layoffs

Respondent ordered a mass layoff of almost the entire shop for a week, beginning April 26, 2002. The layoff was totally outside the regular practice of Respondent to put the entire shop on vacation, at the slow times of July 4 and Christmas. April was not typically a slow month.

The real motivation behind the layoffs is established by the testimony of Rivera, which is uncontradicted. Rivera testified she was advised of the layoff on April 26, by Stone. At that time Stone showed her a paper, saying he had to write everything because of the Union, and admonished her: "I want you to think about what's going on here." This could only have referred to the recent organizing drive and union victory in the March 29 election. The timing of the layoff, a month after the Union's election victory strongly supports the General Counsel's contention that such layoff was discriminatorily motivated. Thus, given the knowledge of the employee's union activities and the intense animus establishes its *Wright Line* burden.

Respondent contends the layoff was an economic layoff. However, Respondent did not offer any documentary evidence at the trial to substantiate its contention that work was slow at the time of layoff. Failure of a party to produce evidence in its control justified an inference that such evidence, if produced, would be unfavorable to it. *J. Huizinga Cartage Co.,* 298 NLRB 965, 970 (1990), and cases cited therein. Accordingly, I conclude the layoff was discriminatorily motivated and violative of Section 8(a)(1) and (3) of the Act.

The Layoff of Florius

Florius was a valued employee who not only did down work, but was also assigned to check that fabrics were cut and sewn, to examine down work to see if it was done properly, and if not, to give the work to sewers or cutters for fixing, and to repair jobs. He was a card signer and an advocate for the Union. He was friendly with the others who favored the Union and could be seen talking to them by Jeffrey Stone. He was the recipient of union interrogation by Jeffrey Stone about what was happening and whether the Union had written him, thus, showing that Stone had identified Florius as one associated with the Union. Further, and most important, Florius was a recipient of a flagrant threat by Jeffrey Stone that he would find out who brought in the Union and get new people to work for him. Moreover, on January 31, 2003, Florius talked about the Union with fellow employee Herbie, at which time he noticed Jeffrey Stone standing nearby, and after which Stone castigated him about his alleged sitting around. It may be inferred that Stone heard Florius taking about the Union. For the reasons set forth above, I find the General Counsel has established its *Wright Line* burden and has established a strong prima facie case.

As for Respondent's defense of business justification, no records were produced to demonstrate that business was slow at the time of the Florius layoff. His skills were such that he was not a mere "down man" whose job could be easily consolidated with another employee. After the layoff Stone's sarcastic promises to recall Florius, which were obviously not sincere, further attest to the falsity of the reasons for the layoff that were asserted to Florius and at the trial herein. In this connection the undenied testimony of Florius that supervisor Stern told him, weeks after the layoff, that Florius should look for another job because Jeffrey Stone would not hire him back. Finally, Stone's flippant statement to Florius in 2003 that Florius should call him "after the war" clearly establishes that Stone had no intention of calling him back, and that he had indeed used the layoff method as a means to rid himself of a strong union adherent.

I find Respondent has utterly failed to meet is *Wright Line* burden. Accordingly, I find Respondent violated Section 8(a)(1) and (3) of the Act.

Discriminatory Conduct Against Mustafa Iri

Mustafa Iri was a top-flight employee of Respondent, whose skills are undisputed. While he also signed for the Union and certainly could be identified with his brother in regard to the organizing drive, Jeffrey Stone apparently decided that Mustafa was not as closely identified as his brother with the Union efforts, and indeed, he was correct. Thus, after accusing the two brothers of unauthorized entry into the shop, he "forgave" Mustafa while firing Musa. However, it appears strongly that Jeffrey Stone changed his attitude about Mustafa after he illegally solicited Mustafa to get the above NLRB charges dropped, without success, and after Mustafa Iri refused his demand that he give an affidavit which could be used in support of Respondent's case at the trial herein. I find acts taken against Mustafa subsequent to Jeffrey Stone's unsuccessful attempts to persuade Mustafa to cooperate with Respondent's defense of this case, is evidence of discrimination in hours and terms and conditions of employment, in violation of the Act. These include: (1) the warning notices on November 4, 2003, concerning alleged production problems and his arriving to work late, and his being sent home at that time. Iri explained to Stern without success that the job in question was impossible and should not have even been taken on. Nor, as Iri testified, had he missed punching in on November 3. His failure to call in when late was a random aberration. He had never been criticized, certainly not substantially, for alleged bad work in the past, and he was allowed to come in late or early, without any criticism of his hours. Moreover, supervisor Stern kept no records that could substantiate claims of frequent lateness. The suspension, as Iri testified, was without pay and Respondent's records, not always reflecting overtime, do not prove that Iri was in fact paid, (2) The reduction in overtime. Iri had always worked many overtime hours, for a total of about 80 hours per week, but now after he rebuffed Stone with regard to his solicitations on the NLRB matters, his overtime was drastically cut.

Interestingly, his overtime was largely restored after he filed his own unfair labor practice charge in Case 2–CA–36138.

Accordingly, I conclude General Counsel has established a strong prima facie case. I also find Respondent's defense that overtime was cut as a punishment to Iri because of his alleged work deficiencies does not make sense, in view of his overall excellent record as an employee, the consistency of his effort as he has testified, and given the timing of the cutbacks. The March 5 "counseling notice" that Iri allegedly was being warned for losing his temper and muttering obscenities. Iri has credibly denied losing his temper or muttering obscenities, and the warning notice can only then be explained by Respondent's antiunion animus.

Moreover, I find Respondent's attempt to make Mustafa Iri appear to be a disgruntled and sabotaging employee was not at all made out by the testimony of Respondent witness Arbelo who claimed to hear Mustafa Iri say that he would make the company pay. The testimony was not consistent, the remark was denied by Iri on rebuttal, and in any event the statement if made would still not establish that Iri meant anything other than seeking legal redress.

Accordingly, I find that Respondent has not met its *Wright Line* burden. I find that Respondent's defense is without merit. Accordingly, I find Respondent has violated Section 8(a)(1) and (3) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(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. Respondent violated Section 8(a)(1) of the Act, as set forth above and below in the notice and appendix.
4. Respondent has violated Section 8(a)(3) of the Act, as set forth above, and below in the notice and appendix.

## REMEDY

Having found Respondent has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist and take certain action to effectuate the policies of the Act.

With respect to Francisca Rivera, I found the warning letter issued to Rivera on April 17 was a violation of Section 8(a)(1) and (3) of the Act. I shall recommend that such warning letter be removed from her personnel file and that Rivera be notified that this has been done, and that such action will not be used against her in any way. I also find that Respondent discriminatorily laid off Rivera on May 10, for 1 day in violation of Section 8(a)(1) and (3) of the Act. To remedy this violation I shall order backpay for the single day she was not allowed to work. Back pay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed by *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

With respect to Musa Iri, I found that by issuing a written warning concerning his work production on April 17, 2002, Respondent violated Section 8(a)(1) and (3) of the Act. To remedy such violation I shall recommend that such warning letter be removed from his personnel file and that he be given written notice that this has been done and that such letter shall not be used against him in any way.

With respect to Iri's discharge on May 2, 2002, I have found that such action violated Section 8(a)(1) and (3) of the Act. As a remedy, I shall recommend that he be offered unconditional reinstatement to his former position of employment, or if such position no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights previously enjoyed by him. I shall further recommend that he be made whole for any loss of earnings, or other benefits suffered as a result of his discharge, from the date of such action until the date that a valid offer of reinstatement, as defined by the Board is made by Respondent. Backpay to be compiled as set forth above in this section.

With respect to Ahmet Atlas' discharge on January 31, 2000, I have found that such action violated Section 8(a)(1) and (3) of the Act. As a remedy, I shall recommend that he be offered unconditional reinstatement to his former position of employment, or if such position no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights previously enjoyed by him. I shall further recommend that he be made whole for any loss of earnings, or other benefits suffered as a result of his discharge, from the date of such action until the date a valid offer of reinstatement, as defined by the Board is made by Respondent. Backpay to be compiled as set forth above in this section.

I have also found that Respondent violated Section 8(a)(1) and (3) by laying off the entire work force for 1 week beginning April 26, 2002. To remedy this action I shall recommend that Respondent be ordered to make such employees whole for any loss of earnings or other benefits suffered as a result of this layoff. Backpay to be computed as set forth above in this section.

The employees who were laid off based upon Respondent's payroll records for the week ending May 2 and including April 20 are set forth as follows:

Eustaquio Arvelo—cleanup
Radames Baez—cleanup
Max Berrezueta—cutter
Bhagwandai (Vicky) Brijlall—seamstress
Pausey Brown—carpenter in woodshop
Marizol Cabrera—seamstress
Carmen Guerra—cleanup
Musa Iri—upholsterer
Mustafa Iri—upholsterer
Suat Kocak—cutter
Fernando Lebron—cleanup and stock
Ana Moran—seamstress
Khemraj Narain—woodshop
Gloria Naula-Maza—seamstress
Blanca Rincon—seamstress
Francisca Rivera—seamstress
Wilfredo Sanchez—upholsterer
Raul Seminario—upholsterer
Sonia Ubiera—seamstress
Trinidad Valdez—seamstress
Maria Zumba—seamstress

Herbert Heyward—frame shop
John Johnson—foam stuffer
Stanley Chow—frame shop
Stanley Clerrosier—upholsterer
Lidia Delacruz—seamstress
Carlos Lebron—fabric librarian
Eusebia Valdez—upholsterer

I found that Respondent discharged its employee Stanislas Florius on February 4, 2003. To remedy this violation I shall recommend the same remedy as set forth above in this section relating to the discharge of Musa Iri.

With respect to Mustafa Iri, I have found that Respondent, on November 4, 2003, had issued Mustafa a series of warning letters in connection with his production and lateness, and a failure to punch his timecard, in violation of Section 8(a)(1) and (3) of the Act. To remedy this violation I shall recommend the same action as recommended with respect to Rivera and Musa Iri above in this section.

I also found that Mustafa Iri was discriminatorily laid off for 1 day on November 4, 2003, in violation of Section 8(a)(1) and (3) of the Act. To remedy this violation, I recommend the same remedy as was recommended in connection with Rivera as set forth above in this section.

[Recommended Order omitted from publication.]