Amptech, Inc. *and* International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL–CIO, CLC. Cases 7–CA–44416 and 7–CA–44638

September 22, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On August 26, 2002, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions, a supporting brief, and a Request for Oral Argument.[1] The General Counsel filed an answering brief.

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

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

I. INTRODUCTION

This case concerns the Respondent's response to a union organizing drive that took place at the Respondent's facility in late September 2001.

The judge found, and we agree, that the Respondent violated Section 8(a)(3) and (1) by discriminatorily laying off 13 production employees—most of whom were known or suspected union supporters or associates thereof—in the wake of this organizing drive. However, for the reasons discussed below, we find that the layoff of one of these employees, Gayle Vallad, was unlawful on the basis of a different rationale than that applied by the judge. The judge also found, and we agree, for the reasons described below, that the Respondent violated Section 8(a)(3) and (1) by failing and refusing to recall certain of the laid- off employees to their former positions, and by issuing employee Kathy Reimann-Ruba a disciplinary warning notice because of her union support and activities.

Further, for the reasons discussed below, we agree with the judge's conclusions that the Respondent violated Section 8(a)(1) by, inter alia, stating to employees at a management-organized meeting that the Respondent considered the union organizing drive to be a "personal attack" and that the Respondent would "keep [its] options open"; maintaining a rule prohibiting individuals other than on-duty employees from entering the Respondent's grounds; and instituting an employee advocacy program and distributing an employee survey for the purpose of discouraging its employees from supporting the Union. We discuss these items, in turn, below.[4]

II. FACTUAL BACKGROUND

As more fully set forth in the judge's decision, the relevant facts are as follows. The Respondent is a corporation in Free Soil, Michigan, engaged in the manufac-

[1] The Respondent's request for oral argument is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[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.

[3] We have modified the judge's recommended Order in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001), and to conform to our findings and the Board's standard remedial language. We have also substituted a new notice. In addition, we do not believe that a broad cease-and-desist order is warranted under the test set forth in *Hickmott Foods*, 242 NLRB 1357 (1979), and we shall modify the judge's recommended Order and notice accordingly.

In reaching this conclusion, Member Schaumber relies additionally on *NLRB v. Express Publishing Co.*, 312 U.S. 426, 433 (1941) ("It would seem . . . clear that the authority conferred on the Board to restrain the practice which it has found the employer to have committed is not an authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct."); see also *NLRB v. Southwire Co.*, 352 F.2d 346, 349 (6th Cir. 1965) (denying enforcement of Board order seeking to restrain employer from violating the Act "in any other manner" in the future); *NLRB v. Process & Pollution Control Co.*, 588 F.2d 786, 792 (D.C. Cir. 1978) (to justify restraint of other violations, "it must appear that they bear some resemblance to that which the employer has committed or that the danger of their commission is to be anticipated from the course of [the respondent's] conduct in the past."); see generally Fed.R.Civ.P. 65(d) (establishing specificity requirements for cease and desist orders).

Member Walsh agrees with the judge's recommended broad cease-and-desist order under *Hickmott Foods*, supra, on the grounds that the Respondent has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for the fundamental statutory rights of its employees. *Trus Joist MacMillan*, 341 NLRB No. 45, slip op. at 6; JD slip op. at 25 (2004); cf. *United Parcel Service*, 340 NLRB No. 89, slip op. at 1 fn. 3 (2003) (an unlawful discharge).

[4] We adopt the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) by laying off employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle (Sue) Stewart, Judy White, and Rose Zimmer, and by placing employee Barbara Cormany on probation and issuing her a disciplinary warning because of her union support and activities.

We also adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by: making threats of plant closure and retaliation through Alice Patulski Wilson and Supervisor Trudy Thomas; making statements regarding plant closure to employees and interrogating employees regarding their union sympathies through outside ISO Consultant Mary Schlattman; maintaining and enforcing an unlawful confidentiality rule; and discharging Supervisor Thomas because she gave an affidavit to the Board. Further, in the absence of exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(a)(1) by making threats of plant closure through Supervisor Dave Honomichl.

ture of circuit boards. During the period in question, the Respondent employed approximately 110 permanent employees and 40 temporary employees. The Respondent is owned by two brothers, Jeff Patulski (J. Patulski), who is the president of the Respondent, and Stacey Patulski (S. Patulski), who is the Respondent's vice president and human resources director. The Respondent's plant is owned by a separate corporation, which is co-owned by the Patulskis' mother, Alice Patulski Wilson (A. Patulski).

A. The Union Organizing Drive

In September 2001,[5] the Union began an organizing drive at the Respondent's facility. All of the employees who were either involved in the organizing drive or who supported the Union were first shift production employees; second shift production employees generally did not support the Union. The Respondent learned of the organizing effort on September 21, when employees Barbara Cormany, Kathy Reimann-Ruba, Kathy Heard, and Vicki Renner engaged in handbilling outside of the Respondent's plant during the shift change. One of the handbills they passed out was a notice for a union organizational meeting on Sunday, September 23.

Over 20 employees attended that meeting. On Monday, September 24, S. Patulski conducted his own meeting with employees. Reading from a written statement, Patulski told employees that the Respondent viewed the union organizing effort as a "personal attack," and coupled that statement with a warning to employees that, in light of the organizing drive, the Respondent would continue to "explore all of [its] options for the future of Amptech."

Following this meeting, several of the Respondent's officials, including the Respondent's general manager, Jerry Overla, began to observe employees and listen to information regarding which employees supported the Union and which employees associated with the union supporters. Beginning on or about Wednesday, September 26, and continuing through Friday, September 28, the Respondent held a series of additional mandatory meetings with small groups of employees. Known union supporters were not invited to these meetings.

On Thursday, September 27, the Union held another meeting attended by over 50 employees, including most of the known union supporters, as well as, Merle (Sue) Stewart, Rose Zimmer, Sandy Krusniak, and Brad Block. Also in attendance were several of the Respondent's managers and front office employees, who came to the meeting to express their opposition to unionization. During this meeting, several employees who were not already known as union supporters, including Block and Krusniak, expressed their support for the Union.

B. The September 28 Layoffs

On September 28, the Respondent instituted, without any prior notice, indefinite layoffs of both permanent and temporary production employees. In total, the Respondent laid off 13 permanent employees and 32 temporary employees; 9 temporary employees were not laid off. All of the layoffs involved employees on the first shift. Those selected for layoff included four of the six September 21 union handbill signers—Babcock, Heard, Renner, and Reimann-Ruba. The other permanent employees who were laid off were Block, Jennifer Ely, Krusniak, Paul Schlaud, Shedd, Stewart, Vallad, White, and Zimmer.

C. October No-Access Policy

The Respondent's "Visitors in the Workplace" policy states that all visitors to the Respondent must enter in the reception area, and upon receiving authorization to enter the plant, they will be escorted to their destination by an official of the Respondent. At an employee meeting on October 15, shortly after the layoffs, the Respondent announced that, pursuant to this policy, no one was to be "on the grounds" except for "working Amptech employees."

D. Employee Advocacy Program

Also after the September 28 layoffs, the Respondent instituted an employee advocacy program. The Respondent solicited employees to participate in this program by acting as advocates for other employees who wanted to bring concerns and/or suggestions to the attention of management, and wished to have someone accompany them when they did so. The volunteer sign-up list for the program, which was posted by the timeclock and company bulletin board, stated that the role of the employee advocate is to be a "neutral third party to help [employees] feel comfortable, to serve as a witness, and to help find a resolution to the concern," and that "management has agreed to do this *to help resolve employee issues*."[6] (Emphasis added.)

E. The Recall of Laid-Off Employees

During the time the aforementioned employees were on layoff, the Patulskis told Supervisor Trudy Thomas that they were sorry that the laid-off employees who

[5] All dates herein are in 2001, unless otherwise noted.

[6] After several individuals had volunteered to act as employee advocates, the Respondent posted another document entitled "Employee Advocate Program," which listed the employee advocates and included statements similar to those on the volunteer sign-up list. The employee advocacy program was still in effect, and this document was still posted, as of the date of the hearing.

supported the Union would soon be recalled because they "just [didn't] want to deal with them." Nevertheless, the Respondent began to sporadically recall the laid-off employees on November 8. It did not, however, recall some of these employees to their former positions. And, some of the employees who were among the first to be recalled—namely, Reimann-Ruba and White—testified that, when they returned to work, they witnessed temporary employees working while permanent employees remained on layoff.[7]

F. The Disciplinary Warning of Kathy Reimann-Ruba

On January 8, 2002, S. Patulski issued union supporter Reimann-Ruba, who had recently been recalled from layoff, an "Employee Warning Notice" because she had accumulated nine unexcused absences within the preceding 12 months. The notice stated that she would be placed on probation if she incurred any further absences. One of the absences cited as unexcused on the notice was a request from February 15 of the preceding year for an absence without pay on May 11 of that year. After Reimann-Ruba had put in a written request for this absence, Renner, her team leader at that time, verified with Office Manager Kim Graczyk that the absence would be approved. After Graczyk had told Renner that the absence would be approved, Renner relayed this message to Reimann-Ruba. However, at some point thereafter, S. Patulski crossed out that the absence was excused on the request form and did not inform Reimann-Ruba that he had done so; he issued Reimann-Ruba the warning notice based, in part, on this incident.[8]

G. Employee Survey

Finally, on February 1, 2002, at an employee meeting, S. Patulski informed employees that the Respondent would soon be distributing survey forms in order to find out what employees "wanted" from the Respondent. The survey, which was distributed on February 4, 2002, asked employees to provide their opinions and suggestions regarding such subjects as communications, employee benefits, and employment policies. There is no evidence that the Respondent had conducted such a survey on any prior occasion.

III. DISCUSSION

1. The judge found, and we agree, that the Respondent violated Section 8(a)(3) and (1) by laying off employees Kent Babcock, Brad Block, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Rose Shedd, Merle (Sue) Stewart, Judy White, and Rose Zimmer because of their union support and/or activities, or because of their association with known union supporters; and by laying off employees Jennifer Ely and Paul Schlaud, who were not known union supporters or associates thereof, to conceal its unlawful motive for laying off the other employees. The judge also found that the Respondent violated Section 8(a)(3) and (1) by laying off employee Gayle Vallad, who was not a known union supporter, for the same reason it had laid off Ely and Schlaud, namely, to conceal its unlawful motive for the other layoffs.

While we adopt the judge's conclusion that the Respondent's layoff of Vallad was unlawful, we do so for different reasons. Although it was not mentioned in the judge's decision, there is undisputed evidence that Vallad, unlike Ely and Schlaud, was regarded by management officials of the Respondent as a close associate of known union supporters. In this regard, Overla testified that he was aware that Vallad associated with known union supporters. Consistent with Overla's testimony, Vallad testified that, at the time in question, she was closely associated with known union supporters Cormany, Heard, Renner, and Reimann-Ruba.

In *Martech MDI*, 331 NLRB 487, 488 (2000), enfd. 6 Fed. Appx. 14 (D.C. Cir. 2001), the Board held that "the discharge of an employee who is not known to have engaged in union activity, but who has a close relationship with a known union supporter may give rise to an inference of discrimination." Consistent with this holding, the judge, in this case, inferred that the Respondent laid off certain of the employees, such as White, based on their association with known union supporters. Given that Vallad was also recognized as an associate of known union supporters, and was regarded by the Respondent's management as such, an inference of discrimination on the basis of this association is also appropriate with respect to her layoff.

2. The judge further found, and we agree, that the Respondent violated Section 8(a)(3) and (1) by failing and refusing to recall certain of the discriminatorily laid-off employees to their former positions. The Respondent has excepted generally to this finding; however, we find no merit in this exception. For the reasons described below, we find that the Respondent unlawfully failed and refused to recall certain laid-off employees to their former positions in order to discourage their continued employment and to thwart future union organizational efforts.

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board established its test of causation for

[7] As of the date of the hearing, the Respondent had recalled all but two of the laid-off employees.

[8] It is not clear from the record when S. Patulski crossed out the excused absence.

cases alleging violations of Section 8(a)(3) of the Act. First, the General Counsel must prove, by a preponderance of the evidence, that an employee's protected conduct was a motivating factor in the employer's adverse employment decision. *Manno Electric, Inc.*, 321 NLRB 278, 280 (1996). Once this showing has been made, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. *Wright Line*, 251 NLRB at 1089.

In this case, the judge properly found that the General Counsel met his initial burden of proving that protected conduct was a motivating factor in the Respondent's decision not to return certain recalled employees—particularly, Reimann-Ruba, Heard, and Renner—to their former positions. The Respondent does not dispute that it had knowledge of the union activities of these employees, who were members of the core group of union organizers at the Respondent and whose signatures had appeared on a union handbill that was viewed by S. Patulski.

Further, as discussed more fully herein, the recalls of these employees took place against the background of numerous unfair labor practices that demonstrated the Respondent's antiunion animus, the most significant of which was the Respondent's discriminatory layoff of the union supporters in the first place. See *Novartis Nutrition Corp.*, 331 NLRB 1519, 1520 (2000) (recognizing that the employer's commission of other unfair labor practices around the time of the unlawful termination of a prounion employee constituted evidence of the employer's animus toward prounion employees). Both before and during the recalls, the Respondent also committed several other unfair labor practices that evidenced its animus toward the union organizing drive and union supporters, including, inter alia, the unlawful discipline of union supporters, threats of plant closure and retaliation, and the unlawful solicitation of employee grievances.

The circumstances surrounding the recalls themselves also evidence the Respondent's animus toward the Union and its supporters. In this regard, before the recalls, the Patulskis expressed regret that the laid-off union supporters would be recalled, because they "just [didn't] want to deal with them." As previously noted, the Respondent began to sporadically recall employees after November 8. It did not, however, return all of the recalled employees to their former positions. For example, Reimann-Ruba, who was one of the first employees to be recalled on November 8, was placed in a position on the second shift—a shift she had told S. Patulski she did not want to work on—and she remained on that shift until it was eliminated in December.[9] In addition, Heard, the most senior production employee, who could perform most of the jobs at the plant, was offered a basic assembly position paying $5 less per hour than her former position. Heard rejected this offer and did not receive an offer of work similar to her former position until January 2002. Likewise, Renner, another senior employee, was offered, and eventually accepted, a basic assembly position paying $1 per hour less than her former position. Further, as noted above, when certain recalled employees returned to work, they noticed that temporary employees were working while permanent employees were still on layoff.

In light of these circumstances, we find that the General Counsel met his initial burden of proving that the union activity of employees such as Ruba, Heard, and Renner was a motivating factor in the Respondent's failure to recall them to their former positions. We further find that the Respondent, having offered no explanation to justify the method it employed in recalling these employees, has failed to demonstrate that it would have recalled them in the same manner even in the absence of their union activities.

Accordingly, on this basis, we agree with the judge's conclusion that the Respondent violated Section 8(a)(3) and (1) by failing and refusing to recall certain laid-off employees to their former positions.

3. The judge also found, and we agree, that the Respondent violated Section 8(a)(3) and (1) by issuing Reimann-Ruba a disciplinary warning because of her union support and activities. The warning was issued to Reimann-Ruba in January 2002, 2 months after she had been recalled from layoff, purportedly because she had accumulated nine absences in a 12-month period. In its exceptions, the Respondent argues, inter alia, that it had established an informal practice of warning employees who had accumulated close to 10 unexcused absences that they would be subject to disciplinary action if they accumulated any more absences.[10] The Respondent argues that these "warnings" were not discipline; instead, they were merely designed to prevent employees from violating the Respondent's attendance policy. Thus, the Respondent argues that its warning to Reimann-Ruba, who had accumulated nine absences, did not violate the Act. The Respondent contends that the warning was consistent with existing practice and that it did not con-

[9] As noted above, second-shift production employees at the Respondent were generally opposed to the Union.

[10] As noted above, the Respondent's formal disciplinary process, as set forth in the employee handbook, is invoked when an employee has reached 10 unexcused absences in a 12-month period.

stitute discipline. For the reasons set forth below, we find no merit in the Respondent's exceptions.

Preliminarily, we disagree with the Respondent's contention that the "warning" issued to Reimann-Ruba did not constitute discipline. We note that the form used by the Respondent to "warn" Reimann-Ruba that she was close to the threshold of formal discipline—the "Employee Warning Notice"—was the *same* form that the Respondent used when it actually issued formal discipline. Thus, the Respondent issued Reimann-Ruba, who was on the threshold of violating the Respondent's attendance policy, a warning using the same form that an employee who had actually violated the policy would receive. Moreover, in the course of issuing the warning, the Respondent converted an excused absence incurred by Reimann-Ruba on May 11 to an unexcused absence. The Respondent has offered no explanation for its decision, well after the fact, to reclassify this absence as "unexcused." By increasing the number of unexcused absences charged to Reimann-Ruba, the Respondent moved her a step closer to being placed on probation. Under these circumstances, we agree with the judge's finding that the warning issued to Reimann-Ruba constituted discipline.

Having established that the warning was discipline, we now turn to the judge's finding that this discipline was unlawful. Applying the analysis set forth in *Wright Line*, supra, the judge found, and we agree, that the General Counsel met his initial burden of proving that Reimann-Ruba's union activity was a motivating factor in the Respondent's decision to issue her a disciplinary warning. The evidence showed that Reimann-Ruba's union activity was well known to the Respondent, as demonstrated by her status as a core union supporter and organizer and her signature on a union handbill that was viewed by S. Patulski.

In addition, as discussed above, Reimann-Ruba's disciplinary warning occurred against the background of unfair labor practices showing that the Respondent bore substantial animus toward the Section 7 activities of its employees. Some of these unfair labor practices, including the discriminatory layoff and subsequent recall of union supporters to positions different from their former positions, involved Reimann-Ruba.[11] Under these circumstances, we agree with the judge that the General Counsel has met his burden of proving that Reimann-Ruba's union activity was a motivating factor in the Respondent's decision to issue her a disciplinary warning.

We also agree with the judge's finding that the Respondent has failed to demonstrate that the disciplinary warning would have been issued absent Reimann-Ruba's union activity. The Respondent presented evidence that, at the time it issued Reimann-Ruba the warning, it also issued warnings to several other employees who were not known union supporters because they, like Reimann-Ruba, had accumulated close to 10 absences. However, as discussed above, S. Patulski crossed out a previously approved excused absence without pay requested by Reimann-Ruba, and he did not notify her of this change; he relied, in part, on this absence in issuing Reimann-Ruba the warning. The Respondent offered no explanation for this change and there is no evidence that S. Patulski took similar action with respect to any of the other employees to whom warnings had been issued.

Thus, the Respondent's conduct in connection with Reimann-Ruba's warning is particularly telling of its unlawful motive. We, therefore, agree with the judge's finding that the Respondent's asserted reason for issuing Reimann-Ruba the disciplinary warning was pretextual and that the Respondent has failed to demonstrate that it would have issued the warning in the absence of Reimann-Ruba's union activity. That being the case, we agree with the judge's conclusion that the Respondent violated Section 8(a)(3) and (1) by issuing the warning to Reimann-Ruba.

4. The judge further found, and we agree, that the statements made by S. Patulski at an employee meeting on September 24—in which he told employees that the Patulskis considered the union organizing drive to be a "personal attack" and that they would "keep [their] options open with respect to the future of Amptech"—violated Section 8(a)(1). The judge reasoned that the "personal attack" statement equated union activity with disloyalty and was, therefore, unlawful; he also reasoned that the statement concerning the Respondent's plan to "keep [its] options open" constituted an unlawful implicit threat of plant closure.

In adopting the judge's finding that these statements violated Section 8(a)(1), we stress that the characterization of unionization as a "personal attack" was followed by, and inextricably linked to, an unlawful implicit threat of plant closure that was made in the same speech, as discussed above. In these circumstances, we agree with the judge that the "personal attack" statement, when viewed together with the threat of plant closure, violated Section 8(a)(1).[12]

[11] It is also significant that, in October of the preceding year, the Respondent unlawfully placed fellow union supporter Cormany on probation and issued her a disciplinary warning because of her union support and activities.

[12] Member Walsh finds that S. Patulski's characterization of unionization to the employees as a personal attack on the Patulski family (the Respondent's owners and chief executives), and his veiled threat to the employees of plant closure in warning them that, in light of their at-

5. The judge further found that the Respondent violated Section 8(a)(1) by maintaining and enforcing an unlawful no-access policy that prohibited individuals other than on-duty employees from being on the Respondent's grounds. As previously discussed, S. Patulski announced this policy during an employee meeting on October 15, a few weeks after the September 28 layoffs. In finding this policy to be unlawful, the judge reasoned that the policy was overly broad, and that the Respondent enforced this policy in order to keep laid-off union supporters from entering its grounds.[13]

In excepting to the judge's findings, the Respondent contends that it was merely enforcing an "existing policy" for "legitimate security reasons," in particular the threat of terrorism. We find no merit in the Respondent's contention.[14] In adopting the judge's finding that this policy violated Section 8(a)(1), however, we rely only on the policy's natural consequence of prohibiting *off-duty employees* from being on the Respondent's grounds. As discussed below, we find, on this basis, that the policy is overly broad and therefore unlawful.

In *Tri-County Medical Center,* 222 NLRB 1089, 1089 (1976), the Board held that an employer may maintain a rule prohibiting off-duty employees access to the interior of its plant and other working areas if the rule "(1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity." The Board further held that, "except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside working areas will be found invalid." Id.

In this case, the Respondent's no-access policy is overly broad under the principles set forth in *Tri-County Medical Center,* supra, because it prohibits off-duty employees from accessing the Respondent's "grounds," which encompass the parking lot and other nonworking areas. Further, the Respondent has not established a substantial business reason for maintaining this policy. The Respondent generally cites "legitimate security reasons," particularly the threat of terrorism in the wake of September 11, as its justification for the policy. While we recognize that in light of the events of September 11 some employers may have reconsidered their security procedures, we find in light of all the evidence that the Respondent failed to show that legitimate security concerns were the substantial motivating factor in its adoption of a no-access policy at its facility in Free Soil, Michigan.

Indeed, even if the Respondent's stated concern regarding terrorism was a tenable one, the Respondent has presented no evidence as to how preventing its *off-duty employees* from being on its grounds would contribute to safeguarding its facility or employees. Thus, we find that the Respondent has failed to demonstrate that prohibiting off-duty employees from being on its grounds was necessary to maintain safety and security. Consequently, we find that the Respondent's no-access policy is overly broad and therefore unlawful, and we adopt the judge's finding that the Respondent violated Section 8(a)(1) by maintaining it.

6. Finally, the judge found that the Respondent violated Section 8(a)(1) by unlawfully soliciting employee grievances and implicitly promising to remedy these grievances through an employee advocacy program initiated shortly after the commencement of the union organizing effort, and through an employee survey conducted by the Respondent in February 2002. As discussed above, the employee advocacy program permits certain employees to volunteer as advocates for employees who wish to bring a concern or suggestion to management's attention.

In excepting to these findings, the Respondent contends that it did not unlawfully solicit grievances through the employee advocacy program because the idea for the program originated with employees, not with management. With respect to the employee survey, the Respondent contends that the fact that the survey was conducted several months after the union organizing drive refutes the theory that the Respondent's reason for conducting the survey was to discourage employees from supporting the Union. We do not find merit in these contentions. Instead, we agree with the judge's findings that the Respondent, through the employee advocacy program and survey, unlawfully solicited grievances from employees and, at least implicitly, promised to remedy them in order

tempt to obtain union representation, the Respondent was going to keep its options open about the future of the Respondent, were independently coercive and separately violated Sec. 8(a)(1).

[13] In reaching this finding, the judge relied upon evidence in the record that union supporter Reimann-Ruba, following her layoff, had come to the Respondent's facility on several occasions to have lunch with her friend Cormany, and that the Respondent's no-access policy, which was announced shortly thereafter, precluded her from continuing to do so.

[14] Contrary to the Respondent's contention, the no-access policy announced by S. Patulski is inconsistent with—and wholly separate from—its existing "Visitors in the Workplace" policy. As previously noted, the "Visitors in the Workplace" policy states that "visitors" will be allowed access to the facility if they check in at the reception desk. It does not make the blanket statement that individuals not working at the facility should not be there at all, as does the no-access policy. Thus, the no-access policy was a new policy and not merely a reiteration of the existing "Visitors in the Workplace" policy.

to discourage its employees from seeking union representation.

The Board has long held that, in the absence of a previous practice of doing so, the solicitation of grievances by an employer during an organizational campaign violates the Act when the employer promises to remedy those grievances. See, e.g., *Uarco, Inc.*, 216 NLRB 1, 2 (1974). The solicitation of grievances alone is not unlawful, but it raises an inference that the employer is promising to remedy the grievances. This inference is particularly compelling when, during a union organizational campaign, an employer that has not previously had a practice of soliciting employee grievances institutes such a practice. *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), enfd. 457 F.2d 503 (6th Cir. 1972).

In this case, there is no evidence that the Respondent had a previous practice of soliciting employee grievances. However, in late September, after the layoffs and during the union organizing drive, the Respondent implemented the employee advocacy program.[15] Accordingly, as in *Reliance Electric*, supra, the initiation and timing of this program support an inference that the Respondent was implicitly promising to remedy the grievances it discovered from the concerns brought to its attention through the program, impressing upon its employees that union representation was no longer necessary. In addition to the evidence cited by the judge in his decision, this inference is also supported by statements in the documents the Respondent posted in connection with the program. In particular, the volunteer sign-up list for employees who wished to act as employee advocates specifically states that the Respondent's "management has agreed to do this *to help resolve employee issues*." (Emphasis added.)

We also find that the Respondent has failed to rebut this inference. There is no evidence that the Respondent specifically disavowed remedying any of these concerns; and, as discussed herein, the Respondent committed numerous other unfair labor practices during the union organizing drive. We, therefore, adopt the judge's finding that the Respondent violated Section 8(a)(1) by instituting the employee advocacy program.

Turning to the employee survey, we note that this was the first such survey ever conducted by the Respondent. As discussed above, this survey specifically inquired about employee satisfaction with communications, employee benefits, and employment policies. The survey also sought employee input and suggestions on changes to existing policies and the implementation of new policies.

Significantly, in asking employees for this information, the questions in the survey were worded in such a way as to indicate an implicit willingness on the part of the Respondent to look into, and resolve, concerns expressed by employees who filled out the survey. The survey asked these employees questions such as, "If you could add one benefit, what would it be?"; "Is there any company policy you feel is unreasonable and should be reviewed by management"; and "Please list any topics you would like to see a policy or procedures developed to address and a reason why." Other questions on the survey asked employees to prioritize benefits such as insurance, a 401(k) plan, and paid holidays and vacations, as well as fringe benefits. Employees responding to the survey would reasonably conclude that the Respondent was at least implicitly promising to remedy any concerns they expressed.

This is especially true given the timing of the survey, which was distributed on the heels of the numerous unfair labor practices committed by the Respondent in response to the union organizing drive. The Respondent, and our colleague, point out that the union organizing drive ended in late September, and the survey was not conducted until February of the following year. However, the passage of these few months does not sever the nexus between the organizing drive and the survey. First, we note that the organizing drive ended in September only because the Respondent caused it to end by laying off the vast majority of union supporters. Moreover, as discussed above, during the months between the end of the organizing drive and the distribution of the employee survey, the Respondent committed numerous other violations of Section 8(a)(1) and (3) that evidenced its ongoing campaign to preclude any further attempts at union organization.[16] In light of this continuous pattern of unfair labor practices over the course of the months between the union organizing drive and the employee survey, we find that there is a clear nexus between these two events, and, thus, there is a compelling inference that the survey was designed to correct the discontent that led up to the organizing drive and to ensure that no further organizational efforts ensued.

[15] The Respondent contends that the idea for this program originated with Technology Manager Ray and Quality Assurance Manager Taylor, not with management. The judge did not make a final determination as to whether Ray and Taylor are employees or management officials of the Respondent. However, it is undisputed that the Respondent implemented the program, and the question presented is whether the Respondent's actions reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Sec. 7 rights. The source of the idea for the program is immaterial to this determination.

[16] These unfair labor practices included: unlawfully disciplining union supporters; discriminatorily recalling laid-off employees; instituting an unlawful employee advocacy program; implementing an unlawful no-access policy; and discharging a supervisor for giving an affidavit to the Board.

Additionally, because the Respondent has not offered a satisfactory contemporaneous explanation for conducting this unprecedented survey—other than its desire to find out what employees "wanted"—we also find that the Respondent has failed to rebut this inference. See *Villa Maria Nursing & Rehabilitation Center*, 335 NLRB 1345 fn. 2 (2001), affd. 49 Fed. Appx. 289 (11th Cir. 2002), cert. denied 538 U.S. 922 (2003).[17] We, therefore, adopt the judge's finding that the Respondent's distribution of the employee survey violated Section 8(a)(1).[18]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Amptech, Inc., Free Soil, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing an overly broad confidentiality rule prohibiting employees from discussing their wages.

(b) Threatening employees with job loss, plant closure, and unspecified retaliation because of their union and/or other protected concerted activities.

(c) Coercively interrogating employees concerning their participation, or the participation of other employees, in union and/or other protected concerted activities.

(d) Instituting an employee advocacy program and distributing an employee survey for the purpose of soliciting grievances and impliedly promising to remedy these grievances in order to discourage employees from seeking union representation.

(e) Maintaining and enforcing an overly broad no-access policy prohibiting individuals other than on-duty employees from being on its grounds.

(f) Discharging supervisors for giving affidavits to the Board.

(g) Placing employees on probation and/or issuing disciplinary warnings to employees because of their participation in union and/or other protected concerted activities.

(h) Laying off employees and failing and refusing to recall them to their former positions because of their participation, or the participation of other employees, in union and/or other protected concerted activities.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

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

(a) Within 14 days from the date of this Order, offer employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle (Sue) Stewart, Gayle Vallad, Judy White, and Rose Zimmer, and Supervisor Trudy Thomas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle (Sue) Stewart, Gayle Vallad, Judy White, and Rose Zimmer, and Supervisor Trudy Thomas whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, the discharge of Supervisor Trudy Thomas, the unlawful disciplinary warnings issued to Barbara Cormany and Kathy Reimann-Ruba, and the unlawful placement of Barbara Cormany on probation, and within 3 days thereafter, notify these individuals in writing that this has been done and that the unlawful layoffs/discharge and discipline, respectively, will not be used against them in any way.

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

(e) Within 14 days after service by the Region, post at its facility in Free Soil, Michigan, a copy of the attached

[17] In *Villa Maria*, supra, the Board found that the employer violated Sec. 8(a)(1) by instituting an unprecedented employee survey during a union organizational drive, which specifically inquired about employee satisfaction with the employer's handling of grievances. The Board reasoned that the employer's implementation of the survey constituted an implicit promise to remedy the grievances elicited through the survey for the purpose of countering the organizational drive. The Board further noted that the employer offered no contemporaneous explanation of the survey's purpose that would have rebutted the survey's reasonable tendency to interfere with employees' Sec. 7 rights.

[18] Unlike his colleagues, Member Schaumber would not find that the Respondent violated Sec. 8(a)(1) by distributing the employee survey. In Member Schaumber's view, the relationship between the union organizing drive, which ended in September, and the distribution of the survey 5 months later, is too attenuated to warrant such a finding.

notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, 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 September 24, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain and enforce an overly broad confidentiality rule prohibiting employees from discussing their wages.

WE WILL NOT threaten employees with job loss, plant closure, and unspecified retaliation because of their union and/or other protected concerted activities.

WE WILL NOT coercively interrogate employees concerning their participation, or the participation of other employees, in union and/or other protected concerted activities.

WE WILL NOT institute an employee advocacy program and distribute an employee survey for the purpose of soliciting grievances and impliedly promise to remedy these grievances in order to discourage employees from seeking union representation.

WE WILL NOT maintain and enforce an overly broad no-access policy prohibiting individuals other than on-duty employees from being on our grounds.

WE WILL NOT discharge supervisors for giving affidavits to the Board.

WE WILL NOT place employees on probation and/or issue disciplinary warnings to employees because of their participation in union and/or other protected concerted activities.

WE WILL NOT lay off employees and fail and refuse to recall them to their former positions because of their participation, or the participation of other employees, in union and/or other protected concerted activities.

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

WE WILL, within 14 days from the date of this Order, offer employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle (Sue) Stewart, Gayle Vallad, Judy White, and Rose Zimmer, and Supervisor Trudy Thomas reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle (Sue) Stewart, Gayle Vallad, Judy White, and Rose Zimmer, and Supervisor Trudy Thomas whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL rescind the unlawful warnings issued to Barbara Cormany and Kathy Reimann-Ruba and the unlawful placement of Barbara Cormany on probation.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoffs the aforesaid employees, the discharge of Supervisor Trudy Thomas, the unlawful disciplinary warnings issued to Barbara Cormany and Kathy Reimann-Ruba, and the unlawful placement of Barbara Cormany on proba-

[19] 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."

tion, and within 3 days thereafter, WE WILL notify these individuals in writing that this has been done and that the unlawful layoffs/discharge and discipline, respectively, will not be used against them in any way.

AMPTECH, INC.

Gary w. Saltzgiver, Esq., for the General Counsel.
Timothy J. Ryan, Esq. and *Elizabeth W. Lykins, Esq.,* for the Respondent.
Michael L. Fayette, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE[1]

LAWRENCE W. CULLEN**,** Administrative Law Judge. These cases were heard before me on May 8, 9, and 10, 2002, at Beulah, Michigan. The complaint as amended at the hearing was issued by the Regional Director for Region 7 of the National Labor Relations Board (the Board) and is based on charges brought by International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL–CIO, CLC (the Charging Party or the Union) and alleges that Amptech, Inc. (the Respondent or the Company) has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). These involve alleged violations of Section 8(a)(1) by interrogation and threats and a discharge and alleged violations of Section 8(a)(3) by written warnings issued to employees and unlawful layoffs of employees. Respondent by its answer denied the commission of any violations of the Act.

On the entire record including testimony of the witnesses and the exhibits received in evidence and after review of the briefs filed by counsel for the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, Respondent admits, and I find that at all times material, Respondent has been a corporation with an office and place of business in Free Soil, Michigan, engaged in the manufacture and nonretail sale of electrical circuit boards, that during the calendar year ending December 31, 2001, Respondent in conducting its business operations sold and shipped products valued in excess of $50,000 from its Free Soil facility directly to customers located outside the State of Michigan and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

[1] This decision contains a composite of the testimony which I have credited. R. Exh. 33 is received.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is a corporation owned by two brothers, Jeff and Stacy Patuliski. Jeff Patulski is president of Respondent and Stacy Patulski is vice president of Respondent. The plant itself is owned by a separate corporation of which the Patulski's mother, Alice Wilson Patulski, is a co-owner. Alice Wilson Patulski formerly had stock in the Respondent but sold it to her sons in June 2000. Stacy Patulski is responsible for personnel and production while Jeff Patuliski is responsible for sales calls and production. Jerry Overla is the general manager of the plant and oversees all production. Connie Patulski, Jeff's wife, is the operations manager in charge of customer relations and order changes. Jeff and Stacy's offices are located in the front of the plant as are the offices and work areas of Respondent's nonproduction personnel and support staff.

There are several different departments involved in the manufacture of circuit boards. The surface mount department assembles and solders various parts on flat boards. The Through hole department also builds the circuit boards, but the process involves putting pieces through a board and then soldering them. The mechanical assembly department involves the assembly of components. The prototype department involves building new boards. Most of the layoffs in this case involved either surface mount or testing employees. All layoffs were of first-shift employees.

In September 2001, certain employees of Respondent became interested in the formation of a union and met with the Union. On Friday, September 21, 2001 in late afternoon employees Kathy Heard, Kathy Reimann-Ruba, Vicki Renner, and Barbara Cormany engaged in the handbilling of employees at shift change as first-shift employees were leaving and second-shift employees were arriving. There were three different handbills. One of these handbills was a notice for a union meeting for employees on Sunday, September 23, and contained the signatures of the six employee organizers, Barbara A. Cormany, Glen E. Jenner, Kent C. Babcock, Vicki Renny, Kathleen Reimann-Ruba, and Kathy Heard. The employee organizers were all day-shift employees. The evening-shift employees did not support the Union. Glen Jenner whose wife, Patricia Jenner, is a supervisor subsequently withdrew his support for the Union. Vice President Stacy Patulski came out of the plant, accepted handbills from Kathy Heard and then went back inside. The meeting on Sunday was attended by over 20 employees and was the first open organizing meeting held.

On Monday, September 24, Respondent held a meeting of all day-shift employees conducted by Stacy Patulski who told them that he and Jeff Patulski and their mother, Alice Wilson Patulski, regarded the organizing campaign to be a "personal attack" on them. Thereafter the Patulskis' gave stern, angry and unsmiling looks to union organizers Kathy Heard, Vicki Renner, and Kathy Reimann-Ruba and did not look at others. Stacy Patulski walked through the shop but did not stop and talk with employees as he normally did. After the initial large meeting held by Respondent on Monday, September 24, Respondent held a series of small group meetings in opposition to the union campaign. Known union supporters were not asked to attend.

General Manager Overla who testified on behalf of Respondent conceded on the stand that he paid attention to which employees were associating with union supporters. Connie Patulski also testified that she had observed employees and made conclusions concerning their union sympathies after the employees returned from layoffs such as employees Rose Zimmer and Brad Block based on their association with open union supporters. Jeff Patulski also testified that he listens to information concerning who was supporting the Union.

On Tuesday or Wednesday of that week approximately nine employees in favor of the Union met at Cormany's house. Inventory Cage Supervisor Trudy Thomas appeared at the meeting and told the employees in attendance including Kathy Reimann-Ruba and Kent Babcock that she had been contacted by Alice Wilson Patulski, who told her that employees who had signed the union handbill would be sorry. Thomas also told employees Kathy Heard, Vicki Renner, Barbara Cormany, and other employees of Alice Wilson Patulski's hostility to the Union. Thomas testified at the hearing that she had been telephoned by Alice Wilson Patulski following the handbilling on Friday, September 21. Alice Patulski told her that she and her sons Jeff and Stacy considered the move for a union to be a personal attack on them and that she knew who had signed the handbills and that they would be sorry. She also threatened to close the plant down and told Thomas that she had better start looking for another job. When Thomas told Wilson she would keep what Wilson had said confidential, Wilson told her to tell the employees what she had said. Following her direction Thomas told a number of employees what Wilson had said and Wilson's comments were soon all over the plant. I credit Thomas' testimony which was unrebutted as Alice Wilson Patulski did not testify.

In addition to the large meeting of employees held by Respondent on Monday, September 24, the Respondent held small meetings of 9 or 10 employees at a time concerning the Union beginning on Wednesday, and concluding the last meeting on the morning of Friday, September 28. Virtually all of the production employees were told to attend with the exception of the known union organizers who were excluded from the meetings. Employees were given green and white ribbons to show their support for the Company. Employee Merle (Sue) Stewart revealed to Respondent's Quality Control Consultant Mary Schlaatman that she had worked in a UAW represented plant in the past. Rose Zimmer also told Schlaatman of her interest in the Union.

On Thursday, September 27, the Union held a large meeting. Most of the union supporters attended as did Sue Stewart, Rose Zimmer, Sandra Krusniak, and Brad Block. Over 50 employees were in attendance. In addition to the production employees, who attended, several of Respondent's support staff and managers attended to express their objections to a union. During this meeting several production employees expressed their support for the Union in addition to those employees who had signed the initial union meeting notice on the handbills distributed to employees on September 21. Respondent's information technology manager, Donna Ray, Quality Assurance Manager Charleen Taylor, and Accounts Payable Manager Kathy Fairbanks attended this meeting to find out about the Union's campaign and to speak out against the Union which they did. These were managerial employees who work in the offices adjacent to or in the same general area allotted to the office personnel and management of Respondent including Jeff and Stacy Patulski. They have little contact with the production employees who work in the plant. Ray, Taylor and Fairbanks testified along similar lines that they had gone on their own initiative to the meeting to find out what was going on with the Union's campaign and to speak out as they believed they might themselves be affected by the union campaign. They denied having been prodded by management to attend this meeting or that they were asked by Respondent's management or reported to Respondent's management who attended and what the employees had said at the meeting. Ray did testify that she had told the Patulskis' she was going to the meeting but testified that she had only "general conversation" with the Patulskis' about what had occurred at the meeting and that they "probably discussed different things" that had occurred at the meeting. Taylor denied telling "management" who had attended the meeting or what had occurred at the meeting but did testify she told Jeff Patulski about yelling by employees at the meeting and that nothing was accomplished. Fairbanks testified she considered it part of her job duties to attend the meeting and to take note of the individuals in attendance because the work could slow down and employees, including herself, could lose their jobs if the company cannot compete because of higher wages and increased overhead. Fairbanks also testified that at the meeting she offered to have a petition in her office to sign for employees who did not support the Union. She testified she discussed the meeting with the other managers who had attended, but did not report what had occurred at the meeting to the Patulskis or other managers who had not attended the meeting.

Other employees who had not been known union supporters also spoke out at the meeting of September 27. Employee Brad Block spoke out at the meeting against unfair treatment of the employees by the Company in the past and said he wanted a union for security and respect. Employee Sandy Krusniak told the employees she favored the Union. She also told the employees at the meeting that she had not been treated fairly by the Company.

Respondent held its last small meeting of about 20 employees on Friday, September 28. Sue Stewart and Rose Zimmer attended the meeting held by Jeff Patulski. Stewart voiced a complaint about her wages and said that she had not received a promised pay raise and said there should be a pay scale. Zimmer complained about her treatment by Stacy Patulski and Jeff Patulski called her a "bitcher." Later that afternoon Respondent instituted indefinite layoffs of both permanent and temporary employees.

A. The Confidentiality Rule

Respondent maintains a confidentiality rule in its employment handbook which prohibits "Unauthorized disclosure of business secrets or confidential information" which is defined in the handbook as including "compensation data". In addition, Respondent also requires its employees to sign a Confidentiality Agreement which includes a prohibition of disclosure of "compensation data." Additionally, employees testified they

understood this rule to bar discussion of their wages. Kathy Heard testified that when she received a pay raise, Stacy Patulski told her not to discuss it with anyone.

Analysis

I find Respondent violated Section 8(a)(1) of the Act by the maintenance and enforcement of the overly broad confidentiality rule which clearly includes a bar against employees discussing their wages which has a chilling effect on the exercise of their Section 7 employee rights *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998); *Waco, Inc.*, 273 NLRB 746, 748 (1984); *Pontiac Osteopathic Hospital*, 284 NLRB 442, 446 (1987).

B. The Alleged Threats and Interrogations

I credit the unrebutted testimony of Inventory Cage Supervisor Trudy Thomas that she told the employees of the threats that had been made by Alice Wilson Patulski to close the plant and to retaliate against the employees who had signed the union handbill. I find that Alice Wilson Patulski was in a position of at least apparent authority as the founder of the Company and the owner of the plant which she leased to Respondent and that the threats which were communicated to the employees by supervisor Thomas were attributable to the Respondent. I find that by the issuance of these threats by Thomas, Respondent violated Section 8(a)(1) of the Act.

I further find that the September 24 speech delivered by Stacy Patulski in which he told the employees that he and his brother Jeff and mother Alice considered the organizing attempt to be a personal attack on them was violative of Section 8(a)(1) of the Act as it equated the employees' support of the Union to being disloyal to the Company. This was an unlawful interference with the employees' Section 7 rights to support a union. *Workroom For Designers*, 274 NLRB 840, 855 (1985).

Mary Schlaatman is the Company's nonemployee outside ISO 9000 consultant who generally performs her consulting duties in the quality assurance area in the front office with Taylor. She is retained by the Company to maintain its ISO 9000 certification and directs employees of Respondent as necessary to perform this function. On either September 25 or 26, Schlaatman and Supervisor Trudy Thomas approached three employees who were eating lunch in the lunchbreak area of the plant. Two of the three employees at lunch were Merle (Sue) Stewart and Rose Zimmer. Thomas testified that Schlaatman told her that she had heard in the front office that the Company would close its doors if a union got in. Zimmer testified that she observed from the conversation that neither Schlaatman nor Thomas were in favor of a union at the Company. Schlaatman told the employees that the Patulski's were devastated by their employees' attempt to obtain union representation. Schlaatman told the employees to talk to Jeff and Stacy Patulski as they were not in favor of a union and discussed with the employees whether there was any alternative to unionization. Zimmer expressed that she was in favor of a union because of issues of unfairness and problems she had with Stacy Patulski. Schlaatman remained at the lunch area with Zimmer and Stewart throughout the lunch period although she did not eat lunch. Ten minutes after the end of the lunchbreak, Schlaatman called Stewart and Zimmer from their workstations to the receiving dock to talk further to them. Both Thomas and Schlaatman were at the receiving docks to meet Stewart and Zimmer. Schlaatman and Thomas both urged them to talk to Jeff Patulski since he did not want a union and did not want to close the business. Schlaatman also asked the employees whether they had ever worked for the UAW (United Auto Workers). Stewart told her she had worked for the UAW downstate and Schlaatman ceased asking questions of her. The meeting lasted approximately 20 minutes.

Schlaatman admitted she was aware of union activity in September 2001, and had talked to Trudy Thomas about it. She admitted she said on the day she initially learned of the union activity, that she would not be surprised if the Company sold the shop if a union came in. She testified that Jeff Patulski was "ill about the whole thing" but denied she was influenced by Respondent's management in this regard. It is noteworthy and I place great weight on the undisputed fact that Schlaatman was not usually in the plant area and only rarely had contact with the production employees. Stewart and Zimmer both testified they had never had contact or talked with Schlaatman prior to the day she and Thomas engaged them both in two separate discussions regarding the Union.

Analysis

I find that the circumstances of these conversations and Respondent's overall animus against the Union give rise to an inference supporting the conclusion that Schlaatman was acting as an agent for Respondent in engaging these employees and issuing threats of plant closure and in interrogating them concerning their union sympathies and their support for the Union as was Thomas in issuing the threat of plant closure. I further find that at a minimum, Respondent had placed Schlaatman in a position of apparent authority and that her expression of anti-union sentiments, threats, and unlawful interrogation are attributable to Respondent. I find that the threat issued to employees Sue Stewart and Rose Zimmer by Mary Schlaatman that it would not surprise her if the Respondent sold the business if the employees chose union representation was violative of Section 8(a)(1) of the Act. Although Schlaatman was an outside consultant who advised on quality control, her participation in conjunction with Supervisor Trudy Thomas in seeking out employees Stewart and Zimmer and threatening them with plant closure and later interrogating them concerning their union affiliation on September 26 support an inference and clearly establish that she was acting as an agent of Respondent in making these threats and engaging in this interrogation. Schlaatman had admittedly not previously spoken to either Stewart or Zimmer who worked in the plant proper as opposed to the office where Schlaatman performed her consulting duties. Yet she sought these employees out at their lunch area while they were at lunch and after lunch on their worktime had them called away from their assigned work area to interrogate them about their support for the Union. Under all the circumstances, I find the employees reasonably believed that Schlaatman was speaking for Respondent and her actions are attributable to Respondent and constituted unlawful interrogation and threats of plant closure in violation of Section 8(a)(1) of the Act. *House Calls, Inc.*, 304 NLRB 311 (1991), citing *Lovilia Coal Co.*, 275

NLRB 1358, 1372 (1985); *MTR Sheet Metal, Inc.*, 337 NLRB 1358 (2002). Re: Threats of plant closures.

Kathy Reimann-Ruba testified that on about November 8, 2001, she returned to work after her layoff by Respondent and was put on the second shift. At lunch, Second-Shift Supervisor Dave Honomichl told the employees that employees in favor of the Union were causing trouble and the plant would close as a result. I credit Reimann-Ruba's testimony which was unrebutted as Honomichl was not called to testify and find that Respondent violated Section 8(a)(1) of the Act thereby. *MTR Sheet Metal, Inc*., supra.

C. Employee Advocacy Program and Survey

At the apparent suggestion of Managers Donna Ray and Charlene Taylor and with the acquiescence of Vice President Stacy Patulski, Respondent instituted an employee advocacy program sometime after the layoffs of September 28, wherein certain employees and supervisors signed a list variously placed by the timeclock and company bulletin board, to act as advocates for any employee who wished to bring a "concern" or "suggestion" to the attention of management and who desired to have someone accompany them and serve as their advocate, "to help find a solution to the concern." This document had remained posted as of the date of the hearing. Manager Ray testified she has observed several employees use the employee advocate program. This program was initiated by Respondent's managers after they attended the large union meeting the day prior to the layoffs in response to complaints made by employees at that meeting with the intent to address them.

In addition, on Friday, February 1, 2002, Stacy Patulski met with employees and informed them that Respondent would distribute survey forms to learn what employees wanted at the Company. On Monday, February 4, 2002, Respondent put out these survey forms on tables in the lunch area. The forms solicit employees' opinions regarding improved communications, benefits priority and additional benefits, suggestions regarding evaluations, and "any" other company policy. There was no evidence presented of any prior survey at the Company.

Analysis

I find the employee advocate program and the Amptech employee survey were initiated in direct response to the advent of the union campaign and were initiated to enable Respondent to discover and remedy problems and address the employee discontent which had led to the union campaign. As such it was a clear solicitation of grievances with the implied promise to remedy them in order to defeat the union campaign in conjunction with deterrents to organizing instituted by management such as the threats, interrogations, and layoffs of employees. These actions were clear violations of Section 8(a)(1) of the Act. *Villa Maria Nursing Center*, 335 NLRB 1345 (2001); *Astro Printing Services*, 300 NLRB 1028, 1029 (1990).

D. Rule Prohibiting Off-Duty Employees from Visiting the Plant

Following her layoff on September 28, Kathy Reimann-Ruba met for lunch with her friend Barbara Cormany on successive Fridays on the plant premises. Although there was a rule prohibiting nonemployees on the plant floor it had admittedly not been enforced in the past. Around October 15, 2001, Stacy Patulski announced to employees at a meeting that no one was to be "on the grounds" except for "working Amptech employees," citing terrorism as a reason. At the hearing he testified that he had concerns brought to him by other employees following the September 11 attack on the World Trade Towers buildings and on the Pentagon. Thereafter, Reimann-Ruba no longer lunched on the company premises. However, there was testimony by Barbara Cormany that nonemployees were permitted on the premises after this announcement.

I find that Respondent's actions in enforcing this rule were motivated by its desire to discourage laid off union supporters such as Reimann-Ruba from returning to the plant rather than because of safety concerns *Tri-County Medical Center*, 222 NLRB 1089 (1976). I further find that the rule was disparately enforced in violation of Section 8(a)(1) of the Act. See *Simmons Industries*, 321 NLRB 228, 248 (1996).

E. Discharge of Supervisor Trudy Thomas

Trudy Thomas was a 7-year employee who had attained the supervisory position of inventory cage supervisor, a position she had held for about 2 years. She had received awards in the past and her most recent appraisal of September 6, 2000, had been "very good." She had carried Alice Wilson Patulski's message of threats to close the plant and that the signers of the handbills on behalf of the Union would be sorry for what they had done. She apparently was opposed to the union campaign consistent with the management's antiunion attitude in this case. However, on October 15, 2001, she willingly gave an affidavit to a Board agent outlining her role in the case and the threats and animus of the Patulski's concerning this. She told Stacy and Jeff Patulski that she had given the affidavit and they appeared to accept it without any display of anger or dismay that she had done so. Respondent contends that the testimony of Thomas should be rejected as the Board agent knew she was a supervisor and did not afford her the opportunity to have a management representative present and cites a recently issued Memorandum OM 2-36 dated February 15, 2002, regarding ethical guidance for attorneys. This memorandum is not retroactive and I find no grounds for rejecting her testimony, particularly as she came forward at the trial and was subjected to cross-examination and she herself had allegedly been the victim of a violation of the Act. Stacy and Jeff Patulski both denied that Thomas had told them she had given an affidavit to the Board agent. I credit Thomas that she did disclose this to both Stacy and Jeff Patulski. Shortly after Thomas disclosed to Stacy and Jeff Patulski that she had given an affidavit to the Board agent, she was moved in November 2001, to the back of the inventory cage. She then went on vacation and less than a week after her return she was moved to the production floor presumably because of a need for greater production as a result of the layoff. In early January 2002, she was assured by both Stacy and Jeff Patulski that her job was safe and that she would be returned to the inventory cage job once sufficient production employees were recalled. However, on January 11, 2002, she was terminated by Stacy Patulski who asserted she was not giving 100 percent and was not contributing to the Company. At the hearing, Stacy and Jeff Patulski and Production Manager

Jerry Overla testified that there were continuing performance problems with Thomas and that there were complaints of missing parts attributable to her poor performance. However, there was no documentary evidence to back up this testimony and the record shows that she had received "very good" appraisal and was never counseled, warned or otherwise disciplined for poor performance. I credit Thomas testimony in its entirety and find that the asserted reasons for her discharge are pretextual. I find that the discharge of Thomas was a direct result of her giving an affidavit to the Board agent and that she was terminated in violation of Section 8(a)(1) of the Act. *Better Monkey Grip*, 115 NLRB 1170 (1956), enfd. 243 F.2d 836 (5th Cir. 1957); *Elaine Powers Figure Salons*, 227 NLRB 1307, 1310 (1977), citing *King Radio Corp.*, 166 NLRB 180, 184 (1967).

F. The Layoff of Employees on September 28, 2001

On September 28, 2001, Respondent laid off 32 temporary manpower employees and 13 permanent employees sparing 9 temporary employees from the layoff. The General Counsel and the complaint allege that the layoff was discriminatorily motivated and a violation of the Act and that the selection of the permanent employees for layoff was also discriminatorily motivated and a violation of the Act. The unrebutted testimony of the employees called by the General Counsel established that in the past, layoffs had been for brief periods of a week or less and employees were asked whether they wanted to volunteer for layoff. Additionally Kathy Heard, a former supervisor, testified that as a supervisor she attended management meetings where the method of mandatory layoffs was to lay off the newer and less experienced employees first and to shift remaining employees from one line or position to another as required. This was often done on a routine basis even when no layoffs were involved. When one area of work was slow employees would be routinely sent to work in another area of the plant. Accordingly, most of the experienced permanent employees were cross-trained on several jobs including assembly work which is less skilled than building circuit boards, and on testing and maintenance of computer and other equipment. In the instant case, the layoff of September 28, 2001, was a large layoff of 32 of the 41 temporary manpower employees and 13 of the permanent employees. Most of the laid-off employees were told the layoff was indefinite. Some employees were told the layoff would be 2 weeks or less. The layoffs of September 28 followed a week of intense activity on behalf of the Union by Respondent's employees and against the Union on behalf of the management of Respondent. On Friday, September 21, employees handbilled at Respondent's plant entrance during a shift change of the first and second shift. Employees Barbara Cormany, Kathy Heard, Kathy Reimann-Ruba, and Vickie Renner did the handbilling of the prounion literature, one of which was a notice of an upcoming union meeting to be held on Sunday, September 23. This handbill was signed by six of the permanent day-shift employees. The employees were Barbara Cormany, Kathy Heard, Kathy Reimann-Ruba, Vickie Renner, Kent Babcock, and Glen Jenner. All but two of these employees (Cormany and Jenner) were included in the September 28 layoff. Apparently Jenner withdrew his earlier support of the Union. It is noteworthy that his wife, Patricia Jenner, was regarded as a supervisor by employees. She called employees to various antiunion meetings that were held by management with small groups of employees during the week prior to the layoff of Friday, September 28.

On the night of the handbilling of September 21, Inventory Supervisor Trudy Thomas was called by Alice Wilson Patulski, the former owner of Respondent who had sold the business to her two sons, Jeff and Stacy Patulski, in 2000, and who owned the plant in which the business was located. Alice Wilson Patulski at least outwardly appeared to be and was regarded by employees as an active member of Respondent's management who regularly appeared at the plant on Mondays and whose name appeared in Respondent's literature. In her telephone call to Trudy Thomas, she told Thomas that she and her sons Jeff and Stacey considered the employees support of the Union to be a personal attack on them. She also threatened to close the plant and said that she knew who had signed the handbills and asserted that those employees would "be sorry."

The announced union meeting was held on Sunday, September 23, and attended by over 20 employees. On Tuesday or Wednesday of that week, Barbara Cormany held a meeting at her house attended by about nine employees. Supervisor Thomas appeared at the meeting and conveyed the threats issued by Alice Wilson Patulski.

On Monday, September 24, Stacy Patulski held a meeting of all employees and told them that he and his brother Jeff and his mother, Alice Wilson Patulski, regarded the employees' attempt to obtain union representation as a personal attack on them and that the management would consider their options. During the week, Jeff and Stacy Patulski held a series of small group meetings with the employees concerning the Union and arguing against the union organization of the plant. Employees who had been identified as union supporters were not invited to these meetings.

On Thursday, September 27, the Union held a large meeting attended by over 50 employees at which a number of employees spoke in favor of a union. In addition to the rank-and-file plant employees who attended the meeting, it was attended by management employees who work in the office area in offices adjacent to or near the offices of President Jeff Patulski and Vice President Stacy Patulski. These management employees were Quality Assurance Manager Charlene Taylor, Accounts Payable Manager Kathy Fairbanks, and Information Technology Manager Donna Ray. The management employees spoke out against the Union and observed and heard other employees such as Barbara Cormany, Kathy Reimann-Ruba, Brad Block, and Sandy Krusniak speak on behalf of the Union. On the next day (Friday, September 28), Respondent instituted the layoffs in the afternoon. It held a final small group meeting in the morning concerning its response to the union campaign. At this meeting of about 20 employees Jeff Patulski with Stacy Patulski present asked the employees to inform him of any problems in the shop. Employee Merle (Sue) Stewart complained about her wages, failure to receive a raise, and said there should be a pay scale. Employee Rose Zimmer complained about treatment by Stacy Patulski and Jeff Patulski called her a "bitcher." There was no mention of layoffs at this meeting.

In the afternoon, Production Manager Jerry Overla and Stacy Patulski used a list to lay off employees. The permanent employees laid off included four of the six signers of the handbill. They were Kent Babcock, Vicki Renner, Kathleen Reimann-Ruba, and Kathy Heard. Barbara Cormany (the leading union advocate) and Jenner who had apparently abandoned his support for the Union, were not laid off. Additionally, the Respondent laid off Rose Shedd whom Jerry Overla had heard asking questions about the Union of union supporter Kathy Reimann-Ruba in the presence of Judy White with whom Reimann-Ruba worked. It also laid off Sue Steward and Rose Zimmer who had been interrogated by consultant Schlaatman and Supervisor Trudy Davis and who complained about wages and treatment of Zimmer by Stacy Patulski. It laid off Sandy Krusniak who had complained of unfair treatment by Respondent at the large union meeting on Thursday, September 27, and Brad Block who also complained about the company treatment of employees at this meeting. It also laid off Judy White whom Respondent had apparently identified as a friend of the union supporters. Additionally, Gayle Vallad, Jennifer Ely, and Paul Schlaud were laid off although they were not known as union supporters. All of the laid-off permanent employees worked on the day shift. The second shift did not support the union campaign and no second-shift employees were laid off. Respondent had sporadically recalled all but two of the laid-off employees as of the date of the hearing. Kathy Heard who made $12 per hour and who was the most experienced employee in the plant and a former supervisor was offered a recall to an assembler's job at a low pay rate of pay per hour and refused this first offer. Subsequently, she was offered a higher rate of pay and returned to work, where she saw temporary employees working in her area.

Respondent has offered various reasons for the layoff such as the slowdown of business as a result of the terrorist attacks of the World Trade Center and the Pentagon on September 11, 2001, and a slowdown of orders from several of the 50 accounts of regular customers that Respondent supplies products to as testified to by Jeff Patulski and his wife, Connie Patulski, who schedules the orders. Respondent also notes that the layoff included most of its temporary manpower employees in addition to the permanent employees. Respondent through the testimony of Jeff and Stacy Patulski and Jerry Overla, disparaged the work performance of several of the laid-off employees and also contended there was no need for them because of a lack of orders in specific areas. However, with the exception of one employee Brad Block, all of the employees laid off had very good or excellent work records as documented by performance appraisals in their files. Respondent otherwise produced no documentation to support its contentions that the employees were chosen for layoff because of their poor performance. Respondent also produced no documentation to explain why it had not followed its past practice of asking for volunteers and retaining the most senior employees as it had in the past and moving these employees to other positions in order to retain the benefit of their experience. When Respondent did recall employees, it did not return them to their old positions in many cases which were then filled by temporary or new employees. Additionally, Supervisor Trudy Thomas testified that both Jeff and Stacy Patulski told her they were unhappy that they were going to have to recall the prounion employees back to work as they just did not want to have to deal with them.

Analysis

I find that the layoffs of permanent employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle Sue Stewart, Gayle Vallad, Judy White, and Rose Zimmer were violative of Section 8(a)(1) and (3) of the Act. The General Counsel has established prima facie cases of violations of Section 8(a)(1) and (3) of the Act, by the layoff of these permanent employees on September 28, 2001, and by its failure and refusal to return all of the employees to their former positions. Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has the initial burden to establish that:

1. The employees engaged in protected concerted activities.
2. The Respondent had knowledge or at least suspicion of the employees' protected activities.
3. The employer took adverse action against the employees.
4. A nexus or link between the protected concerted activities and the adverse action underlying motive.

It is clear from the record in this case that these four elements have been established. All but two of the six employees who were signers of the prounion handbill who had been specifically threatened by Alice Wilson Patulski and which threat was carried to the employees by Supervisor Trudy Thomas were laid off. Other employees selected for layoff had been identified by Respondent's management and managerial employees as supporters of the Union except for Paul Schlaud, Jennifer Ely, and Gayle Vallad who were not shown on the record to be known union advocates. I find that the evidence supports an inference and a finding that the Respondent had knowledge or at least a suspicion that the employees selected for layoff were supporters of the union campaign. The layoffs were adverse actions taken against the employees and the record in this case clearly establishes a nexus between the protected concerted activities and the layoffs. I, thus, find that the General Counsel has established a prima facie case that the selection of the permanent employees for layoff was motivated in part by the employees' participation in union activities. Consequently the burden has shifted to the Respondent to prove, by a preponderance of the evidence, that it took the adverse action for a legitimate nondiscriminatory business reason and would have done so even in the absence of the unlawful motivation. I find Respondent has failed to rebut the prima facie case by the preponderance of the evidence.

In this case the evidence is overwhelming that the layoff and the selection of the permanent employees for layoff were discriminatorily motivated. At the outset there had not been any evidence of an impending layoff prior to the afternoon of the layoff on September 28, 2001, when the layoff was executed by management. The Respondent presented evidence of some slowdown in business occurring in the time period from late

August until the September 28 layoff. Connie Patulski testified concerning cancellations and delays of some orders by several customers that were occurring in this time frame. However, she testified that Respondent has 50 regular customers. I have taken judicial notice that the terrorist events of September 11, impacted business generally in the American economy. I note Trudy Thomas' testimony that she was not surprised by the layoff but that she was surprised by the employees who were selected for layoff. I, thus, conclude that there was some evidence presented which would indicate that a layoff of some kind may have been imminent. However, the Respondent has not demonstrated, that in the absence of the unlawful motivation for the layoff, it would have occurred on September 28, without warning and that it would impact on permanent employees given the fact that several temporary employees were retained while permanent employees were laid off. I further find that Respondent has failed to demonstrate that the permanent employees would have been selected for layoff in the absence of the unlawful motivation. Here, it is apparent that the Respondent laid off employees known or suspected by Respondent to be supporters of the Union in order to rid itself of these employees. I find that it spared Barbara Cormany from the layoff to conceal its unlawful motive by retaining a leading union adherent. I further find that it added to the mix of union supporters selected for layoff three employees not known to be union supporters in order to conceal its antiunion motivation for the layoff.

G. Disciplinary Warnings of Barbara Cormany and Kathy Reimann-Ruba

Barbara Cormany was one of only two employees in the core group of employee union organizers who was not laid off. However, on October 18, 2001, Stacy Patulski issued her an "Employee Warning Notice" and put her on probation for "employee harassment" by creating a "hostile and intolerable work environment through intimidation as reported by other employees." Stacy Patulski testified that he relied on complaints by two employees including employee Pat Hammond concerning his decision to issue this warning to Cormany. He testified he initially had a complaint from the two employees and that a few weeks thereafter he had another complaint against Cormany by Hammond and that he told Hammond to put it in writing which she did. At the hearing he produced an unsigned note which he testified he had received from Hammond. The note speaks of Cormany allegedly staring at Hammond, walking by her with clinched fists and laughing loudly so as to intimidate. However, Hammond was not called to testify. On the basis of this, he issued the disciplinary warning to Cormany without obtaining her version of the events as to what had happened if anything. Cormany had never been disciplined before. She testified that she was not aware of the events leading to this warning and did not act in the manner attributed to her by the note. She protested the discipline when she received it.

Analysis

I find the issuance of the warning was violative of Section 8(a)(3) and (1) of the Act as Cormany had been the leading employee organizer. She had not been laid off in an apparent attempt by Respondent to cast off suspicion as to the true unlawful nature of the layoff. However, Respondent by the warning made clear that Cormany's prounion support had not been forgotten and subjected her to vulnerability concerning her employment. I find Stacy Patulski's reliance on Hammond's word and his failure to inquire of Cormany as to what had occurred constituted a rush to judgment attributable to Respondent's unlawful motivation to take adverse action against the leading prounion employee on the premises. I, thus, find that the General Counsel has made a prima facie case of a violation of the Act as the warning was discriminatorily motivated. I find Respondent has failed to rebut the prima facie case. *Wright Line*, supra.

Kathy Reimann-Ruba was also one of the core employee organizers on behalf of the Union. On January 8, 2002, she was issued an "Employee Warning Notice" by Stacy Patulski for nine absences within the last 12 months. However, one of the absences cited was a February 15, 2001 request for an excused absence to be taken without pay on May 11, 2001. Reimann-Ruba had been informed by Supervisor Renner that Office Manager Kim Graczh had told her the absence had been approved according to Stacy Patulski. However, subsequently Stacy Patulski crossed out the excused absence on the form and did not inform Reimann-Ruba of this, and issued her a disciplinary warning months later in February 2002, in part based on this incident. Patulski testified that this was not discipline and that this was only one case of several employees whom he had issued these warnings to in order to alert them they were close to a violation of the attendance policy which could subject them to discipline.

Analysis

I find the General Counsel has established a prima facie case of a violation of Section 8(a)(1) and (3) of the Act by the warning issued by Patulski to Reimann-Ruba. I conclude that it was discipline and that the removal of the excused absence and reliance on it to subject Reimann-Ruba to the warning was discriminatorily motivated in order to retaliate against Reimann-Ruba, a known supporter of the Union. I find Respondent has failed to rebut the prima facie case. *Wright Line*, supra; *MTR Sheet Metal, Inc.*, supra, Re: written warnings for excused absences.

CONCLUSIONS OF LAW

1.The 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. The Respondent violated Section 8(a)(1) of the Act by:

(a) The maintenance and enforcement of the overbroad confidentiality rules prohibiting discussion of employee compensation.

(b) The threats of retaliation and plant closure by Supervisor Trudy Thomas.

(c) The interrogation of employees Merle (Sue) Stewart and Rose Zimmer by Respondent's agent, Mary Schlaatman.

(d) The threat issued by Respondent's agent, Mary Schlaatman, that she had heard that Respondent would close its doors if a union got in.

(e) The statement by Stacy Patulski that the union organizing by its employees was a "personal attack" on the Patulskis' which equated their support for the Union as being disloyal to the Company.

(f) The threat of plant closure issued by Second-Shift Supervisor Dave Honomichl.

(g) The institution of an employee advocate program and survey.

(h) The adoption and disparate enforcement of a rule prohibiting off-duty employees from visiting the plant.

4. Respondent violated Section 8(a)(1) of the Act by its discharge of Supervisor Trudy Thomas.

5. Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) The issuance of a disciplinary warning to Barbara Cormany.

(b) The issuance of a written attendance warning to Kathy Reimann-Ruba.

(c) The September 28, 2001 layoff of its permanent employees.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in numerous violations of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

It is recommended that Respondent offer immediate full reinstatement to employees Kent Babcock, Brad Block, Jennifer Ely, Kathy Heard, Sandy Krusniak, Vicki Renner, Kathy Reimann-Ruba, Paul Schlaud, Rose Shedd, Merle Sue Stewart, Gayle Vallad, Judy White, and Rose Zimmer who were unlawfully laid off on September 28, 2001, and to Trudy Thomas who was unlawfully discharged on January 11, 2002, and set aside the unlawful warnings issued to employees Barbara Cormany and Kathy Reimann-Ruba. The laid-off employees and Trudy Thomas shall be reinstated to their former positions or to substantially equivalent ones if their prior positions no longer exist. The employees shall be made whole for all loss of backpay and benefits sustained by them as a result of Respondent's unfair labor practices.

These amounts shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), at the "short term Federal rate" for underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[Recommended Order omitted from publication.]