Arakelian Enterprises, Inc. d/b/a West Covina Disposal and City Refuse Service *and* Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL–CIO. Cases 21–CA–28835 and 21–CA–29068

September 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On March 31, 1994, Administrative Law Judge Burton Litvack issued the attached decision. The General Counsel has filed exceptions and a supporting brief, and the Respondent has 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 the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Arakelian Enterprises, Inc. d/b/a West Covina Disposal and City Refuse Service, West Covina, California, its officers, agents, successors, and assigns, shall take the action as set forth in the Order as modified.

1. Insert the following as paragraph 1(f) and reletter the following paragraph.

''(f) Informing employees that other employees were terminated because of the Union.''

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

[1] The General Counsel 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.

The General Counsel also excepts to the judge's failure to find that the Respondent violated Sec. 8(a)(1) by informing employee Efrain Carrillo that his brother, Sergio, had been fired because of his union activity. We find merit in this exception. The judge found that in August 1992, subsequent to the termination of his brother, Efrain Carrillo asked Supervisor Efrain Olmos why the Respondent had discharged his brother, Sergio. Olmos replied that among the reasons for Sergio's discharge was ''the Union.'' On the basis of this finding, we conclude that the Respondent violated Sec. 8(a)(1) by informing Carrillo that his brother had been discharged in part because of the Union and we will amend the Order and notice accordingly. Notwithstanding this conclusion, we agree with the judge's finding that the Respondent would have discharged Sergio Carrillo even absent his union activity.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in surveillance of our employees' union or other protected concerted activities.

WE WILL NOT create in the minds of our employees the impression that we are engaging in surveillance of their union or other protected concerted activities.

WE WILL NOT threaten to fire or lay off our employees in order to induce them not to engage in any union or other protected concerted activities.

WE WILL NOT threaten to withhold benefits from our employees in order to induce them not to engage in any union or other protected concerted activities.

WE WILL NOT interrogate our employees concerning their union activities or sympathies.

WE WILL NOT inform employees that other employees were terminated because of the Union.

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

ARAKELIAN ENTERPRISES, INC. D/B/A WEST COVINA DISPOSAL AND CITY REFUSE SERVICE

Robert J. Debonis, Esq. and *Salvador Sanders, Esq.*, for the General Counsel.

Kyle D. Brown, Esq. (Hill, Farrer & Burrill), of Los Angeles, California, for the Respondent.

Dennis M. Harley, Esq., of Pasadena, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. On July 22 and November 27, 1992,[1] respectively, Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL–CIO (the Union), filed the unfair labor practice charges in the above-captioned matters. Based on the unfair labor practice charges, on January 29, 1993, the Regional Director for Region 21 of the National Labor Relations Board (the Board), issued a consolidated complaint, alleging that Arakelian Enterprises, Inc. d/b/a West Covina Disposal and City Refuse Service (Respondent),[2] engaged in acts and

[1] Unless otherwise stated, all events herein occurred in 1992.

[2] Apparently, for business and contractual purposes, Respondent does business in Glendora, California, as City Refuse Service and in West Covina, California, as West Covina Disposal. Inasmuch as Re-

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conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent timely filed an answer, essentially denying the commission of any of the alleged unfair labor practices. Pursuant to a notice of hearing, the allegations of the consolidated complaint were the subject of a trial before me on June 15, 16, 17, 28, 29, and 30 and July 1, 1993, in Los Angeles, California. At the hearing, all parties were afforded the opportunity to examine and to cross-examine all witnesses, to offer into the record all relevant evidence, to argue legal positions orally, and to file posthearing briefs, which were subsequently filed by counsel for the General Counsel and by counsel for Respondent and which were carefully examined by me, and I granted a motion by counsel for the General Counsel to add a paragraph to the consolidated complaint, alleging another violation of Section 8(a)(1) of the Act, and a motion by counsel for Respondent to dismiss, from the consolidated complaint, Juan Santiago as an alleged discriminatee. Accordingly, based on the entire record herein, including the posthearing briefs and my observations of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, with an office and truck depot located in West Covina, California, is engaged in the business of trash removal for residential, commercial, and governmental customers. In the course and conduct of its business operations, in the 12-month period immediately preceding the issuance of the consolidated complaint, which period is representative of its business operations, Respondent provided services, valued in excess of $50,000, directly for customers located within the State of California each of which customers, during the same period of time, purchased and received products, valued in excess of $50,000, directly from suppliers located outside the State of California. Respondent admits that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

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

III. ISSUES

The consolidated complaint alleges that Respondent engaged in conduct violative of Section 8(a)(1) and (3) of the Act by terminating three employees (Antonio Arreola, Sergio Carrillo, and Mario Rubio) on July 24, 1992, and nine employees (Jesus Arreola, Jose Arreola, Efrain Carrillo, Guadalupe Mendoza, Jose Luis Mendoza, Ruben Real, Carlos Garcia Sanchez, Agustine Santiago, and Martin Santiago) on November 13, 1992. Further, the consolidated complaint alleges that Respondent violated Section 8(a)(1) of the Act by various acts and conduct including: engaging in surveillance of its employees' union activities; creating the impression of surveillance of its employees' union activities; threatening to terminate employees because of their union activities; threatening adverse consequences because of its employees' union activities; threatening to withhold benefits because of its employees' union activities; interrogating employees with regard to their union sympathies and activities; and informing other employees that fellow employees have been terminated for engaging in union activities. Respondent denied the commission of any of the alleged unfair labor practices and asserts that the employee terminations on July 24 were for cause and that those employees assertedly terminated on November 13 were, in fact, laid off due to a lack of work resulting from new equipment.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The record establishes that Respondent, which is jointly owned by Mike Arakelian and Ron Arakelian Jr.,[3] purchased the assets of West Covina Disposal in early 1992. Inasmuch as the city of West Covina had an ongoing contract with West Covina Disposal for all residential, commercial, and governmental trash removal services within its borders, the former, as a condition of the contract, was required to and did approve the sale on or about March 3, and Respondent began operating as West Covina Disposal that same day. Besides continuing to perform all trash removal operations for the city of West Covina, pursuant to another ongoing contract, Respondent continued to perform the same services for the city of Glendora. Ron Arakelian Jr. is the president of Respondent, and Mike Arakelian is the vice president and general manager of the business. In addition, Respondent employs two supervisory employees, Rosalio Caballero, who is generally responsible for Glendora routes, and Efrain Olmos, who is responsible for all West Covina routes and the Glendora routes after 12 p.m. each day. To perform its trash removal operations, Respondent employs individuals who are classified as either drivers or helpers.

There is apparently no dispute herein that a union organizing campaign amongst Respondent's employees commenced in the late spring of 1992; that, in mid-May, the employees contacted Raul Lopez, the chief operating officer of the Union, with regard to seeking representation by the Teamsters union; and that a meeting with Lopez was scheduled for 4 p.m. on May 22 at Parque del Norte (North Park), a community park in West Covina.[4] The record reveals that word

spondent is a single business entity, for purposes of convenience, the business shall be referred to herein as West Covina Disposal.

[3] The Arakelians are brothers, and each owns a 50-percent interest in West Covina Disposal. The record reveals that the Arakelian brothers also possess ownership interests in another California trash removal company, Athens Disposal Company, which is located in the City of Industry approximately 7 miles from the West Covina Disposal yard. While their father, Ron Arakelian Sr., owns 59.84 percent of Athens Disposal Company, Ron Arakelian Jr. owns 22.85 percent of the business and Mike Arakelian owns 10.95 percent. Although Mike is not an officer of Athens Disposal Company, Ron Arakelian Jr. is the vice president and is involved in setting labor relations policies.

[4] North Park, located at the intersection of Rowland and Sunset Streets, appears to be a small, neighborhood type park of a square block in size, consisting of tennis courts, a little league baseball field (with bleachers along the first and third base lines), and a grass picnic area. A parking lot, with entrances to Sunset Street, is located behind the baseball field, which is separated from the picnic area by

of the meeting spread throughout Respondent's employee complement and that approximately 40 workers (including alleged discriminatees Antonio Arreola, Sergio Carrillo, Martin Santiago, Ruben Real, Jesus Arreola, Jose Arreola, Guadalupe Mendoza, Carlos Garcia Sanchez, Jose Luis Mendoza, Efrain Carrillo, and Mario Rubio) met with Lopez after work on May 22 at North Park. According to Lopez, the subject of the meeting was the commencement of a union organizing campaign, with Lopez asking questions as to what the employees ''were seeking in the Union'' and answering questions about the labor organization. Authorization cards for the Union were distributed, and ''almost all'' of those present, including each of the alleged discriminatees,[5] signed a card and returned it to Lopez.[6] Lopez further testified that, prior to the meeting, he had received information and formed ''suspicions'' that Respondent and Athens Disposal Company, given their common ownership, were related companies and that, at the meeting, he asked questions about the ''connection'' between the two companies and ''confirmed'' his suspicions. The May 22 meeting ended with Respondent's employees deciding to hold another organizing meeting at North Park on Saturday, June 13, and Lopez deciding to invite Athens Disposal Company employees to it.

There is no dispute that, as scheduled, the next meeting, between representatives of the Union and Respondent's employees, occurred on Saturday, June 13, at North Park in the picnic area;[7] that it began shortly after 12 p.m.; that Lopez and Lorenzo Amaya conducted the meeting for the Union; that, at least, 25 of Respondent's employees, including most of the alleged discriminatees, attended; that, at least, two Athens Disposal Company employees were present; and that, in addition, having been invited by Lopez, several employees of NewCo Disposal, a company which previously had recognized the Union as its employees' bargaining representative, were in attendance. While Respondent concedes that two separate instances of surveillance of this meeting, by supervisors of Athens Disposal Company, occurred, exactly what conduct these incidents entailed is in dispute. As to these, Raul Lopez testified that, in the midst of a discussion of what effects the employees could expect from the conducting of an organizing campaign, Athens Disposal employees said that an Athens Disposal supervisor was ''cruising the area'' in a pickup truck and, moments later, ''one of the employees noticed that the pickup had parked on Foxdale'' 150 to 200 feet from where the employees were standing. Describing the truck as being a black Chevrolet with silver or white striping, Lopez testified that he observed the driver inside, sitting with his hands ''cupped toward his face'' on either side of his eyes, and that, as he and Amaya began walking toward the truck, the driver made a U-turn and drove away. Then, Lopez testified, about 15 or 20 minutes later, one of the employees said that he recognized a red, Athens Disposal pickup truck in the parking lot, and, at the same time, other employees shouted that they recognized two Athens supervisors photographing the meeting. Lopez turned and observed two individuals, standing ''pretty much in plain sight'' in the row of trees approximately 150 to 200 feet away from the group, one taking pictures with a video camera and the other using what appeared to be a 35 millimeter camera with an extended telephoto lens. Suddenly, according to Lopez, the assembled workers began running toward the two men, and the two men immediately began running toward the parking lot. Lopez and Amaya ran toward their car, which was parked on the street and drove toward the parking lot entrance on Sunset. As they did so, Lopez observed one of the workers struggling with one of the asserted supervisors beside the passenger door of the pickup truck. The latter broke away, climbed inside and closed the door, and the red pickup drove away. With regard to the two alleged instances of surveillance of this North Park meeting, alleged discriminatee Mario Rubio, who stated that he recognized three or four Athens Disposal Company employees at the meeting,[8] testified that ''we were talking in a group when suddenly one of the members of the group looked behind and saw two people . . . with a camera.'' Rubio turned, and saw two persons near a tree 40 to 45 feet from the bleachers of the little league baseball field. ''One was squatting down a little, the other one was standing [with] the camera. . . . I notice it was a video camera,'' and the photographer was pointing it ''toward the group.''[9] According to Rubio, when he initially observed the two men with the video camera, they were slightly more than the length of a soccer field from the site of the meeting, and the Athens employees identified the photographers as being from Athens. Then, according to Rubio, someone pointed out a red pickup truck in the parking lot. The group began walking toward it, and, as they did so, the two men with the video camera, who were identified by the Athens Disposal employees as being from that company, also began running toward the truck. The two men arrived at the truck first, and both got inside, with the one holding the video camera getting into the passenger seat. He appeared to point the camera toward the workers, who were running towards the pickup truck. As Rubio and the others approached, ''we asked [the photographer], what are you doing with this camera. He told us, move away from here, the other man started the truck and they left,'' almost running down one of the workers who had his hands on the passenger door.[10]

a line of trees. Foxdale Street is the road which runs parallel to Sunset and adjacent to the picnic area.

[5] The only alleged discriminatee, who was not present, was Augustine Santiago.

[6] None of Respondent's managerial or supervisorial employees were present at this meeting.

[7] Denying that such was done by printed flier, Lopez testified that notice of the June 13 meeting was spread amongst Respondent's employees ''by word of mouth,'' with a committee formed to inform other employees and the Athens Disposal employees. Contrary to Lopez, alleged discriminatee, Jose Arreola, testified that, in publicizing the meeting, ''we would hand out [leaflets] and have an address and everything.'' He added that these were distributed at work but ''we were taking care to make sure the company would not know but . . . maybe someone told.''

[8] He knew them to be Athens Disposal employees ''because I used to see these people at the dump site.''

[9] Rubio was certain the camera was a video camera as ''part of the camera was resting on his shoulder and part of the camera was in his hand. He was pointing it.''

[10] During cross-examination, Rubio reiterated that the photographer was using a video camera as ''the lens was a little long'' and ''to me it was a video, the way he was holding it, the way he was using it.'' Then, Rubio was confronted with his pretrial affidavit, wherein he mentioned only that the camera had a long lens and failed to mention that it was a video camera. Also, during cross-examination, Rubio said that, in order to return to the red pickup truck, the two

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Rubio testified further that, no more than 5 minutes later, he observed a person, who was parking a beige colored pickup along the street adjacent to the park no more than 25 feet from the group. ''Then I hear somebody state that he belongs to Athens. I was looking at this. When Raul finds out, he and the other Union representative started to walk toward the truck. When the person in the pickup noticed . . . he left immediately.''

Several of the other alleged discriminatees also testified regarding the alleged instances of surveillance of the June 13 North Park meeting. Jose Arreola testified that the first involved a photographer, who, the group of employees observed, was ''taking pictures with a camera with a long lens'' while standing beside a white Chevrolet pickup truck, which was parked on the street. The photographer, who was approximately 150 feet from the group, had his camera pointed at them. Arreola added that the Athens Disposal employees, at the meeting, identified the person as an Athens Disposal supervisor, Tony Rodriguez, who, 3 months later, was seen, by Arreola, several times in [Respondent's] pickup with [Efrain Olmos] . . . looking at routes'' and in the truck yard. Later, according to Arreola, he observed two persons underneath a tree 150 feet from where the employees were standing, with one taking pictures of the group with a video camera. After watching him for approximately 5 minutes, the assembled employees began chasing the photographer in order to take the camera from him. Thereupon, the two men began running toward a pickup truck in the parking lot. Arreola reiterated that the camera was a video camera and stated that, as the chasing employees reached the truck, the photographer was closing the passenger door, ''and then they hit us with the door. We tried to take the camera away from them. At that time he put it into reverse fast and they just put the truck on top of us and took off.'' Concluding, Arreola testified that two Athens Disposal employees identified the two men as being ''supervisors from Athens.'' Martin Santiago testified that he observed someone taking photographs and another taking pictures with a video camera. As to the latter, for 5 minutes, he observed two people standing beneath a tree 100 feet from the group, with one using the video camera to take pictures of the group.[11] ''Someone said they were supervisors from Athens'' and ''several went over to where they were. When [the two asserted supervisors] saw we were going over there, they ran toward their pickup. . . . One of [the group] got really close and when they opened the door he hit him . . . and knocked him out. And they got in and then took off fast.'' With regard to the latter point, during cross-examination, Santiago admitted he was told what happened and did not see the incident at the door of the pickup truck. As to the person taking photographs, Santiago testified that he was inside a pickup, which was parked on the street, approximately 100 feet from the employees, and that, when the union officials walked towards the truck, it drove away. During cross-examination, Santiago conceded this photographer was not mentioned in his pretrial affidavit.

Ruben Real testified that he arrived late for the North Park meeting on June 13, but ''when I got to the meeting I noticed two persons with a camera . . . . underneath a tree'' approximately 100 feet from the group. According to him, the camera was a video camera, which was ''pointed toward the group.'' Suddenly, those present ''started to run'' toward the two men, who, upon noticing the group moving in their direction, began running to the parking lot. After the members of the group returned to the meeting site, Real testified, one told him ''there was a foreman from Athens.'' During cross-examination, Real reiterated that, although he could not say the brand, the camera, used by the two men, was a video camera. Thereupon, Real was confronted by his pretrial affidavit wherein he stated he did not know what type of camera the men used; however, according to Real, his reference, in the affidavit, was to the brand name and not to the fact that the camera was a video camera. Finally, with regard to Real, he did not observe anyone else with a camera, taking photographs of the organizing meeting. Jesus Arreola testified that he observed two men, standing by some trees ''around a hundred feet'' from the meeting site and taking pictures of the group with a camera of ''the kind for videos.'' He added that coworkers noticed the picture taking; ''[the two men] realized and they ran and then we run after them. . . . they ran and they went to a pickup truck . . . .'' While some workers got ''right at the truck,'' the cameramen were able to escape ''fast,'' and, while Arreola had never seen either of the men previously, the Athens Disposal Company employees said they were supervisors from Athens.[12] Arreola further testified that he also observed, ''some distance'' away, two men in a pickup truck, taking still pictures of the group. According to Arreola, the truck ''was moving and then when . . . the ones from the Union . . . wanted to go speak with them . . . [the photographers] saw that they were coming, so then they left.'' Later, in his testimony concerning this incident, Arreola conceded that he only observed the two men and not a camera, but ''my co-workers saw it and they said.'' As with the two men with the video camera, Arreola was unable to recognize the two men in the pickup truck, but ''the ones from Athens said they were supervisors from Athens.''

Carlos Garcia Sanchez testified that the only person, whom he observed with a camera on June 13, was an individual, who was approximately 20 feet from the meeting site and who was identified by Athens Disposal employees as being an Athens disposal supervisor, taking pictures with a photographic camera, attached to which was a long lens. Also, according to Sanchez, at another point during the meeting, while he never observed the camera, several employees said that someone was taking pictures of the meeting with a video camera. His attention was drawn to two individuals, who ''were really far away'' near the parking lot. Several of the group, including Sanchez, proceeded to run after the two men, but ''they got in the truck and then they left real fast.''

men with the camera had to walk around the bleachers of the little league field.

[11] During cross-examination, Santiago reiterated that the camera was, in fact, a video camera—''At that distance . . . you could see it was a video camera . . . . because they have it on their shoulder.''

[12] During cross-examination, Arreola reiterated that the camera utilized was a video camera—''the surest thing is that it must be a video camera,'' a ''VCR'' camera. As with Ruben Real, when confronted with his pretrial affidavit wherein he said he could not recall what kind of camera it was, Arreola stated that his reference was to the brand.

Efrain Carrillo testified that, soon after the meeting began, he observed a brown pickup truck park on one side of the street, adjacent to the meeting site. Someone said that the person in the truck had a camera, and Lopez and Amaya began walking toward the truck. However, ''[the driver] did not want to wait for them so he left.'' Carrillo further testified that, no more than 10 minutes later, one of the workers said someone was videotaping them. All of those present turned to look and ''we saw [two persons] standing . . . about 100 feet'' away under a tree. ''[Two males] were together, one next to the [other], blocking the other so they can take video.'' According to Carrillo, the camera was ''a video-taking camera,'' in which large cassettes are used.[13] After no more than a minute, the workers began moving in the direction of the two men, and the latter began running toward a parking lot, in which a pickup was parked. Before they could drive away, some of the employees managed to ''[place] themselves in front of the vehicle to ask them what they were doing there. Then, [the driver] . . . turned the pickup on and they practically run over [the workers]'' in driving away.

Sergio Carrillo testified that, at some point during the June 13 meeting, he observed two individuals arrive at in a pickup truck, park no more than 100 feet from the site of the organizing meeting, and, while remaining inside the truck, one begin taking pictures of the meeting with a video camera. According to Carrillo, 5 minutes later, he observed a beige pickup truck park approximately 100 feet behind the other and the driver begin taking pictures of the meeting with a photographic camera. Finally, after being asked by counsel for the General Counsel if he attended the North Park union meeting on June 13, Antonio Arreola testified, during direct examination, that the meeting was observed by supervisors from Athens Disposal and that he knew the individuals were from Athens as ''I myself recognized them because I had seen them before.'' Elaborating, Arreola stated that ''there were two hidden behind a tree'' 200 feet away from the meeting, that they had arrived in a red pickup truck, and that one of the two men was taking pictures of the group with a video camera. Also, a third Athens Disposal supervisor was taking pictures of the group from a pickup truck, which was parked across the street from the park. During cross-examination, Arreola was confronted with his pretrial affidavit, in which he stated that the picture taking was at the May organizing meeting, and admitted that such was correct. Further, Arreola admitted that his pretrial affidavit statement, that no employer surveillance occurred at the second organizing meeting in North Park, was also correct. Finally, during cross-examination, Arreola averred that the camera, utilized by the individuals behind the tree, was ''the kind that take movies'' and conceded that, rather than seeing it, he knows the supervisor, inside the pickup truck, had a camera ''because . . . Raul told us.'' The final employee witness, with regard to surveillance at North Park was an Athens Disposal employee, Jesus Rosas. Asked if he saw anyone with a camera, Rosas testified, ''What I saw was . . . two pickups from Athens Company. . . . a red pickup . . . and another pickup truck gray in color.'' There were two people in the red pickup, which was parked in the parking lot, with the driver being an Athens Disposal supervisor named Francisco Uicab. Rosas did not recognize the passenger as ''his face was covered . . . . with a small video camera'' with which he was taking pictures of the meeting. Rosas added that, at all times, he observed the two men inside the truck and that he believes the passenger was using a video camera because ''I saw this man holding [the camera] against his face with one hand.'' Rosas continued, stating that, after a few minutes, everyone in the group ''ran to the pickup truck to try to get ahead of the man,'' but ''the pickup truck left the parking lot.'' As to the grey pickup, Rosas recalled that it was driven by an Athens Disposal employee, Pedro Esparza. According to the witness, the grey pickup was also ''inside of the parking lot'' and the red and grey pickup trucks ''left together at the same time.''

At the conclusion of the North Park meeting on June 13, Lopez invited Respondent's employees to attend a meeting between Teamsters union representatives and Athens Disposal employees scheduled for 4 p.m. that day at the Teamsters Local 420 meeting hall on Peck Road in El Monte.[14] Later that afternoon, accompanied by several of Respondent's employees, including many of the alleged discriminatees, Lopez went to the Local 420 meeting hall but discovered that the building was locked. Thereupon, the group went across the street to a gas station where they were joined by several employees of Athens Disposal, thereby increasing the size of the group to approximately 30 employees. According to Lopez, while the people were milling about prior to the start of the formal meeting, someone said that an Athens Disposal supervisor had driven by for the second time, and Lopez' attention was directed to a white pickup truck, which was stopped at a stoplight at the intersection of Peck Road and Durfee. Leaving the group, Lopez walked over to the pickup, in which a driver and a passenger were seated, and accused the driver of doing something illegal. He asked the driver to identify himself, and the man gave Lopez a name. The union official then returned to the group, informed them of the man's name, and the individual, who had initially observed the vehicle passing by, said that such was not his name and that his real name was ''Guadalupe.''

[13] During cross-examination, with regard to the camera, Carrillo said, ''I can see the bulk of the camera only. . . . I think it was a video camera; it looks large to me.'' Thereupon, when asked if he could discern whether it was a video camera or a photographic camera, Carrillo replied, ''[N]o.'' He added that others said the camera was a video camera, and, according to the witness, rather than holding the camera in front of his face, the photographer ''was balancing this camera on his shoulder.'' Finally, while in his pretrial affidavit, Carrillo stated that he did not know what the type of camera being used, during redirect examination, he explained that he meant ''because of the distance I was not able to distinguish it.'' He added that he believed the camera was a video camera as ''it still looks somewhat larger so that's why I say it [was] . . . a video camera.''

[14] According to Raul Lopez, prior to May 22, Teamsters Local 495 had been engaged in efforts to organize the employees of Athens Disposal. Subsequent to the May 22 meeting with Respondent's employees, as the Union has Teamsters union jurisdiction over the rubbish industry, Lopez spoke to the secretary/treasurer of Local 495 and, as a result, the latter relinquished the organizing of Athens Disposal Company's employees to the Union. Lopez further testified that the June 13 afternoon meeting had been scheduled by a Local 495 business agent in order to inform the Athens Disposal employees of what had occurred and that Lopez decided to attend in order to ease the transition.

While, apparently, Lopez did not observe the vehicle, allegedly driven by an Athens Disposal supervisor, twice drive past the assembled employees, alleged discriminatees Mario Rubio,[15] Efrain Carrillo,[16] and Sergio Carrillo[17] each testified that he saw the aforementioned pickup truck drive past the group and, shortly thereafter, drive past them again only to be stopped by a red light.[18] Particularly telling is the testimony of Athens Disposal employee, Jesus Ramirez, who stated that, on June 13, aware that a union meeting was scheduled, he arrived at the corner of Peck Road and Durfee at approximately 3 p.m., finding a group of his fellow employees and Respondent's employees standing at a gas station across from the Teamsters 420 building. He parked his car across the street and was crossing Peck Road when another employee, who had accompanied him, said that Ramirez' supervisor was approaching. Ramirez turned to look and saw Guadalupe Diaz and Estaban Uribe, Ramirez' foreman, coming toward them in a pickup truck. ''They were crossing the street inside of the vehicle looking to the group. . . . They went by and a few minutes later they returned. At that moment, the light turned red. [The Union officials] went to talk to them, and they had a conversation.'' Shortly after the incident, according to Lopez, as everyone seemed ''fidgety,'' the group moved to Legg Lake Park in order to convene the formal meeting.

There is no dispute that Respondent's management, including Mike Arakelian and Efrain Olmos,[19] and Athens Disposal Company's supervisorial hierarchy were aware of the scheduled June 13 union organizing meetings and that the latter group planned to, and carried out, surveillance of the North Park and Peck Road meetings. What is in dispute are the activities of the Athens Disposal Company supervisors and whether they acted at the behest, or on behalf, of Respondent. Thus, Arakelian testified that he became aware of the union activity of Respondent's employees ''in late May or early June'' when he heard ''from Olmos,'' who said he had heard from a friend at another company that there was going to be a union meeting. According to Arakelian, at about the same time, Athens Disposal supervisor, Guadalupe Diaz, telephoned him and told him about a flyer, announcing a union meeting later that month. Finally, Arakelian testified that he also ''saw a flyer,'' stating that there would be a union sponsored meeting on June 13 beginning at 11 a.m. While Arakelian denied any further discussions with the Athens Disposal supervisorial hierarchy or being aware of their conduct on June 13 and there is no evidence to the contrary, the record establishes that, aware of the scheduled union meetings on June 13, the Athens Disposal Company supervisors conspired to engage in surveillance of their employees suspected union activities on that day and, in fact, engaged in such conduct. In this regard, Tony Rodriguez, the Athens Disposal Company operations manager, who denied being acquainted with any of Respondent's supervisors or speaking to them about the events of June 13, testified that, in early June, a few of his company's drivers showed him a flyer, announcing a union meeting for June 13; that, on June 12, he met with his company's supervisors; and that, after a ''discussion,'' the decision was made ''just to see if any of . . . Athens personnel were involved in this meeting.'' Therefore, the next morning, ''just to see if any of our men were involved in it,'' accompanied by a friend, who happened to be driving because ''he likes pickups'' and ''he wanted to drive,'' Rodriguez rode, as a passenger, in a company white Chevrolet Silverado pickup truck, to the site of the suspected union meeting at North Park in West Covina. According to the witness, they approached the park on Sunset, made a right turn onto Rowland, and drove past a group of people, who were ''scattered'' and resembled a ''family gathering.'' They turned left at the next corner and parked on the left or wrong side of the street, with the group about 100 yards to their left. Remaining for no longer than a minute and affording Rodriguez the opportunity to no more than glance at the group, the operations manager and his friend drove away.[20] Rodriguez further testified that, no more than a half hour later, in the same pickup truck, he and his friend returned to North Park, driving past without stopping. Denying taking any photographs or getting out of the truck, Rodriguez said he did not recognize anyone and ''saw no reason to go back and look any more.''

Athens Disposal Company field supervisor, Frank Uicab, who stated that he was aware of Respondent from having seen its trucks and that he knew the 2 companies were ''affiliated,'' admitted that Respondent's supervisors had ''decided'' to learn what was going on and that he was at North Park in West Covina on June 13 ''to see if there was any Athens people at the so-called union gathering.'' According to Uicab's testimony at the hearing and a stipulation as to his testimony, at approximately 1 p.m., driving a company-owned, burgundy colored pickup truck, he and Pedro Esparza, who was a ''spare driver'' and whom Uicab was taking home, arrived at North Park, drove completely around the park, observed a group of 30 to 40 people standing in the grass picnic area, turned into the parking lot and parked. Watching the group from the truck, Uicab was unable to recognize anyone. Then, carrying a company Polaroid camera,[21]

[15] Rubio testified that one of the Athens Disposal employees shouted that the driver of the pickup truck was an individual named ''Lupe'' and that, subsequently, he saw ''Lupe'' at Respondent's facility ''taking notes as to what time you arrive and things like that.''

[16] During cross-examination, Carrillo was confronted with his pretrial affidavit in which he mentioned nothing of the asserted surveillance of the Peck Road meeting.

[17] Carrillo testified that Athens Disposal employees identified one of the individuals in the pickup truck as an Athens supervisor named Guadalupe and that he had seen Guadalupe previously at Respondent's office, ''looking at papers'' and speaking to Mike Arakelian and Rosalio Caballero.

[18] Martin Santiago testified that he only observed the pickup truck, the driver of which was identified by one of the Athens Disposal employees as being a company foreman, drive slowly past the group and stop at a red light. The pickup truck was in the traffic lane closest to the assembled employees, and the driver was ''looking at us.''

[19] Alleged discriminatee, Jose Arreola, testified that, on or about June 4, Olmos spoke to him in Respondent's yard as the former was pouring water into his truck's radiator. Olmos approached and said, ''We already know that you're going to have a meeting, where and when.'' While denying all other allegedly unlawful Sec. 8(a)(1) conduct herein, Olmos failed to specifically deny either the occurrence or substance of this conversation.

[20] Describing the group as being comprised of from 12 to 15 people and some women, Rodriguez doubted that anyone, in the group, noticed him from such a distance and denied that anyone walked toward his pickup.

[21] Uicab specifically denied having a video camera with him that day. With regard to the Polaroid camera, Uicab stated that it was

Uicab, accompanied by Esparza, walked to the third base side of the baseball field and seated themselves in the bleachers, where other people were sitting and watching a little league baseball game. From his location, according to Uicab, the 30 to 40 person group was ''probably . . . a little bit more'' than the length of a football field or 400 feet away. Uicab and Esparza sat and observed the group for approximately 5 minutes, during which time Uicab took two photographs but was unable to recognize anyone.[22] As they climbed down from the bleachers, Uicab noticed that the members of the group had started to walk towards ''where our vehicle was parked.'' Thereupon, he and Esparza ran toward the parking lot, dropping the two photographs while doing so. Arriving at the truck before anyone from the group and tossing the camera onto the front seat, Uicab started the engine and drove away; one man came within two feet of the truck but did not touch it.[23]

According to the stipulated testimony of Athens Disposal Company field supervisors, Steve Uribe and Guadalupe Diaz, they drove together in a beige pickup truck to the area near Peck Road and Durfee in El Monte at approximately 1 p.m. on June 13 in order to engage in surveillance of company employees at a union meeting at that location. Testifying at the hearing, Uribe, who was driving, initially stated that they drove there because ''we were going to a bar'' but later conceded that their purpose was as stipulated. In any event, Uribe admitted that, nearing the intersection of Peck Road and Durfee, he slowed down enough so that he and Diaz could look to see what was happening; Uribe and Diaz each admitted observing a group of six to eight people standing at a corner gas station, and Diaz denied recognizing anyone in the group. According to their stipulated testimonies, they stopped at a red light at the intersection of Peck Road and Durfee, and a man, whom neither recognized, approached the passenger window and asked Diaz for his name. Diaz gave him a false name, and, when the light changed, Uribe drove away. Finally, each man denied driving back and forth in the area that day.

It is the contention of the General Counsel that, at the most, the Athens Disposal Company supervisors acted as agents of Respondent and generally engaged in surveillance of both union organizing meetings on June 13 and photographed and made a videotape recording of the North Park meeting on behalf of Respondent and, at the least, shared the aforementioned video tape with Respondent's supervisors. In this regard, alleged discriminatee, Carlos Garcia Sanchez, testified that, in the morning of June 15, the next work day after the North Park meeting, while working his route, he discovered that one of his truck's tires had become flat, and that, while he and his helper waited for assistance from the yard, Olmos came over in his truck, approached, and ''wanted to know what happened to the truck and mechanics were on the way to replace the tire.'' Then, Olmos came close to Sanchez and, speaking in a soft voice, said, ''[Y]ou bastard, you looked very good on television, bald headed.''[24] Likewise, Jose Arreola testified that, on the Tuesday following the June 13 meeting at North Park, he was working his route in West Covina when Olmos drove to where Arreola's truck was stopped, approached, asked about Arreola's progress that morning and said that ''he had seen me already in the video and I was . . . one of the ones in the video.'' Olmos turned and walked away before Arreola could respond. Either on the following Friday or Monday, according to Arreola, while working on a route in West Covina, Olmos again approached him and said that Respondent had received new trucks and would give one to another driver rather than to Arreola and that ''if you had not been one of the ones that tried to take the camera away . . . they would have given you a new truck.'' Arroela replied, ''What can I do.''[25] Finally, with regard to the alleged existence of a videotape recording of the June 13 North Park organizing meeting, Martin Santiago testified that, on Monday, June 15, while he was washing down his truck in the truck yard after work, Olmos approached him, and they began talking ''about work, and I asked him, what did Mike say about the Union. He says, I already saw you in the video. Then I asked him, are they going to fire us or what's going to happen? And he responded, not right now but further on [Mike's] going to look for the way that he can do it, that he was very mad.''[26]

There is no dispute that approximately three other union organizing meetings were held at various locations, including the Union's office, during the summer and fall of 1992 and that several of Respondent's employees attended these meetings; there is no record evidence of Respondent's surveillance of these meetings. Also, the parties stipulated that, one day in late June, alleged discriminatees Jose Arreola and Jesus Arreola and employee Alonza Cazeres distributed leaflets in front of the Athens Disposal Company office and truck facility in City of Industry; that they were observed by Mike Arakelian; and that the latter asked the three employees what they were doing. Jose Arreola testified that, 2 days after the above incident while working his route, he was ap-

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the type which requires use of two hands in order to take a picture and that it was not equipped with a telephoto lens.

[22] Uicab opined that the group could have been a gathering of soccer players; he nevertheless took photographs ''because I knew there was something going on with the union gathering.''

[23] Pedro Esparza, a ''spare driver'' for Athens Disposal, essentially corroborated Uicab's version of the latter's activities at North Park on June 13.

[24] Sanchez, whose hair was cut short at the time of the hearing, said his hair is always cut that way, ''sometimes shorter.''

Stating that he knew nothing of a video tape of the June 13 meeting at North Park, Olmos denied the occurrence of this conversation.

[25] Olmos denied the occurrence of both of the alleged conversations with Arreola.

With regard to the matter of new trucks, there is no dispute that, in June, Respondent ordered eight new trucks, requiring just a driver and no helper, for use on the West Covina residential routes and that such were scheduled for delivery, and were, in fact, delivered to Respondent, in late October. In addition, Respondent had purchased new one person trucks for its commercial routes, with said trucks received in August.

During cross-examination, Arreola stated that the truck, to which Olmos referred, was a commercial vehicle. After admitting he was a residential route driver and not a commercial route driver, Arreola was asked by counsel for Respondent how he could have been given a new commercial truck, and he replied, ''[B]ecause the residential were about to arrive. They were going to change all of the trucks. And he was telling me that one commercial truck was going to come over.''

[26] During cross-examination, Santiago was confronted with his pretrial affidavit wherein he stated that his question to Olmos was what did he think about the Union. Admitting confusion, Santiago reiterated that he opened the conversation with ''what Mike thought about it.'' Olmos denied the occurrence of such a conversation.

proached by Olmos, who said to him, ''You're seeing that they're trying to fire you because you're involved in the meetings of the Union. Now you're going around delivering papers . . . and . . . Antonio . . . is the one who's pushing you so that you can get in this Union and now you do this and I cannot do anything for you.''[27]

Besides the foregoing, the consolidated complaint alleges several other statements, by Olmos and Rosalio Caballero, as being violative of Section 8(a)(1) of the Act. During cross-examination, asked if he had any conversations with supervisors after June, Jose Arreola recalled one conversation ''after June'' when Olmos approached Arreola and his helper, gave each a piece of chewing gum, and asked, ''[I]f we were still with the Union. I said, yes.''[28] Martin Santiago testified with regard to two other conversations with Efrain Olmos during the summer of 1992. One such conversation occurred in June when he was working a route in West Covina with Efrain Carrillo as his helper. Olmos drove to where Santiago's truck was stopped and asked if they were almost finished. Then, according to Santiago, Olmos asked ''are you guys in the Union also? . . . And I said, yes. And I said what's going to happen.'' Olmos replied, ''Oh, nothing, you're gonna get run off, fired.''[29] Santiago further testified as to a late morning conversation in August while he was working his route in West Covina. Olmos drove up to him and inquired as to his progress. Then, according to Santiago, as was his habit, he asked Olmos what was happening with Mike Arakelian, and ''what did he say about the Union.'' Olmos replied on that occasion ''that we should not have started with the Union, because . . . Mike was going to give us more benefits; and with this business about the Union, he was not going to give us anything.'' Asked by counsel for the General Counsel if anything was said, in either conversation, as to Respondent's knowledge of who was in the Union, Santiago stated, ''[I]n one of those conversations he mentioned that Michael knew who was in the Union and who was not in the Union.'' Santiago recalled that he said nothing to this assertion and ''just remained quiet.'' Also, asked whether Olmos said anything about what might happen in the future, Santiago replied that, on ''several'' occasions, Olmos said ''only he was going to look for a way he could fire us. He couldn't do it just like that, but . . . we'll see how we're gonna do.'' Denying that he ever threatened Santiago with termination or asked if Santiago was in favor of the Union, Olmos testified concerning two union related conversations with the alleged discriminatee. The first, which occurred in June and was initiated by the alleged discriminatee, began with Santiago asking ''what are they going to do with all of us that are getting involved in the Union. My answer was, 'I cannot tell you what to do or not what to do. You can do whatever you want.''' The second conversation, which occurred in August, commenced when Santiago ''asked me what was my thinking about the Union. . . . I told him you're free to do whatever you want. I don't have any opinion about the Union.'' Finally, with regard to Olmos' allegedly unlawful union related comments, Guadalupe Mendoza testified that, in August or September, while he and his driver were working their route, Olmos drove to where they were working and a conversation ensued. ''I comment that the route was very large and they should pay us overtime; and [Olmos] responded that due to my involvement with the Union . . . that's probably why [Mike was] . . . making the route larger.'' Olmos added that, due to their support for the Union, the company was enlarging the routes ''to see if we would quit'' and that ''the Union was no good . . . . and . . . was the cause they were going to lay us off.''[30]

With regard to the allegations of unlawful conduct attributed to Rosalio Caballero, Jose Luis Mendoza testified that, one Tuesday after the May 22 initial meeting with union representatives, he was in Glendora about to drive to a dump site when, as was his custom, Caballero approached in order to check upon Mendoza's progress. According to the latter, Caballero ''came and said to me, hey, short man, get to work hard. And I said, what for if I make the same amount of money? And then he told me that if I continue going around to the meetings of the Union, he was going to fire me.'' Mendoza further testified that, in September or October, while working in Glendora, he had a conversation with Caballero. The latter approached Mendoza's garbage truck, and, ''as always, he called me a short man. He told me to work hard. Then he told me he had pictures from Antonio and myself about a meeting with the Union and they were going to fire us.'' Mendoza added that Caballero ended the conversation with an expletive.[31] Moreover, Ruben Real testified that,

[27] Jesus Arreola testified that he was acting as a helper for his brother Jose one morning when Olmos approached and began speaking to Jose. According to Jesus, he was throwing some garbage into the truck but was listening to the conversation. He heard Olmos tell his brother ''to get out of this mess from the Union because it's nothing good, that they could lay us off.'' Olmos added that he had heard this from Mike Arakelian. Olmos denied ever threatening Jose Arreola with termination because of his union activities.

The record establishes that Antonio, Jesus, and Jose Arreola are brothers, that Efrain and Sergio Carrillo are brothers, that Martin and Augustine Santiago are cousins, and that the above seven individuals are all cousins.

[28] Olmos denied the occurrence of such a conversation, and Arreola failed to mention it in his pretrial affidavit.

[29] Corroborating Santiago, Efrain Carrillo testified that, in June, he and Santiago were working a route in West Covina when Olmos drove up in his truck and came over to them. ''He began by saying that they had missed a stop, and then he asked, ''Martin why we were getting involved with . . . the Union. . . . He told us that he knew Martin and I were involved. . . . he told us to be careful not to do this too much because maybe Mike was going to find out and could fire us.'' Carrillo replied that this would be too bad. During cross-examination, Carrillo stated that it was Santiago who began the conversation by asking, ''What's happening with the Union'' and that Olmos' comments were in response. Further, he changed his direct examination testimony, denying that he said, ''[T]oo bad,'' in response to Olmos' warning. Also, while seeming to suggest the conversation was mainly between Santiago and Olmos, Carrillo admitted responding to Olmos' remark, about his involvement with the Union—''I just told him, yes, we were going to the meetings.'' Finally, returning to how the conversation ended, Carrillo testified that he said, ''[W]hatever happens, let it happen.'' However, when asked by me about how the conversation ended, Carrillo said, ''I did not say anything to Olmos, I was just myself thinking these things.''

[30] During cross-examination, Mendoza was confronted with his pretrial affidavit wherein, as to the conversation, nothing is said about the route being enlarged. Olmos denied the occurrence of such a conversation.

[31] During cross-examination, Mendoza said that he would not answer to the name, ''shorty'' and that he did not take Caballero's comments about the Union as jokes. While denying the occurrence

on the Monday or Tuesday after the June 13 North Park meeting while on his way to the dump site in Glendora, he spoke to Caballero, who had driven up to Real's truck and indicated that he should stop. Real did so, climbed down from the truck, approached Caballero, and ''the first thing he told me, you're in the Union, right? I did not answer . . . he says, leave that, that's useless, the Union only wants the money for themselves. And what's going to happen is Mike is going to fire you.'' Concluding, Caballero said, ''[F]or us to forget about the Union.''[32]

In the midst of the above-mentioned allegedly unlawful conduct attributed to Respondent's supervisors, Olmos and Caballero, Respondent allegedly unlawfully terminated three employees, Antonio Arreola, Sergio Carrillo, and Mario Rubio on July 24. With regard to Sergio Carrillo, a driver, the record establishes that, on July 24, he completed his work, returned to Respondent's truck depot at approximately 4 p.m., and was told to report to Mike Arakelian's office where the latter and Efrain Olmos awaited him. According to Carrillo, with Olmos translating, Arakelian said, ''[H]e's going to fire me because of the post that I had hit, and because of the ticket I had received for overload.''[33] Michael Arakelian testified that Carrillo was discharged because ''he backed into a power pole causing extensive damage to the electrical system to the warehouse . . . and an overweight citation on the same day.'' Thus, on or about June 30, Carrillo was scheduled to pick up refuse at the California Day Fresh for Juices plant in Glendora. Arakelian testified that, on the day of the accident, Rosalio Caballero reported that Carrillo had called and reported a minor accident, backing into a pole. Later that day, ''I got a call from the manager of California Day Fresh for Juices . . . telling me what was I going to do about the major damage.'' Arakelian asked him what damage, and was told that ''[h]alf the electricity to our warehouse is out.'' The manager added that, as a result, he was forced to utilize portable electrical generators, and he was concerned about being reimbursed. Arakelian further testified that, later that day, Carrillo also received a California Highway Patrol citation for carrying an overweight load to the dump site. Moreover, on the day before the discharge, according to Arakelian, he learned that California Day Fresh for Juices demanded compensation in the amount of $3000 for Carrillo's accident, which amount Respondent paid on July 24.[34] There exists no dispute that Carrillo had the accident at the juice plant and received an overweight load citation on the same day. However, while conceding that power to the warehouse was cut off and his responsibility for what happened, Carrillo testified that a supervisor told him to leave as there was ''no problem.''[35] In addition, while conceding having received a load overweight citation that same day, Carrillo insisted that he never received a disciplinary warning over either occurrence and never was threatened with termination based upon the accident or the citation. Further, as to Respondent's reason for terminating the alleged discriminatee, his brother Efrain testified that, on a Monday early in August, he was working his route when Efrain Olmos drove up to his truck, and ''he asked me, what's going on with your brother, what is he doing? I told him . . . . he's at home. And then he told me that struck a pole in Glendora and that also he got a ticket for overweight and also because of the Union. That's why they fire him.'' Olmos failed to deny either the occurrence of the substance of this conversation. Finally, with regard to Carrillo, Arakelian testified that, a few months before the alleged discriminatee's accident, another company driver, Carlos Calvio, ''had struck a tree . . . and . . . [a] branch fell . . . on the back of a car'' The car's owner claimed $2500 in damages; Respondent paid, and, subsequently, ''[Calvio] was terminated.''[36]

The second alleged discriminatee terminated on July 24 was Antonio Arreola, who was employed by Respondent as a driver. As with Carrillo, there is no significant dispute as to the facts. Thus, according to Arreola, at approximately 3 p.m. on July 24, he was told to report to Mike Arakelian's office where the latter and Efrain Olmos were waiting for him. With Olmos interpreting, Arakelian ''told me that I was fired. . . . I asked him why. Because of the two accidents that I had. . . . That was all, that I was let go.''[37] Respondent contends that Arreola was terminated for having two negligent accidents within a 10-day period of time. In this regard, Michael Arakelian testified that the first of Arreola's two negligent accidents occurred on July 13 and that Olmos

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of the two conversations, Caballero admitted that, in view of Mendoza's height, he would call the employee ''shorty'' as a joke.

[32] Caballero denied the occurrence of this conversation.

Respondent seeks that I find that neither Olmos nor Caballero would have made any of the allegedly unlawful comments, which are attributed to each, as, on or about June 1, Arakelian gave each a copy of R. Exh. 8, a listing of what supervisors can and can not legally do during a union organizing campaign which had been prepared by counsel for Respondent, and discussed the document with them. Notwithstanding counsel's good intentions, the issue is, of course, whether Respondent deemed it necessary to abide by his advice and, in fact, did so.

[33] There is no dispute as to this conversation. Thus, according to Mike Arakelian, he explained to Carrillo that he had $3000 accident and an overweight citation on the same day, and he was being terminated.'' Carrillo protested that the damage amount was small and not ''any big deal.''

[34] Respondent offered no corroboration for the amount of damages assertedly paid to California Fresh for Juices as a result of Carrillo's accident.

[35] Respondent's accident report states that the damage resulting from Carrillo's negligence was limited to ''the pole and wiring.''

[36] Arakelian denied that an accident, without more, means termination for a driver—''It's got to be an at fault accident.'' Asked if he would terminate an experienced driver prior to establishing fault, Arakelian said, ''To tell the truth it doesn't matter whether he's experienced or not, I want to make sure it's the individual's fault.''

Antonio Arreola mentioned two drivers, _____ Olmos, the father of Efrain, and Raul DeLeon, who had accidents involving collisions with automobiles and who were not terminated by Respondent. Arakelian testified that, with regard to the Olmos accident, the damage to the truck was under $1000 and may have resulted from the car backing into the truck. As to the DeLeon accident, the incident is pending litigation, and, according to Arakelian, the driver will be terminated if proven to have been at fault.

[37] Michael Arakelian's version of the conversation is as follows:

> [W]e started out by explaining to him that he had two negligent accidents within . . . a ten day period of time. And . . . . [I showed] him [the repair forms] and explain[ed] . . . the extent of the damage done from the accidents . . . that they were negligent and he was going to be terminated for them.

reported that, while driving his route and raising and lowering ''the bucket,'' into which trash is deposited by the driver and helper, Arreola lowered the mechanism below the ''normal level.''[38] As a result, while the truck was moving, the bucket struck a raised manhole cover, ''and the pressure of the truck, the weight bent the arms,'' which raise and lower the bucket. Arakelian stated that Olmos reported to him that he had personally inspected the damage to the bucket lifting arms[39] and Respondent's repair order, for the truck damage, reveals that in excess of 8-man hours were required to repair the bucket lifting arms. According to Arakelian, Arreola's second accident occurred on the day before his termination, July 23 and that he became aware of what occurred when Olmos reported that Arreola had been utilizing his truck's compacting mechanism, that ''there was a piece of wood . . . sticking out the hopper of the truck,'' the opening through which the trash enters the mechanism, and that the piece of wood, either 2 by 4 or 2 by 6 in size, had ripped the entire packer apart. Arakelian testified that such should never have happened as ''there's mirrors . . . on the truck . . . in unique positions to help aid the driver in his tasks. And one is a spot mirror on the right side . . . to where when you look down . . . it shoots straight up to the top of the truck.'' Arakelian added that Arreola should have observed what was happening and pulled the piece of wood out.[40] Arakelian further testified that the discharge decision was based upon the fact that ''two accidents in ten days shows a very scary pattern in the way of negligence.'' However, during cross-examination concerning the second accident, Arakelian admitted being surprised that a stuck piece of wood could have caused the extent of damage involved in this incident—it was ''just weird to have a packer get ripped up by one.'' Arreola does not dispute the occurrence of either incident. As to the first, he stated that, while he does have the ability to control the height of the bucket, ''we were working. It has to be down low.'' As to the second accident, the alleged discriminatee conceded that it was his responsibility to ensure that nothing becomes stuck in the truck's packing mechanism; however, he maintained that one cannot continually observe the packer, and ''I've got to do that and [work] at the same time.'' On the same point, conceding that, if he had been staring into the mirror, he might have prevented the wood from becoming jammed, Arreola said, ''If I had seen it, yes, but I was out front dumping the garbage cans.''

The consolidated complaint alleges that alleged discriminatee Mario Rubio[41] was also terminated on July 24. In this regard, Rubio testified that, as of the above date, he had been a commercial route driver for Respondent and, that, while he had worked as a helper on occasion, ''I have always been classified as a driver.'' According to Rubio, his class B driver's license expired in 1989 and, as he failed to take the written examination on time, in order to obtain a new license, he was required to take and pass not only the written examination but also a driving test. Rather than take the latter test, about which he was apprehensive of failing, Rubio only took the written test. He passed and thereby qualified for a ''permit,'' which enabled him to continue driving a truck but which had to be renewed every 3 months.[42] Through 1990, 1991, and the first 6 months of 1992, Rubio continually renewed his driving permit and never bothered to take the driving test, required for a permanent class B license.[43] There is no dispute that Respondent was aware that Rubio was driving without a permanent license, and, according to Rubio, sometime prior to the May 22 organizing meeting, Michael Arakelian told him to take the license driving test. Rubio requested to use a company truck for the test, and he was given permission to do so. However, he failed the test and, prior to July 24, did not again take the driving test as ''Olmos told me they were not going to loan me the truck'' and as he did not want to pay to rent a truck. Rubio further testified that, on July 24, he finished driving his route and was instructed to report to Arakelian's office. The latter and Olmos were waiting for him, and, with Olmos interpreting, Arakelian told Rubio that ''since I was working with a permit . . . I don't need you as a helper, I need you as a driver. And I told him . . . I have an appointment with the [Department of Motor Vehicles] next week.'' Arakelian replied that, after Rubio received his license, ''you come to see me.'' Rubio replied that all he needed was the driving test and ''by next week I [will] . . . have [a license],'' and Arakelian repeated that, when Rubio had everything, he should ''come and see me.'' To this, Rubio replied that he would not come back to see Arakelian's ''pretty face'' but would return ''because of work.'' At that point, according to Rubio, Arakelian told him that, when he received a license, ''you're going to be hired back.'' Rubio testified further that, acting upon Arakelian's promise, he rented a three axle diesel tractor, took the class B license driving test on July 28, passed it, and, while his permanent license was being processed, was given a document entitled ''Interim Commercial Driver's License,'' which is a temporary class B license valid for 60 days. That same day, July 28, Rubio returned to Respondent's office and, with Rosalio Caballero translating, spoke to Arakelian. ''I arrived there and I told him that I already had a driver's license. . . . I showed it to them. . . . He look at it and he told me, this is not a driver's license. This is just a permit which will be expired next month. I want one that has your picture.''[44] Rubio left Respondent's facility, returned to the

[38] Arakelian defines the ''normal level'' as being high enough to clear objects in the street.

[39] Olmos testified that, at the scene of the accident, Arreola ''told me that he was thinking because of the accident he was going to be fired.'' While denying that he made such a comment to Olmos, Arreola admitted making the foregoing comment to his helper.

[40] Arakelian testified that the repair work, resulting from this accident consumed 12-man hours.

[41] Besides attending the May 22 and June 13 union organizing meetings at North Park and being among those who gathered at the corner of Peck Road and Durfee later on June 13, Rubio spoke to other employees in Respondent's truck yard prior to work about the Union. On one occasion, according to Rubio, Efrain Olmos passed by within 20 feet of where he was speaking to other employees. A few days later after work, Rubio approached Olmos and said that employees were worried about being fired; the supervisor responded that they had nothing to worry about.

[42] Apparently, in order to continue driving with a license permit, Rubio was required to, and did, pass a written test after 9 months.

[43] Rubio explained that ''I was not in a hurry'' to take the driving test ''because I had the permit to drive.''

[44] G.C. Exh. 15, the ''interim,' license, appears to be a mere mimeographed document and bears no official California Department of Motor Vehicles stamp. Notwithstanding a seeming lack of official

Department of Motor Vehicles office, was told that Arakelian was incorrect in not accepting the ''interim'' license, once again went to Respondent's office, but Arakelian refused to speak to him. Three weeks later, in August, Rubio testified, he received his permanent license in the mail and reported to Respondent's office. With Caballero again interpreting, ''I told him, here's the license. And he said, yes, this is the driver's license. He went to check on the list and he told me, at this moment I have a lot of people. . . . I don't need you at this time, I'll call you.'' Rubio testified that, subsequent to leaving Respondent's office on that day, he has had no further communication with Respondent.

Other than what was said during the July 24 conversation, there is no essential factual disagreement with regard to the foregoing. According to Olmos, he was well aware that Rubio was driving with 3-month license extensions and told the employee that he did not like that and ''that I needed his license.'' Olmos testified that, after Rubio used a company truck and failed the license driving test, he concluded that Rubio should no longer drive and spoke to Arakelian, who ''told me we were going to let him be a helper but that he was going to continue paying him like a driver'' because Rubio ''had been working in the company for a long time.'' Thereafter, according to Olmos and Arakelian, Rubio worked as a helper, and, in Olmos' words, ''if he ever drove, it was without my permission or anyone's permission.''[45] According to Arakelian, in July, Respondent had purchased new one person commercial trucks and was in the process of reorganizing its six West Covina commercial routes into five and its four or five Glendora commercial routes into three, and he decided to terminate Rubio based upon two factors. First, on ''countless times,'' he warned Rubio that ''he needed to get . . . the license'' and ''the one time he tried . . . he couldn't get it.'' Next, as ''he was on an extension since 1989 . . . . showed me I couldn't depend on him . . . .'' Accordingly, on July 24, according to Arakelian, ''I explained to him that he was getting driver's wage that whole time, and it was just coming . . . to where . . . there was going to be no more helpers; and . . . I needed firm commitment . . . [we would] have . . . men to run those routes.'' Arakelian told Rubio he was terminated but, feeling bad about it, ''told him . . . you've driven before you would think you would think you'd be able to pass that test with flying colors and . . . in the future if you ever choose go on try and get that license, . . . you would be eligible for rehire.'' Arakelian specifically denied promising to rehire Rubio, but ''I guess he took that as . . . he was guaranteed a job coming back.''[46] Arakelian continued, stating that Rubio returned ''about a week or so later'' with his ''interim'' license, and ''I told him this wasn't a driver's license'' as ''it says interim . . . which means short term . . . not permanent'' and it seemed to be ''another one of your three month extensions.'' Confirming that Rubio returned in mid-August with his permanent license and asked about a job, Arakelian states that he told Rubio ''I have no opening now. . . . I said there's nothing now,'' and added that Rubio never again contacted him concerning a job.[47] Finally, with regard to the availability of driver positions subsequent to Rubio's appearance at Respondent's office with his permanent license, the parties stipulated that three drivers were hired in September—Avelino Hernandez on September 16 and Francisco Flores and Mike Guzman on September 25.

There is no dispute that alleged discriminatees Martin Santiago, Carlos Garcia Sanchez, Jose Arreola, Augustine Santiago,[48] Jesus Arreola, Guadalupe Mendoza,[49] Jose Luis Mendoza,[50] Ruben Real, and Efrain Carrillo and others were laid off on November 13. In this regard, the record establishes that, in June, in order to implement a program, requiring the utilization of specialized containers for recyclable trash, disposable trash, and green waste, for residential trash collection in West Covina, Respondent purchased nine new automated trash collection trucks. The significance of this new equipment to Respondent's operations, according to Michael Arakelian, was that ''an automated truck alleviates the need for two people. . . . the hydraulic arm does the work for the . . . helper and . . . [it] is a one man operation. It's not a two man operation.'' Therefore, he ''knew all along'' that a layoff would eventually be required, and, in October, he discussed with Efrain Olmos the necessity for laying off 10 employees, the layoffs corresponding to the number of routes being converted to the new system. Prior to discussing the matter with Olmos, Arakelian prepared employee rating sheets,[51] and, he testified, ''I presented [the rating sheets] to . . . to Olmos, took some time and explained each category and exactly what I was looking for. . . . I explained to him that he was going to need to go through every one of his employees . . . and rate them best to worst, the layoff being the ten at the bottom of the barrel.''[52] Corroborating

status, Respondent failed to raise this as a defense for its actions with regard to Rubio.

[45] Denying that he ever acted solely as a helper and asserting that he always was a driver, Rubio conceded that he sometimes worked with another driver. Asked whether, on those occasions, he ever acted as a helper, Rubio replied, ''We work equally the same, sometimes as driver, sometimes as helpers.''

[46] Olmos corroborated Arakelian, stating that what he translated into Spanish for Rubio was that ''any time you get your driver's license, come back and see if I have anything to offer you.'' Olmos added that Arakelian ''never promised [Rubio] positively the job.''

[47] Olmos corroborated Arakelian on this point, testifying that, ''by then we had the trucks with only one man, and we had all the people that we needed.''

[48] Santiago did not sign an authorization card for the Union until June 18 at an organizing meeting in either LaPuente or the City of Industry, and he did not attend any of the prior organizing meetings.

[49] Mendoza did not attend the June 13 union organizing meetings and, after the May 22 meeting at North Park, did not attend another one until 3 or 4 weeks later— at a bar in Hacienda Heights.

[50] While he did not attend the June 13 union organizing meetings, Mendoza attended three later meetings and distributed authorization cards and union literature at a Pomona dump site.

[51] The rating sheets, R. Exhs. 6 and 7, are divided into three broad categories, driving skills, communication skills, and general skills, and several specialized ones. Thus, within driving skills are subcategories for accidents, violations, and overweight citations; within communication skills are subcategories for ability to communicate with customers, knowledge of geographic areas, and serviced by employer; and within general skills are subcategories for attitude, appearance, punctuality, service complaints, and care for company property. For each category, the employee is rated good, fair, or poor.

[52] Arakelian explained that Olmos should be guided by two considerations: ''how the foreman who was going to [supervise] these people on a daily basis . . . was going to be able to get along with

Continued

Arakelian, Olmos testified that the former gave him the responsibility for determining which employees would be laid off when Respondent began operating the new one man trash collection trucks and that he was to utilize the rating sheets, which had been prepared by Arakelian, in the selection process.[53] The General Counsel does not dispute Respondent's contention that utilization of the new one person trash collection trucks necessitated a layoff but, rather, contends that Respondent was motivated by unlawful considerations in selecting the individuals, who were eventually laid off. In this regard, Olmos testified that, in fact, he was the management official who selected those to be laid off; that an employee's involvement with the Union was not a factor in his considerations but that his ratings of the various employees were entirely subjective as Respondent had ''nothing'' in the form of records;[54] that, rather than rating workers against each other, ''I was rating each one on [his] own merits; that, after completing a rating sheet for each driver and helper, ''I added all of the fairs, all of the good ones, and all of the bad ones'' and ''which ever person came out with a bigger percentage of bad, [that is] the one . . . we laid off;'' and that completion of the entire process required approximately ''two or three weeks.''

Respondent's Exhibit 6 is a compilation of the rating sheets of those individuals, including the alleged discriminatees, who were laid off on November 13 as the ostensible result of the foregoing layoff selection procedure. Olmos testified as to the rationale underlying the rating of each alleged discriminatee, none of whom controverted the supervisor's assessments of them. Initially, with regard to Efrain Carrillo, who is classified as a driver and whose rating sheet contains four fair grades and seven poor marks, Olmos attributed his grading to the fact that Carrillo ''had some accidents when he was working for the other owners. He had a lot of overweight tickets. He was always late, especially on Mondays. The uniforms he used to wear was either dirty or never complete or he used to wear it two or three times. . . . He never really took care of the truck.'' As to Augustine Santiago, who was classified as a driver and whose rating sheet contains eight fair marks and three poor marks, Olmos testified that ''the biggest problem with [him] was he hardly knew any of the cities. He could not even talk to the supervisors to understand it. We used to tell him something and we had no idea if he was going to do it or not because he never answered.''[55] Olmos added that Santiago's problems were particularly harmful as the latter never learned his routes, and ''I was forced to take him personally, and many times I had no time.'' The next alleged discriminatee, Ruben Real, who was classified as a driver and whose rating sheet contains five fair and six poor marks, was given such grades as ''his attitude was out of control. He used to wear the same uniform two or three times. He used to have a lot of problems with his overweight. Also . . . no knowledge of the areas. He used to leave many droppings . . . that he never picked up. We used to get a lot of complaints.'' Concerning Jose Arreola, who was a driver and whose rating sheet contains five fair and six poor marks, Olmos stated that ''his biggest problem was that he had no real knowledge of the areas, and he got a lot of tickets for overweight. He was not taking care for his truck . . . . he hardly knew the [route to which he was assigned].'' As to Martin Santiago, who was classified as a driver and whose rating sheet contains three fair grades and eight poor marks, Olmos said, ''[H]e hardly took care of the truck'' and ''he hardly knew the area.'' With regard to Jose Luis Mendoza, who was classified as a driver and whose rating sheet contains five fair and six poor grades, Olmos said ''his biggest problem was misunderstanding us.'' He was continually counseled about taking overweight loads,[56] but ''he used to do it almost every day. . . . He had no knowledge of the [route].'' As to Jesus Arreola, who was classified as a helper and whose rating sheet contains six poor marks, Olmos said only that he was a helper, whose main problem ''was the drivers did not like him. He was . . . always sleeping. . . . His attitude was bad. He was always late.'' Regarding Guadalupe Mendoza, who was classified as a helper and whose rating sheet contains one fair and five poor marks, Olmos recalled that ''every time I have to talk to him, I have to guess if [he] were going to do what I [ordered]. . . . Every time I told him where to go or what to do, he never answered me.'' Finally, with regard to Carlos Garcia Sanchez, who was classified as a driver and whose rating sheet contains nothing but 11 poor marks, Olmos said, ''He had a lot of accidents and overweights'' and ''I used to send him to different places. The next day . . . he forgot where he had been the day before. He used to drink all of the time. . . . Every time we [gave] him the truck, something happened to it.''

Asked, during cross-examination, if the lowest rated drivers were the ones chosen for the layoff, Olmos responded, ''That's correct.'' Thereupon, when confronted with an em-

them'' and the ''dollars and cents'' meaning that ''your better men . . . get in less accidents and have less trouble.''

[53] As to why Olmos was selected as the individual to determine which employees would be laid off, Arakelian explained that the prior owner had not maintained any personnel files and ''that's pretty much why I selected [Olmos] because he had the longevity of knowing those people.'' Olmos testified that Arakelian told him that ''knowing what I know about the people . . . I was to make the decision as to who was going to be laid off.'' According to Arakelian, confirmed by Olmos, the latter had a ''vested'' interest in choosing the right people to lay off as he has ''a bonus structure . . . based on how the [business] hits the bottom line each month. So if he does good and there's few complaints and a few accidents and little problem, it's going to make him look very good and . . . [result in him receiving a higher bonus].''

[54] Asked for the meaning of the category, communicative skills, Olmos said that, rather than communicating with customers, such referred ''to communicate with us.'' Insofar as communicating with clients, according to Olmos, ''the only thing we wanted for the employee to do was, if . . . not able to answer some questions of the client, to be able to tell the client to get in touch with the company.''

[55] Asked why Santiago was rated poor in communicating with customers, Olmos averred that ''the clients used to call us sometimes complaining they tried to talk to the driver and he just turned around and left.'' Admitting there were no records with which to substantiate his testimony, Olmos said, ''I knew why he had complaints because I was the one who had to go after him to make him pick up the trash or talk to the clients.''

[56] According to Olmos, in order to avoid overweight load citations form the California Highway Patrol, each route is ''well calculated'' so that the driver should make three trips each day to the dump site without being overweight. He added that the drivers are trained in this manner.

ployee, Jorge Arechiga Ahumada, who is classified as a driver, Olmos conceded that he rated Ahumada as low as those employees, who he selected for layoff, but said he decided to retain Ahumada as the latter seemed to be improving and was a hard worker. Asked if Ahumada was, in fact, a driver, Olmos said that, during the fall of 1992, the former was utilized as a driver ''only when we needed to'' and, for the most part, worked as a helper. Confronted with Ahumada's rating sheet, which contains four fair and six poor grades and when asked, by me, why Ahumada was retained over Augustine Santiago, whose rating sheet contained eight fair and three poor marks, Olmos responded that Ahumada ''was trying to do everything better than before. . . . We let this employee in the company because he was trying hard. He began to work better. He began to understand the instructions better.'' Moreover, according to Olmos, after he completed all the employee ratings, ''the only one that I could see trying to do better was [Ahumada].'' When asked how his decision to retain Ahumada could be reconciled with his above-described intent to lay off the 10 lowest rated employees, Olmos stated that, while the ratings were the only criterion in the layoff selection process, he spoke to Arakelian ''especially'' about Ahumada, pointing out that ''this young man is going to become a good worker.'' After testifying with regard to Ahumada, when asked if the said employee was the only exception to the criterion used for selecting employees for the layoff, Olmos replied, ''That is correct.'' However, I note, in this regard, that Respondent's Exhibit 7, the rating sheets of those employees who were not laid off, establishes that Respondent retained an employee, identified as F. Robles, and that, classified as a driver, Robles was rated by Olmos with six fair marks and five poor marks—a rating significantly worse than that of alleged discriminatee, Augustine Santiago.

According to the uncontroverted respective testimony of Arakelian and Olmos, 2 or 3 weeks after having received the assignment, the latter finished his employee ratings and his selection of the bottom 10 employees and presented his findings and conclusions to Arakelian, explaining in detail his rationale. As to which one made the ultimate layoff decision, according to the latter, ''I think it was Olmos' input and my decision . . . . He made the recommendation and gave me the reasons why and I accepted . . . them.'' Further, there is no dispute that Respondent received the new automated trash collection trucks between October 28 and 30 and that, while the trucks were placed in service on November 2, as Arakelian testified, ''[T]here was a couple of weeks training . . . . to let the men look at them, get familiarized with them, practice . . . picking up barrels.'' Finally, on November 13, Arakelian was ready to announce the layoffs, and, there is no dispute, he did so that day on an individual basis with Olmos translating.

For the most part, there is little dispute as to what he said to each alleged discriminatee. According to Arakelian, ''the main content was the same,'' with him ''explain[ing] to them that the automated system was going real well and that the need for the second man was no longer necessary. And that they were going to be laid off due to the lack of work.''[57] While Efrain Carrillo, Ruben Real, Jesus Arreola, and Guadalupe Mendoza each corroborated Arakelian with regard what was said in his layoff conversation, Martin and Augustine Santiago each testified that Arakelian mentioned his inability to speak English as a factor in the decision to lay him off.[58] Further, Martin Santiago testified that Arakelian told him that he ''needed people he could trust, people who did not have a bad record with a license,'' and Jose Arreola testified that Arakelian told him that ''I need people that I can trust, not people like you who were going around handing leaflets at Athens.'' While, of course, admitting having seen Arreola and his brother leafleting at the Athens Disposal Company facility, Arakelian specifically denied saying what was attributed to him by Arreola.[59] Finally, Jose Luis Mendoza testified that Arakelian told him that ''they didn't need me anymore because they had too many drivers and . . . he was having a lot of problems with insurance because I was not yet 25'' years old, and Arakelian admitted that he did, indeed, say to Mendoza that there was an insurance problem due to his age, that being under 25 years of age was a ''red flag'' to Respondent's insurance carrier, and that ''for some reason the number 25 is the biggest thing . . . on any male's insurance. . . . and you either get paid as a helper and do [helper's work] or you get paid as a driver doing [driver's] work.''[60] According to Mendoza, at the time of the layoff, one other driver, Jorge Arechiga Ahumada, was under 25 years of age.[61] As stated above, there is no dispute that Respondent retained Ahumada, and, while conceding that Ahumada was also under 25 years old, Arakelian stated that Ahumada is a helper with a class B license and is ''getting paid a helper's wage'' and that he is willing to wait until he becomes 25 years old at which time ''he's going to be the first eligible for a route that opens.'' During his cross-examination, Efrain Olmos was asked why Ahumada was retained over Mendoza and stated, ''[B]ecause Mr. Mendoza had his own route . . . but had no knowledge of the city outside there.'' He added that ''one of the big problems with . . .

[57] Asked why so many drivers were laid off when it was the helper, who was no longer necessary, Arakelian explained that, as of November, almost all of Respondent's employees were being paid at the driver's wage rate and that almost all had class B driver's licenses. Moreover, while most of the alleged discriminatees considered themselves drivers, ''they could have worked as both'' and ''the reason why they say they were drivers is because they had a class B license and by law could drive a truck. . . . A lot of the time what they do is . . . one man would do one load and then they'd switch. The other man would do the other load.''

[58] Arakelian specifically denied this and stated, ''I still have drivers . . . that don't speak English.''

[59] Carlos Garcia Sanchez' version of his layoff conversation establishes that his layoff was caused more by his work record than by a lack of available work. Thus, he testified that Arakelian gave, as the reason for his layoff, an accident and his bad driving record.

[60] Asked why he raised the matter of Mendoza's age, Arakelian said, ''[H]e was going eventually be classified as a helper, although he had a license. . . . As of November 13th, he would never drive again until he becomes 25 years old. So . . . I've got to be very fair, I could have kept him there and let go of someone else who was a driver and . . . that had a valid license.'' Blaming the problem on his insurance carrier, Arakelian said that he learned ''about the 25 with my insurance company'' in November and that such would have been told to Mendoza regardless of the layoff. He added that the reason for Mendoza's layoff was his age ''corresponded with Olmos' rating sheet. And he happened to rate low.''

[61] Mendoza's and Ahumada's rating sheet grades are comparable with both having six poor marks; however, Mendoza had one more fair grade than did Ahumada.

Mendoza was . . . that he could not understand my instructions'' and ''Ahumada was understanding my instructions better.''

Finally, turning to the matter of the familial relationship between the alleged discriminatees Efrain and Sergio Carrillo, Antonio, Jose, and Jesus Arreola, and Martin, Augustine, and Juan Santiago. They are, as stated above, brothers and cousins, and Jose Luis and Guadalupe Mendoza are brothers. On this point, Arakelian testified that, while he has been aware that many of Respondent's employees have familial relationships, he did not know of the cousin relationship amongst the Carrillo, Santiago, and Arreola brothers and disparagingly stated that ''I call a lot of people they're my cousin. Really there's no blood relation.''

B. *Legal Analysis*

As posited by the General Counsel, the above-described factual matrix is demonstrative of an employer bent upon shattering a nascent union organizing campaign and, in the process, seizing upon happenstance to terminate those employees, whom, it knew or suspected, were among the supporters of the organizing campaign—conduct unequivocally denied by Respondent. At the outset, I consider the acts and conduct, violative of Section 8(a)(1) of the Act, allegedly engaged in by Respondent's supervisors and agents. Initially, with regard to the consolidated complaint allegations concerning unlawful surveillance on June 13, the stipulated and trial testimony of Athens Disposal Company supervisors, Tony Rodriguez and Francisco Uicab, establishes that each was at Parque del Norte in West Covina with the intent of discovering which of Athens Disposal Company's employees attended the scheduled meeting at said location and observing their activities, and the stipulated and trial testimony of Athens Disposal Company supervisors, Steve Uribe and Guadalupe Diaz, establishes that they drove slowly past the gathering at the intersection of Peck Road and Durfee in El Monte, in order to determine whether any of their company's employees were there and to observe what was occurring. The principal legal issue, concerning the above incidents, is whether, in carrying out surveillance of their company's employees, Rodriguez, Uicab, Uribe, and Diaz also engaged in unlawful surveillance of Respondent's employees, acting as agents of Respondent, and, as to the incident involving Uicab, who was accompanied by Pedro Esparza, a ''spare driver'' for Athens Disposal, factual disputes exist as exactly where they were situated in the park (seated in the baseball field bleachers or standing next to some trees) and with what type of camera (a polaroid camera or video recorder) they photographed the employees' union organizing meeting.

Turning to the alleged videotaping incident, while some of the witnesses, proffered by the General Counsel, contradicted each other regarding what occurred as the employees, who were chasing after Uicab and Esparza, reached the latter's red pickup truck in the North Park parking lot, there is virtual unanimity as to what precipitated the group's actions. In this regard, I was particularly impressed by alleged discriminatee, Ruben Real, whose testimonial demeanor was that of an honest and straightforward witness, one who clearly was truthfully recounting events to the best of his recollection. Crediting Real's testimony, I find that, arriving late for the meeting, he immediately observed two persons, standing beneath a tree approximately 100 feet from the group of employees, with one pointing what appeared to be a video recording camera[62] directly at the group. Suddenly, the group began running toward the two men, one of whom was later identified as an Athens Disposal Company foreman, and simultaneously, the two men began running toward the parking lot. Given what I perceive as Real's veracity, I likewise credit the corroborative testimony of Raul Lopez, Mario Rubio, Jose Arreola, Martin Santiago, Jesus Arreola, and Efrain Carrillo, noting that, as did Real, each candidly testified that what precipitated the undisputed pursuit of Uicab and Esparza was the group's sighting of two men, standing beneath some trees, approximately 100 to 150 feet from the site of the organizing meeting, and photographing those at the meeting with a video camera.[63]

Providing support for my above-stated conclusion as to what the alleged unlawful surveillance entailed, I believe, is the rather inexplicable version of events as described by Frank Uicab and his corroborating witness, Pedro Esparza. In this regard, I can not understand why, notwithstanding having driven past the group of 30 to 40 individuals and assertedly failing to recognize anyone and, presumably, being unknown to any member of that group, Uicab and Esparza believed it necessary to conceal themselves amongst the spectators in the baseball field bleachers, situated as much as 400 feet from the meeting site, in order to engage in further surveillance of individuals, with whom they were not acquainted. Also, if, in fact, Uicab was unable to recognize any employees of Athens Disposal Company, why, utilizing a Polaroid camera without a telephoto lens, did he feel compelled to take two photographs of the meeting from where he and Esparza were seated rather than moving closer in order to obtain a more focused picture. Moreover, if, as asserted, Uicab and Esparza were seated among several spectators in the baseball bleachers 400 feet from the meeting site, it seems highly unlikely that any of the group would have been able to recognize either of them, and, therefore, it is difficult to understand why, when members of the group began running toward the parking lot, Uicab and Esparza panicked and ran to their truck. What seems more logical and likely is that, contrary to his assertions, as he drove by them, Uicab did, in fact, recognize Athens Disposal Company employees among the group at North Park; that, inside the park and in order to engage in surveillance and to photograph the meeting, Uicab and Esparza came as close as possible to the group, standing in a row of trees; that they were observed and recognized by the group, some of whom began running toward where Uicab and Esparza were standing; and that, realizing that they had been spotted, Uicab and Esparza began running toward their red pickup truck. Further, of course, contrary to their expressed denials, I believe that Uicab used a video camera to photograph the employee gathering.

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[62] Real credibly clarified any confusion caused by his pretrial affidavit, explaining that his reference to not knowing the type of camera meant the brand and not to its identity as a video camera.

[63] I am confident that the camera, which they observed, was, in fact, a video recording camera. Thus, as described by Mario Rubio, Martin Santiago, Jesus Arreola, and Efrain Carrillo, the photographer rested the camera on his shoulder while pointing it at the group and recording what he observed. Such, of course, is the position in which one uses an older-model video camera and not the position for taking pictures with, for example, a Polaroid camera.

Based upon the parties' stipulations and the credited testimony, the record conclusively establishes that, on June 13, Athens Disposal Company supervisors, Antonio Rodriguez, Steve Uribe, Frank Uicab, and Guadalupe Diaz and Pedro Esparza, a ''spare driver'' for Athens Disposal Company engaged in surveillance, including one instance of videotaping, of organizing meetings for the Union attended by Respondent's employees. There can be no question that an employer engages in conduct, violative of Section 8(a)(1) of the Act, by engaging in surveillance of union organizing meetings, attended by its employees. *Action Auto Store*, 298 NLRB 875, 887 (1990). Moreover, photographing employees while they are engaged in activities protected by the Act is deemed to be surveillance, violative of Section 8(a)(1), absent some ''legitimate justification.'' *John Ascuaga's Nugget & Hotel*, 298 NLRB 524, 554 (1990); *United States Steel Corp*., 255 NLRB 1338, 1338–1339 (1981). Herein, the consolidated complaint alleges that each of the above individuals acted as an agent for Respondent and that, therefore, the June 13 acts of unlawful surveillance may be attributed to Respondent.

At the outset, in this regard, I note that there is no direct record evidence, establishing that the Athens Disposal Company supervisors and Esparza acted at the behest, or on behalf, of Respondent on June 13. Indeed, the record evidence suggests the contrary. Thus, while, prior to that date, Guadalupe Diaz telephoned Mike Arakelian and mentioned a flier, announcing the June 13 North Park and Peck Road meetings, there is no record evidence that Arakelian requested or suggested that the Athens Disposal Company supervisors engage in surveillance of the said meetings, and Tony Rodriguez was uncontroverted that his company's supervisors conspired on their own to do so. Nevertheless, counsel for the General Counsel argues that Section 2(13) of the Act does not require that the specific acts performed be actually authorized or subsequently ratified and, citing *Toyota of Berkeley*, 306 NLRB 893, 912 (1992), that, ''under the doctrine of 'apparent authority' Respondent need not have given express authorization in order to be held responsible for conduct where a third party could reasonably believe on the basis of Respondent's conduct that it consented to particular acts on its behalf.'' Unlike herein, in *Toyota of Berkeley*, the allegedly unlawful statements were made by the respondent's sales manager, who, as part of his job duties, was required to speak to employees, on behalf of management, at weekly sales meetings in order to inform them of about company policies. Likewise, in *Alliance Rubber Co*., 286 NLRB 645 (1987), polygraph examiners, who asked employees unauthorized questions, were found to be the respondent's agent inasmuch as they acted within the general scope of their authority and the respondent should have known employees would believe they were authorized to ask such questions. In arguing that the Athens Disposal Company supervisors and Esparza should be found to have acted as Respondent's agents on June 13, counsel for the General Counsel relies primarily upon Respondent's employees' collective knowledge of the close relationship between Athens Disposal Company and Respondent, upon Guadalupe Diaz presence at Respondent's office prior to June 13, and upon the ''spontaneous'' reaction of Respondent's employees after observing Uicab videotaping their meeting at North Park. However, contrary to the General Counsel, in establishing agency based upon apparent authority, it is simply not enough to find that employees believed that the alleged agents were authorized, by the alleged principal, to engage in the acts and conduct attributed to them; what is also required as a condition for the creation of apparent authority is some manifestation by the alleged principal to the third party or, put another way, that the employer place the alleged agents in such a position that the employees could reasonably have believed that they are authorized to act. *Dick Gore Real Estate*, 312 NLRB 999 (1993); *Diehl Equipment Co*., 297 NLRB 504 at fn. 2 (1989); *Dentech Corp*., 294 NLRB 924, 925 (1989); *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988). There is no record evidence herein that Respondent ever utilized the supervisors of Athens Disposal in any manner or placed them in any position so that employees could reasonably have believed that they acted on behalf of Respondent. Accordingly, absent the existence of apparent authority or record evidence of direct authorization by Respondent for the Athens Disposal Company supervisors to engage in the above-described surveillance of Respondent's employees on June 13, no agency relationship has been established, and I shall recommend dismissal of paragraphs 8 and 9 of the consolidated complaint.

Nevertheless, I believe that, having made a videotape recording of those employees, who attended the June 13 North Park meeting, the Athens Disposal Company supervisors shared it with Respondent, permitting Respondent's supervisors to view it. Thus, Carlos Garcia Sanchez testified that, on the Monday following the North Park meeting, Efrain Olmos told him ''you bastard, you looked very good on television, bald headed.'' Also, according to Jose Arreola, the next day (Tuesday), Olmos told him that he had seen the video and ''I was . . . one of the ones in the video,'' and, either on the following Friday or Monday, Olmos said to him, ''[I]f you had not been one of the ones what tried to take the camera away . . . they would have given you a new truck.'' Moreover, Martin Santiago testified that, on Monday, June 15, during a conversation about the Union, Olmos said, ''I already saw you in the video.'' Further, Jose Luis Mendoza testified that, in September or October, Rosalio Caballero told him that ''he had pictures from Antonio and myself about a meeting with the Union and they were going to fire us.'' With regard to the foregoing conversations, Sanchez, Arreola, Santiago, and Mendoza each seemed to be testifying in a straightforward manner, testifying truthfully as to his recollection. In contrast, neither Caballero nor Olmos impressed me as testifying in an entirely frank manner, with each mendaciously attempting to buttress Respondent's position, and I do not credit Olmos' denial of the foregoing comments or his disavowal of knowledge of the videotape of the June 13 North Park meeting, which was made by Francisco Uicab. Accordingly, I rely upon the respective testimony of Sanchez, Arreola, Santiago, and Mendoza in the above regard and conclude that, by making each of the above-described statements to employees, Olmos and Caballero effectively created the impression that Respondent kept the union activities of its employees in under surveillance in violation of Section 8(a)(1) of the Act. *Escada (USA), Inc*., 304 NLRB 845, 849 (1991); *Livingston Pipe & Tube*, 303 NLRB 873

(1991).[64] Moreover, and perhaps more significantly, I believe not only that Olmos' comments constitute admissions that he, in fact, viewed the Uicab videotape of the June 13 North Park meeting[65] but also that such conduct constitutes surveillance of Respondent's employees union activities, violative of Section 8(a)(1) of the Act, just as if he had been present at North Park personally spying upon the meeting.

Turning to consideration of the remaining allegations of violations of Section 8(a)(1) of the Act involving Olmos, I have previously credited the candid testimony of Martin Santiago over that of Efrain Olmos.[66] Accordingly, I find that, during their June 15 conversation set forth above and on other occasions, Santiago asked Olmos if Respondent was going to firethose who supported the Union, and Olmos replied, ''[N]ot right now but further on [Mike's] going to look for the way that he can do it, that he was very mad.'' I further find that, later in June, Olmos approached Santiago and Efrain Carrillo on a route and asked if they were in the Union. After Santiago answered affirmatively and asked what would happen to them, Olmos warned, ''[Y]ou're gonna get run off, fired.''[67] In the same regard, crediting the frank testimony of Jose Arreola, and the straightforward corroborating testimony of his brother Jesus, over that of Olmos, I find that, 2 days after Jose Arreola was observed by Mike Arakelian distributing prounion leaflets at the Athens Disposal Company facility, Olmos told Arreola ''that they're trying to fire you because you're involved in the meetings of the Union.'' Likewise, crediting Guadalupe Mendoza, who testified in a truthful and convincing manner, 1 day after he complained to Olmos about the size of his route and the lack of overtime pay, Olmos replied that Arakelian probably increased the size of the employee's route because of his involvement with the Union and that, because of the Union, ''they were going to lay us off.''[68] Clearly, these statements by Olmos constitute threats to fire or lay off employees in order to discourage employees from engaging in union activities and, therefore, must be found violative of Section 8(a)(1) of the Act. *Gold Bond Bldg. Products*, 293 NLRB 1138, 1139 (1989); *Norco Products*, 288 NLRB 1416, 1420 (1988).

Crediting Jose Arreola, I have previously found that Efrain Olmos warned that, if he had not been one of the employees, who tried ''to take the camera away,'' Respondent would have given him a new truck. Likewise, crediting Martin Santiago's testimony over the denial of Olmos, I find that, during an August conversation, Olmos said, ''[T]hat we should not have started with the Union, because . . . Mike was going to give us more benefits; and with this business about the Union, he was not going to give us anything.'' Threats, such as uttered by Olmos, to withhold benefits from employees because of their union activities clearly are violative of Section 8(a)(1) of the Act. *United/Bender Exposition Services*, 293 NLRB 728, 732 (1989); *Middletown Hospital Assn.*, 282 NLRB 541 (1986).

Finally, with regard to Efrain Olmos, the record evidence discloses two acts of interrogation. I have previously relied upon the testimony of Jose Arreola over that of the far less credible Olmos and find, on this occasion, that, one day subsequent to June, the latter approached Arreola and asked ''if we were still with the Union.''[69] Also, I have previously credited Martin Santiago that, one morning in June, Olmos approached the former's truck and asked Santiago and his helper, Efrain Carrillo, ''are you guys in the Union also?'' Whether interrogation of an employee, by a supervisor, concerning the former's union activities or sympathies constitutes a violation of Section 8(a)(1) of the Act involves consideration of the surrounding circumstances, including the background, the nature of the information sought, whether the employee is an active and open supporter of the Union, the identity of the interrogator, and the place and method of interrogation. *Rossmore House*, 269 NLRB 1176, 1178 at fn. 20 (1984). Herein, there is no evidence that either employee was an open supporter of the Union and, most importantly, Olmos' interrogations were conducted against a background of numerous other violations of the Act. Accordingly, I find that the foregoing questioning of employees Arreola and Santiago was violative of Section 8(a)(1) of the Act.

With regard to the remaining alleged violations of Section 8(a)(1) of the Act, attributed to Rosalio Caballero, I have previously credited the testimony of Jose Luis Mendoza over that of the far less impressive Caballero. Accordingly, I find that, shortly after the May 22 union organizing meeting, the supervisor approached Mendoza and warned ''that if I continue going around to the meetings of the Union, he was going to fire me'' and reiterate my finding that, in September or October during a routine conversation on a route, Caballero warned Mendoza that ''he had pictures from Antonio and myself about a meeting with the Union and they were going to fire us.'' Further, I have previously stated that Ruben Real was a most impressive witness and, when compared to Caballero, he appeared to be the far more reliable witness. Accordingly, I find that, during a conversation on the Monday or Tuesday after the June 13 organizing meetings, Caballero approached Real at a dump site and, after asking whether Real was in the Union and receiving no re-

[64] Likewise, I find unlawful Olmos' comment to Martin Santiago that Michael knew who was and who was not in the Union.

[65] I do not view Caballero's comment to Jose Luis Mendoza in the same light. Thus, the latter did not attend the June 13 meeting at North Park, and there is no allegation of unlawful surveillance at any other union organizing meeting. Accordingly, I rely upon Mendoza's testimony as establishing an instance of unlawful restraint and coercion by one of Respondent's two route supervisors.

As I believe that Efrain Olmos viewed the videotape of the June 13 meeting, it is likely that Michael Arakelian and, perhaps Rosalio Caballero, also viewed the tape.

[66] While I have no doubt that Respondent's attorney counseled Arakelian, Olmos, and Caballero with regard to what could and could not be said to employees during an organizing campaign, I believe that Respondent's management officials chose to disregard said instructions and do not believe that Arakelian constantly reminded Olmos of them.

[67] Given the confusing nature of his testimony on this point, I rely upon Efrain Carrillo's testimony, that ''Olmos told us that he knew Martin and I were involved . . . . he told us to be careful not to do this too much because maybe Mike was going to find out and could fire us,'' merely as corroborative of that of Santiago.

[68] As with his brother, Mendoza did not attend the June 13 North Park employee meeting with representatives of the Union. I believe that, inasmuch as Mendoza began this conversation with a complaint about overtime pay, Olmos immediately concluded that the employee was a union adherent and uttered his threat.

[69] I have considered that Arreola failed to mention this conversation in his pretrial affidavit but, nevertheless, believe that he was truthful in his recollection.

sponse, said that the employee should leave the Union and that ''what's going to happen is Mike is going to fire you.'' Of course, blatant threats to fire employees because of their union activities, such as those uttered by Caballero, constitute violations of Section 8(a)(1) of the Act. *Gold Bond Bldg. Products*, supra; *Norco Products*, supra. Moreover, given the accompanying threat of discharge, Caballero's question to Ruben Real at the beginning of their above conversation must be viewed as constituting unlawful interrogation in violation of Section 8(a)(1) of the Act.

I turn now to consideration of the allegations that Respondent discharged Antonio Arreola, Sergio Carrillo, and Mario Rubio on July 24 and laid off Jose Arreola, Jesus Arreola, Efrain Carrillo, Guadalupe Mendoza, Jose Luis Mendoza, Ruben Real, Carlos Garcia Sanchez, Augustine Santiago, Juan Santiago, and Martin Santiago on November 13 in violation of Section 8(a)(1) and (3) of the Act and note that my determination of the legality of the July 24 discharges and the November 13 layoffs is governed by the traditional precepts of Board law in alleged union animus discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1990), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 453 U.S. 989 (1982), approved in *Transportation Management Corp*., 462 U.S. 393 (1983). Thus, in order to prove a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of establishing that the alleged discriminatees engaged in union activities; that Respondent had knowledge of such conduct; that Respondent's actions were motivated by union animus; and that the discharges and layoffs had the effect of encouraging or discouraging membership in the Union. *WMRU-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the foregoing matters by a preponderance of the evidence. *Gonic Mfg. Co*., 141 NLRB 201, 209 (1963). However, while the above analysis is easily applied in cases in which a respondent's motivation is straightforward, conceptual problems arise in cases in which the record evidence discloses the presence of both a lawful and an unlawful cause for the allegedly unlawful conduct. In order to resolve this ambiguity, in *Wright Line*, supra, the Board established a causation test in all 8(a)(1) and (3) cases involving employer motivation. ''First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.'' Id. at 1089. Two points are relevant to the foregoing analytical approach. First, in concluding that the General Counsel has established a prima facie showing of unlawful animus, the Board will not ''quantitatively analyze the effect of the unlawful motive. The existence of such is sufficient to make a discharge a violation of the Act.'' Id. at 1089 fn. 4. Second, once the burden has shifted to the employer, the crucial inquiry is not whether Respondent could have engaged in the discharges and layoffs herein, but, rather, whether Respondent would have done so in the absence of the alleged discriminatees' union activities and support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene's Basement Store*, 299 NLRB 183 (1990).

Analysis of the record, as a whole, convinces me that the General Counsel has made a prima facie showing sufficient to establish that Respondent was unlawfully motivated in discharging Antonio Arreola, Sergio Carrillo, and Mario Rubio on July 24. Initially, while neither appears to have been the leader of the union organizing campaign amongst Respondent's employees, each of the three alleged discriminatees signed an authorization card for the Union and attended the May 22 and June 13 meetings at North Park in West Covina. Moreover, I have previously concluded that the Athens Disposal Company supervisors shared their videotape of the June 13 meeting with Respondent and that, given his comments to employees in the week following said meeting, Efrain Olmos admitted having viewed it. In these circumstances, and taking into consideration Olmos' stated identification of some of Respondent's employees, including Antonio Arreola, who attended, the inference is warranted that Respondent was able to identify others, including Carrillo and Rubio. Further, not only, as described above, is the record evidence replete with threats to fire employees because of their activities in support of the Union and other comments, clearly designed to restrain and coerce the employees into abandoning their nascent union organizing effort, but also there is specific evidence of animus with regard to two of the above individuals. Thus, I have credited Jose Arreola with regard to a threat by Olmos to fire him because of his involvement with union meetings, and, later in this conversation, Olmos accused Antonio Arreola as being ''the one who's pushing you so that you can get in this Union . . . .'' Also, crediting Efrain Carrillo, whose testimonial demeanor was more impressive than that of the disingenuous Olmos, I find that, in August, subsequent to the termination of his brother, Olmos told Carrillo that, among the reasons for Sergio's discharge was ''the Union.'' In the foregoing circumstances, I find that the General Counsel has made a prima facie showing sufficient to support the inference that the discharges of Sergio Carrillo, Antonio Arreola, and Mario Rubio were motivated by their activities and support for the Union.

In accord with the *Wright Line*, supra, analytical approach, the burden shifted to Respondent to demonstrate that it would have discharged Arreola, Carrillo, and Rubio notwithstanding the union activities in which each engaged. Initially, with regard to Sergio Carrillo, Respondent contends that he was terminated for an ''at fault'' accident and an overweight citation on the same day. There is no dispute that, on or about June 30, Carrillo negligently backed his truck into a power pole, causing a disruption in the power supplied to the California Day Fresh for Juices plant in Glendora, and received an overweight citation from the California Highway Patrol. Further, Michael Arakelian was uncontroverted that, as a result of the accident, he was required to reimburse the juice company for $3000 in damages resulting from the loss of power. Respondent contends that the termination of Carrillo was consistent with its practice of terminating drivers, who have accidents for which they are responsible and for which Respondent must pay damages, and, as to this, the record establishes that, previously, Respondent had terminated a driver, Carlos Calvio, as a result of an accident, for which Respondent paid $2500 in damages to the owner of a car. While there is record evidence that two other drivers, the father of Efrain Olmos and Raul DeLeon, had accidents, involving collisions with automobiles, and were not terminated, the record establishes that responsibility for the Olmos

accident was unclear and that, according to Michael Arakelian, who I have no reason to doubt in this regard, DeLeon will be terminated if, as a result of litigation, he is deemed to have been at fault. In the foregoing circumstances, inasmuch as there is no dispute as to the occurrence of Carrillo's negligent accident, for which Respondent assumed responsibility and paid damages, as it appears that Respondent has previously terminated an employee for an accident, for which Respondent assumed responsibility and paid damages, and as Carrillo admittedly received an overweight citation on the same day as the accident, the conclusion is warranted that Respondent would have discharged Carrillo notwithstanding his activities on behalf of and support for the Union. Accordingly, I shall recommend that paragraph 7(a) of the consolidated complaint be dismissed as to Sergio Carrillo.

Turning to Antonio Arreola, Respondent contends that he was discharged as a result of having two negligent accidents within a 10-day period of time. In this regard, there is no dispute that, on or about July 13, while driving his route, Arreola operated his vehicle with his loading bucket lowered to such an extent that it struck a raised manhole cover, with the resulting pressure causing the metal arms, which raise and lower the bucket, to bend, and that, on or about July 23, while Arreola was operating the compacting mechanism on his truck, a large piece of wood became lodged in the opening, through which trash enters the compactor, causing the entire packing mechanism to rip apart. Neither counsel for the General Counsel nor the alleged discriminatee offered any mitigation for the first accident, and with regard to the second, it appears that Respondent's trucks are equipped with mirrors to monitor trash entering the compacting mechanism and that Arreola could have observed what was happening and extracted the piece of wood. In this regard, while asserting that one can not continually observe the packer through the viewing mirror and that he was in front of the truck, dumping garbage cans at the time of the accident, Arreola conceded that it was his responsibility to ensure that nothing became lodged in his truck's packing mechanism and that he might have prevented the damage.[70] Based upon the foregoing and record as a whole, there exists no record evidence to controvert Arakelian's apparent business judgment that Arreola's two arguably negligent accidents within a 10-day time period revealed a potentially dangerous pattern of negligence and, as Respondent previously had terminated a driver (Calvio) as a result of damages resulting from negligence, I believe that, notwithstanding his support for the Union, Antonio Arreola would have been discharged after two accidents within a 10-day period. Accordingly, I shall recommend dismissal of paragraph 7(a) of the consolidated complaint as it pertains to him.

Regarding Mario Rubio, the record establishes that, as of July 24, he had not yet obtained a permanent class B driver's license and had been operating Respondent's vehicles with a permit, requiring renewal every 3 months; that, prior to the May 22 organizing meeting, he had taken but failed the test for a permanent license; and that Respondent was aware of his lack of a permanent license. Further, I credit Arakelian, who appeared to be testifying candidly, that, as Respondent was in the midst of consolidating its commercial routes in West Covina and Glendora, as Rubio did not possess a class B license and could not be depended upon to obtain one, and as he was needed as a driver and not a helper, the decision was made to terminate him. Moreover, I find that, on July 24, also crediting Arakelian, whose account of what was said more squarely comports with the record evidence, over Rubio, the former told Rubio he was terminating the alleged discriminatee because he did not have a permanent license but, at the same time, held out the possibility of rehire if Rubio obtained a class B license. While counsel for the General Counsel argues that Respondent's subsequent conduct toward Rubio establishes that he would not have been terminated but for his union support and activities, the record evidence does not warrant such a conclusion. Thus, there is no dispute that, having passed the license driving examination, Rubio returned to Respondent in order to seek rehire and that Arakelian rebuffed him, stating that Rubio's interim license appeared to be yet another permit, requiring subsequent renewal. While, in his posthearing brief, counsel for the General Counsel belittles Arakelian's interpretation of the document, examination discloses that it is a mere mimeographed piece of paper and that there is nothing on the document's face to indicate its status as a permanent license and, indeed, the stated viability of the document is for just 60 days. Moreover, there is no record evidence that, in August when Rubio finally obtained a permanent class B license and returned to Respondent's facility, there were any job openings. In the foregoing circumstances, the only reasonable conclusion is that Respondent decided to terminate Mario Rubio because he did not possess a class B driver's license, and the record warrants the further conclusion that Respondent would have made such a business decision regardless of the alleged discriminatee's union support and activities. Accordingly, I shall recommend that paragraph 7(a) of the consolidated complaint be dismissed as to Mario Rubio.

Turning to the November 13 layoffs of alleged discriminatees Martin Santiago, Carlos Garcia Sanchez, Jose Arreola, Augustine Santiago, Jesus Arreola, Guadalupe Mendoza, Jose Luis Mendoza, Ruben Real, and Efrain Carrillo, there is no dispute that each signed an authorization card for the Union and attended at least one organizing meeting. With regard to whether Respondent knew or suspected that said individuals had been engaged in union activities and supported the Union, I have previously concluded that the Athens Disposal Company supervisors undoubtedly shared their videotape of the June 13 union organizing meeting at North Park with Respondent, and I believe that the record warrants the inference that the latter's management was able to recognize its employees, including Jose and Jesus Arreola, Ruben Real, Efrain Carrillo, Martin Santiago, and Carlos Garcia Sanchez, each of whom was present. In addition, comments by Efrain Olmos and Rosalio Caballero to these individuals, as described above, indicate Respondent's knowledge or suspicion of their involvement with the Union. Moreover, while neither Guadalupe Mendoza nor Jose Luis Mendoza was at the June 13 meeting, in light of Olmos' response to Guadalupe's complaint about overtime pay and Caballero's comment to Jose Luis, claiming possession of pictures of Mendoza and Antonio Arreola at union meetings, it is clear that Respondent

[70] The fact that Arakelian expressed surprise over the extent of the damage, resulting from the lodged piece of wood, does not excuse Arreola from responsibility from ensuring that materials did not become jammed in the mechanism.

likewise suspected that they were union adherents.[71] Equally certain is the existence of record evidence concerning Respondent's antiunion animus toward the above-named alleged discriminatees. Thus, as noted above, besides other evidence establishing restraint and coercion, there is ample record evidence of threats of discharge and layoffs. In particular, I have found that Efrain Olmos directly threatened alleged discriminatees Martin Santiago, Jose Arreola, Jesus Arreola, Efrain Carrillo, and Guadalupe Mendoza with discharge or layoff because of their activities and support for the Union and that Rosalio Caballero warned Jose Luis Mendoza he would be fired if he continued to go to union meetings and threatened to fire Ruben Real because of his involvement with the Union. Based upon the foregoing, I believe that the General Counsel has made a prima facie showing that Respondent harbored specific animus against alleged discriminatees Martin Santiago, Jose Arreola,[72] Jesus Arreola, Efrain Carrillo, Guadalupe Mendoza, Jose Luis Mendoza, and Ruben Real because of their activities in support of the Union.[73]

The record establishes that Respondent placed its new one person residential garbage trucks into service in early November, and counsel for the General Counsel does not dispute Respondent's contention that the foregoing necessitated a layoff of 10 workers. What is in dispute is the selection process, and, pursuant to the *Wright Line*, supra, analytical approach, the burden shifted to Respondent to establish that the above seven alleged discriminatees would have been selected notwithstanding their known or suspected activities in support of the Union. In this regard, there is also no dispute that Efrain Olmos, who, the record establishes, engaged in most of the coercion of employees described above, was the management official, authorized to select those who were to be laid off on November 13. While I harbor doubts as to Olmos' credibility and while, at first glance, Arakelian's grant of authority to Olmos appears to be akin to giving the fox authority to decide which hens should be sent for slaughter, there exists no basis for doubting his analyses of the alleged discriminatees' respective employment records or his grading of them. Put another way, inasmuch as not one of the seven alleged discriminatees testified as a rebuttal witness to deny or explain what Olmos said about him, the supervisor's assessment of each alleged discriminatee's employment history and work ethic was uncontroverted. Accordingly, I find that Efrain Carrillo had been involved in driving accidents, received many overweight tickets, was habitually late, and wore dirty uniforms; that Ruben Real had a poor work attitude, received numerous overweight citations and customer complaints, had poor knowledge of his routes, and wore dirty uniforms; that Jose Arreola had no knowledge of the geographic area to which he was assigned, received many overweight citations, and did not take adequate care of his truck; that Jose Luis Mendoza continually misunderstood assignments and was continually counseled about driving with overloads; that Jesus Arreola had a poor attitude, was always sleeping, and was disliked by the drivers; that Guadalupe Mendoza would never indicate to Olmos if he understood his work instructions and caused Olmos to doubt that Mendoza understood him; and that Martin Santiago never took care of his truck and did not know the geographic area. Moreover, I find that, following the instructions of Michael Arakelian and in accord with his evaluations of their work records, Olmos graded the above seven alleged discriminatees and that each was among those who received the worst rating grades.

Counsel for the General Counsel argues that Respondent's defense is flawed in several respects. First, he argues, Respondent authorized the individual, who ''spearheaded'' Respondent's campaign of restraint and coercion, to select the individuals who were to be laid off. While I agree with the underlying premise that Efrain Olmos, arguably, could not be trusted to have selected those to be laid off uninfluenced by his demonstrable unlawful animus, the fatal flaw in counsel's argument is that Olmos' testimony, as to the evaluation and selection process was uncontroverted. This is significant, for while it might be argued that some of the factors, significant to his decision-making process, may have been subjective in nature, many, such as whether alleged discriminatees constantly wore dirty uniforms or knew the geographical areas to which they were assigned, were objective and irrefutable. Yet, not one of the above seven alleged discriminatees testified in rebuttal and, as Olmos' testimony is, therefore, uncontroverted and as I do not believe that he was an inherently incredible witness, I rely upon Olmos' testimony in these regards. Next, counsel argues that, notwithstanding Olmos' testimony that, without exception, the lowest scoring individuals were laid off, an employee with grades worse than some of the alleged discriminatees, Jorge Arechiga Ahumada, was not included in the layoff. However, the uncontroverted record evidence is that, based upon Ahumada's improved work, his efforts to try harder, and his ability to better understand instructions, Olmos decided against including him. Finally, counsel points to the retention of driver F. Robles, whose ratings were significantly worse than alleged discriminatee Augustine Santiago, and argues that Respondent failed to explain why he was not laid off. While counsel is correct that there exists no record evidence as to why Robles was retained, I note that none of the above seven alleged discriminatees was graded higher than Robles, and I do not believe that Respondent has established a prima facie violation of the Act with regard to the layoff of

[71] There is no record evidence that Respondent knew or suspected that Augustine Santiago was a union supporter or engaged in any union activities.

[72] In concluding that unlawful animus exists as to Jose Arreola and Jesus Arreola, I do not rely upon the former's assertion that, in his layoff conversation, Mike Arakelian gave as a reason that he could not trust anyone who distributed leaflets at Athens Disposal Company. While Jose Arreola otherwise was a straightforward witness, I believe that he dissembled in this instance and that Arakelian's denial should be credited.

[73] Counsel for Respondent argues that almost all of its employees signed authorization cards for the Union; that almost 25 of its employees were at the June 13 North Park meeting; and that, even if evidence exists of unlawful animus, there is no evidence that Respondent was aware that any of the alleged discriminatees engaged in union activities to any greater extent than those employees who were not laid off. In the absence of animus directed toward specified individuals, I agree with counsel. Accordingly, I do not believe that the General Counsel has made the requisite prima facie showing as to Carlos Garcia Sanchez and shall recommend dismissal of the consolidated complaint allegations as to him. Likewise, there is no evidence that Respondent had any knowledge that Augustine Santiago was a supporter of the Union. Therefore, no prima facie showing was made as to him, and I shall recommend dismissal of the consolidated complaint allegations as to Santiago.

Santiago, the driver who, perhaps, should have been retained. In these circumstances, contrary to the General Counsel, I find that Respondent has met its burden of proof and established that it would have laid off the above seven alleged discriminatees notwithstanding their activities and support for the Union. Accordingly, I shall recommend that paragraph 7(a) of the consolidated complaint be dismissed as to Jose Arreola, Jesus Arreola, Martin Santiago, Ruben Real, Jose Luis Mendoza, Guadalupe Mendoza, and Efrain Carrillo.

CONCLUSIONS OF LAW

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

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

3. Respondent engaged in various acts and conduct violative of Section 8(a)(1) of the Act including engaging in surveillance of its employees union activities; creating, in the minds of its employees, the impression that it has been engaging in surveillance of their union activities; threatening to fire or lay off employees because they engaged in union activities; threatening to withhold benefits from employees because they engaged in protected concerted activities; and interrogating employees regarding their union activities and sympathies,

4. Respondent did not violate Section 8(a)(1) and (3) of the Act by discharging employees on July 24, 1992, or laying off employees on November 13, 1992, and, unless specifically found, engaged no unfair labor practices other than those mentioned in paragraph 3 of these Conclusions of Law.

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

REMEDY

Having found that Respondent engaged in serious unfair labor practices violative of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist from engaging in such conduct and to take certain affirmative actions designed to effectuate the policies and purposes of the Act, including the posting of a notice, setting forth its obligations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[74]

ORDER

The Respondent, Arakelian Enterprises, Inc. d/b/a West Covina Disposal and City Refuse Service, West Covina, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of its employees union or other protected concerted activities.

(b) Creating, in the minds of its employees, the impression that it has engaged in surveillance of their union or other protected concerted activities.

(c) Threatening to fire or lay off its employees because they have engaged in union or other protected concerted activities.

(d) Threatening to withhold benefits from its employees because they have engaged in protected concerted activities.

(e) Interrogating its employees concerning their union or other protected concerted activities.

(f) In any like or related manner interfering with, coercing, or restraining its employees from engaging in the rights protected by Section 7 of the Act.

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

(a) Post at Respondent's office and truck depot facility in West Covina, California, copies of the attached notice marked ''Appendix.''[75] Copies of the notice shall be in Spanish and English, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint be, and the same is, dismissed insofar as it alleges that Respondent engaged in violations of Section 8(a)(1) and (3) of the Act by terminating any of its employees.

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[74] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[75] 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.''

Athens Disposal Company, Inc. *and* Package and General Utility Drivers Local 396, International Brotherhood of Teamsters, AFL–CIO. Cases 21–CA–28832 and 21–CA–29067

September 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On March 31, 1994, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply to the General Counsel's answering brief.[1]

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

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Athens Disposal Company, Inc., City of Industry, California, its officers, agents, successors, and assigns, shall take the action as set forth in the Order.

[1] The exceptions are limited to issues surrounding the discharges of Jesus Ramirez, Jesus Rosas, and Miguel Salas.

[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.

We find no merit in the Respondent's exception to the judge's finding that it violated Sec. 8(a)(3) and (1) of the Act by discharging employee Miguel Salas. The Respondent contends it discharged Salas because of a serious customer complaint, a negligent accident, and numerous overweight citations. We note first that the judge completely discredited the Respondent's witnesses as to the severity of the complaint and that other employees who received such complaints were not discharged. Similarly, the judge found that others who had a combination of complaints and accidents within a short period of time likewise were not discharged. Finally, we note that the Respondent's secondary reason—that Salas had too many overweight tickets in 1992—resulted in only three citations during that period. Not only was Salas not disciplined for his truck overweights, he was recommended for a bonus on July 9, 1992, less than a month before his discharge. Accordingly, we adopt the judge's finding that Salas' discharge violated the Act.

Salvador Sanders, Esq. and *Robert DeBonis, Esq.*, for the General Counsel.

Kyle D. Brown, Esq. (Hill, Farrer & Burrill), of Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charges in the above-captioned matters were filed by Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL–CIO (the Union) on July 22 and November 27, 1992, respectively.[1] Based on said filings and after an investigation, on January 29, 1993, the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint, alleging that Athens Disposal Company, Inc. (Respondent) engaged in acts and conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent timely filed an answer, essentially denying the commission of any of the alleged unfair labor practices. Pursuant to a notice of hearing, I held a trial in Los Angeles, California, on July 12, 13, and 14, 1993. At the hearing, all parties were afforded the opportunity to examine and to cross-examine witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The documents were filed by counsel for both parties and have been carefully considered. Accordingly, based on the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I issue the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a California corporation, has been engaged in the business of trash removal for commercial, residential, and governmental customers in the Southern California area and has maintained an office and truck depot facility in the City of Industry, California. In the normal course and conduct of its aforementioned business operations, during the 12-month period immediately preceding the issuance of the instant consolidated complaint, Respondent provided services, valued in excess of $50,000, directly to customers located within the State of California, each of which customers, during the same period of time, purchased and received goods and products, valued in excess of $50,000, directly from suppliers located outside the State of California. At all times material, Respondent has been, and is, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

At all times material, the Union has been, and is, a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The consolidated complaint alleges that Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act by discharging four employees (Trinidad Rodriguez, Jesus Ramirez, Jesus Rosas, and Miguel Salas) because each assisted the Union and engaged in protected

[1] Unless otherwise noted all events herein occurred in calendar year 1992.

concerted activities and that Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act by engaging in surveillance of its employees' union activities, interrogating employees as to their union sympathies and activities, threatening to terminate employees because of their union sympathies and activities, and conveying the impression to an employee that he had been terminated because of his support for the Union. Respondent denied the commission of any unfair labor practices and contended that the above four individuals were terminated for cause.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The record establishes that Respondent is a family-owned State of California corporation with Ron Arakelian Sr. owning approximately 60 percent of the outstanding shares, his sons, Ron and Michael,[2] owning approximately 23 percent and 11 percent respectively, and other family members owning the remaining shares. Servicing 25 cities in the Southern California area from its office and truck depot facility in City of Industry, Respondent's business operations entail the collection, disposal, and recycling of solid wastes and refuse and the performance of municipal street sweeping, and, with regard to its trash collection duties, Respondent provides services to both commercial and residential customers. The record further establishes that Dennis Chiappetta is Respondent's general manager and ultimately responsible for all business operations, including the hiring and discharging of employees; that Terry Schneider is Respondent's assistant general manager; that Antonio Rodriguez is the operations manager; and that reporting to Rodriquez are Field Supervisors Steve Uribe, Frank Uicab, Caesar Gonzales, and Oscar Zamora. Moreover, with regard to Respondent's supervisorial hierarchy, Guadalupe Diaz is responsible for overseeing the truck yard and routing, and Dal Hile and Al Arzola supervise the truck and equipment repair and maintenance shop.[3]

The record reveals that, in or about February, agents of International Brotherhood of Teamsters Local 495 commenced an organizing campaign among Respondent's drivers and helpers, conducting three or four organizing meetings at an employee's home over the next 3 months. Several employees, including alleged discriminatee, Trinidad Rodriquez, attended these meetings and signed authorization cards for Local 495 and, as the record also reveals, another organizing meeting was scheduled for Saturday, June 13, at the meeting hall of Teamsters Union Local 420, located on Peck Road in the city of El Monte. There is no record evidence that, prior to June 13, Respondent's supervisors were aware of or engaged in surveillance of any of the organizing meetings; however, according to Rodriquez, in or about February, he was in the supervisors' office and overheard a conversation between Frank Uicab and another employee during which the latter said that a union would be good and that one ''was going to go in there.'' Uicab replied that it would not happen because Respondent paid them well and then advised the employee ''Let's not get into it because whoever gets into [the Union] going to get fired.''[4] The record further reveals that, in or about May, while Local 495's organizing campaign of Respondent's employees continued, the Union commenced an organizing campaign among the drivers and helpers, employed by West Covina; that an initial organizing meeting for the West Covina employees was held on May 22; that, the said meeting, having previously formed ''suspicions,'' given their common ownership, that West Covina and Respondent were related companies, Raul Lopez, the chief operating officer of the Union, asked questions about the apparent ''connection'' between the companies and ''confirmed'' his suspicions; that a second organizing meeting for the West Covina employees was scheduled for the morning of June 13 at Parque del Norte (North Park) in the city of West Covina; and that, apparently unaware, at that point, of Local 495's ongoing organizing campaign, Lopez decided to invite Respondent's drivers and helpers to attend.[5]

There is no dispute that, as scheduled, the next meeting between representatives of the Union and West Covina's employees occurred on Saturday, June 13, at North Park[6] in the picnic area; that it began shortly after 12 p.m.; that Raul Lopez and Lorenzo Amaya conducted the meeting for the Union; that at least 25 West Covina employees attended; and that some of Respondent's employees, including alleged discriminatee Jesus Rosas, attended. While Respondent concedes that two separate instances of surveillance by its supervisors occurred, exactly what conduct these incidents entailed is in dispute. As to these, Raul Lopez testified that, in the midst of a discussion of what effects the employees of West Covina could expect from an organizing campaign, Respondent's employees said that one of their Company's supervisors was ''cruising the area'' in a pickup truck and, moments later, ''one of the employees noticed that the pickup had parked on Foxdale'' 150 to 200 feet from where the employees were standing. Describing the truck as being a black Chevrolet with silver or white striping, Lopez testified that he observed the driver inside, sitting with his hands ''cupped

[2] Ron Arakelian Jr. and Michael Arakelian are each 50-percent owners of another refuse company, Arakelian Enterprises, Inc., d/b/a West Covina Disposal and City Refuse Service (West Covina).

[3] Respondent admitted that Rodriquez, Uribe, Uicab, Gonzales, Hile, Arzola, and Diaz are supervisors within the meaning of Sec. 2(11) and its agents within the meaning of Sec. 2(13) of the Act.

[4] Uicab specifically denied the conversation, and Rodriguez failed to mention this conversation in his pretrial affidavits. Further, the General Counsel does not contend that the conversation was unlawful but, rather, that such establishes Respondent's knowledge of the employees' interest in union representation and its unlawful animus in that regard.

[5] The record is unclear as to the manner in which the Union invited Respondent's employees to attend the North Park meeting. While Lopez insisted that the meeting was publicized by ''word of mouth,'' a West Covina employee, Jose Arreola, testified that leaflets were distributed, setting forth the time, date, and location of the North Park meeting. Clearly, inasmuch as Respondent's supervisors admit seeing flyers, publicizing the June 13 North Park meeting, written notice of it was distributed among Respondent's employees. Moreover, as will become clear, there is no dispute that, at least as of the day before, Respondent's supervisors were aware of the scheduled June 13 Peck Road union meeting.

[6] North Park, located at the intersection of Rowland and Sunset Streets, appears to be a small, neighborhood-type park of a square block in size, consisting of tennis courts, a Little League baseball field (with bleachers along the first and third base lines), and a grass picnic area. A parking lot, with entrances to and from Sunset Street, is located behind the baseball field, which is separated from the picnic area by a line of trees. Foxdale Street is the road which runs parallel to Sunset and adjacent to the picnic area.

toward his face'' on either side of his eyes, and that, as he and Amaya began walking toward the truck, the driver made a U-turn and drove away. Then, Lopez testified, about 15 or 20 minutes later, one of the employees said that he recognized a red, pickup truck, owned by Respondent, in the parking lot, and, at the same time, other employees shouted that they recognized two of Respondent's supervisors photographing the meeting. Lopez turned and observed two individuals, standing ''pretty much in plain sight'' in the row of trees approximately 150 to 200 feet away from the group, one taking pictures with a video camera and the other using what appeared to be a 35-millimeter camera with an extended telephoto lens. Suddenly, according to Lopez, the assembled workers began running toward the two men, and the two men immediately began running toward the parking lot. Lopez and Amaya ran toward their car, which was parked on the street and drove toward the parking lot entrance on Sunset. As they did so, Lopez observed one of the workers struggling with one of the asserted supervisors beside the passenger door of the pickup truck. The latter broke away, climbed inside and closed the door, and the red pickup drove away. With regard to the two alleged instances of surveillance of this North Park meeting, former West Covina employee Mario Rubio, who stated that he recognized three or four of Respondent's employees at the meeting,[7] testified that ''we were talking in a group when suddenly one of the members of the group looked behind and saw two people . . . with a camera.'' Rubio turned, and saw two persons near a tree 40 to 45 feet from the bleachers of the Little League baseball field. ''One was squatting down a little, the other one was standing [with] the camera. . . . I notice it was a video camera,'' and the photographer was pointing it ''toward the group.''[8] According to Rubio, when he initially observed the two men with the video camera, they were slightly more than the length of a soccer field from the site of the meeting, and Respondent's employees identified the photographers as being from their company. Then, according to Rubio, someone pointed out a red pickup truck in the parking lot. The group began walking toward it, and, as they did so, the two men with the video camera, who were identified by Respondent's employees as being from their company, also began running toward the truck. The two men arrived at the truck first, and both got inside, with the one holding the video camera getting into the passenger seat. He appeared to point the camera toward the workers, who were running toward the pickup truck. As Rubio and the others approached, ''we asked [the photographer], what are you doing with this camera. He told us, move away from here, the other man started the truck and they left,'' almost running down one of the workers who had his hands on the passenger door.[9] Rubio testified further that, no more than 5 minutes later, he observed a person, who was parking a beige colored pickup along the street adjacent to the park no more than 25 feet from the group. ''Then I hear somebody state that he belongs to Athens. I was looking at this. When Raul finds out, he and the other Union representative started to walk toward the truck. When the person in the pick-up noticed . . . he left immediately.''

Several other former West Covina employees also testified regarding the alleged instances of surveillance of the June 13 North Park meeting. Jose Arreola testified that the first involved a photographer, who, the group of employees observed, was ''taking pictures with a camera with a long lens'' while standing beside a white Chevrolet pickup truck, which was parked on the street. The photographer, who was approximately 150 feet from the group, had his camera pointed at them. Arreola added that Respondent's employees, at the meeting, identified the person as their supervisor, Tony Rodriguez. Later, according to Arreola, he observed two persons underneath a tree 150 feet from where the employees were standing, with one taking pictures, with a video camera, of the group. After watching him for approximately 5 minutes, the assembled employees began chasing the photographer in order to take the camera from him. Thereupon, the two men began running toward a pickup truck in the parking lot. Arreola reiterated that the camera was a video camera and stated that, as the chasing employees reached the truck, the photographer was closing the passenger door, ''and then they hit us with the door. We tried to take the camera away from them. At that time he put it into reverse fast and they just put the truck on top of us and took off.'' Concluding, Arreola testified that two of Respondent's employees identified the two men as being ''supervisors from Athens.'' Martin Santiago testified that he observed someone taking photographs and another taking pictures with a video camera. As to the latter, for 5 minutes, he observed two people standing beneath a tree 100 feet from the group, with one using the video camera to take pictures of the group.[10] ''Someone said they were supervisors from Athens'' and ''several went over to where they were. When [the two asserted supervisors] saw we were going over there, they ran toward their pickup. . . . One of [the group] got really close and when they opened the door he hit him . . . and knocked him out. And they got in and then took off fast.'' With regard to the latter point, during cross-examination, Santiago admitted he was told what happened and did not see the incident at the door of the pickup truck. As to the person taking photographs, Santiago testified that he was inside a pickup, which was parked on the street, approximately 100 feet from the employees, and that, when the union officials walked toward the truck, it drove away. During cross-examination, Santiago conceded this photographer was not mentioned in his pretrial affidavit.

Ruben Real testified that he arrived late for the North Park meeting on June 13, but ''when I got to the meeting I noticed two persons with a camera . . . underneath a tree'' approximately 100 feet from the group. According to him, the

[7] He knew them to be Respondent's employees ''because I used to see these people at the dump site.''

[8] Rubio was certain the camera was a video camera as ''part of the camera was resting on his shoulder and part of the camera was in his hand. He was pointing it.''

[9] During cross-examination, Rubio reiterated that the photographer was using a video camera as ''the lens was a little long'' and ''to me it was a video, the way he was holding it, the way he was using it.'' Then, Rubio was confronted with his pretrial affidavit, wherein he mentioned only that the camera had a long lens and failed to mention that it was a video camera. Also, during cross-examination, Rubio said that, in order to return to the red pickup truck, the two men with the camera had to walk around the bleachers of the Little League field.

[10] During cross-examination, Santiago reiterated that the camera was, in fact, a video camera—''At that distance . . . you could see it was a video camera . . . because they have it on their shoulder.''

camera was a video camera, which was ''pointed toward the group.'' Suddenly, those present ''started to run'' toward the two men, who, upon noticing the group moving in their direction, began running to the parking lot. After the members of the group returned to the meeting site, Real testified, one told him ''there was a foreman from Athens.'' During cross-examination, Real reiterated that, although he could not say the brand, the camera, used by the two men, was a video camera. Thereupon, confronted by his pretrial affidavit wherein he stated he did not know what type of camera the men used, Real stated that his reference, in the affidavit, was to the brand name and not to the fact that the camera was a video camera. Finally, with regard to Real, he did not observe anyone else with a camera, taking photographs of the organizing meeting. Jesus Arreola testified that he observed two men, standing by some trees ''around a 100 feet'' from the meeting site and taking pictures of the group with a camera of ''the kind for videos.'' He added that coworkers noticed the picture taking; ''[the two men] realized and they ran and then we run after them. . . . [T]hey ran and they went to a pickup truck . . . .'' While some workers got ''right at the truck,'' the cameramen were able to escape ''fast,'' and, while Arreola had never seen either of the men previously, Respondent's employees said they were their company's supervisors.[11] Arreola further testified that he also observed, ''some distance'' away, two men in a pickup truck, taking still pictures of the group. According to Arreola, the pickup truck ''was moving and then when . . . the ones from the Union . . . wanted to go speak with them . . . [the photographers] saw that they were coming, so then they left.'' Later, in his testimony concerning this incident, Arreola conceded that he only observed the two men and not a camera, but ''my co-workers saw it and they said.'' As with the two men with the video camera, Arreola was unable to recognize the two men in the pickup truck, but ''the ones from Athens said they were supervisors from Athens.''

Carlos Garcia Sanchez testified that the only person, whom he observed with a camera on June 13, was an individual, who was approximately 20 feet from the meeting site and who was identified by Respondent's employees as being one of their company's supervisors, taking pictures with a photographic camera, attached to which was a long lens. Also, according to Sanchez, at another point during the meeting, while he never observed the camera, several employees said that someone was taking pictures of the meeting with a video camera. His attention was drawn to two individuals, who ''were really far away'' near the parking lot. Several of the group, including Sanchez, proceeded to run after the two men, but ''they got in [a pickup] truck and then they left real fast.'' Efrain Carrillo testified that, soon after the meeting began, he observed a brown pickup truck park on one side of the street, adjacent to the meeting site. Someone said that the person in the truck had a camera, and Lopez and Amaya began walking toward the truck. However, ''[the driver] did not want to wait for them so he left.'' Carrillo further testified that, no more than 10 minutes later, one of the workers said someone was videotaping them. All of those present turned to look and ''we saw [two persons] standing . . . about 100 feet'' away under a tree. ''[Two males] were together, one next to the [other], blocking the other so they can take video.'' According to Carrillo, the camera was ''a video-taking camera,'' in which large cassettes are used.[12] After no more than a minute, the workers began moving in the direction of the two men, and the latter began running toward a parking lot, in which a pickup was parked. Before they could drive away, some of the employees managed to ''[place] themselves in front of the vehicle to ask them what they were doing there. Then, [the driver] . . . turned the pickup on and they practically run over [the workers]'' while driving away.

Sergio Carrillo testified that, at some point during the June 13 meeting, he observed two individuals arrive in a pickup truck, park no more than 100 feet from the site of the organizing meeting and, while remaining inside the truck, one begin taking pictures of the meeting with a video camera. Five minutes later, according to Carrillo, he observed a beige pickup truck park approximately 100 feet behind the other and the driver begin taking pictures of the meeting with a photographic camera. Finally, after being asked by counsel for the General Counsel if he attended the North Park union meeting on June 13, Antonio Arreola testified, during direct examination, that the meeting was observed by supervisors from Athens Disposal Company and that he knew the individuals were from Respondent as ''I myself recognized them because I had seen them before.'' Elaborating, Arreola stated that ''there were two hidden behind a tree'' 200 feet away from the meeting, that they had arrived in a red pickup truck, and that one of the two men was taking pictures of the group with a video camera. Also, a third Respondent supervisor was taking pictures of the group from a pickup truck, which was parked across the street from the park. During cross-examination, Arreola was confronted with his pretrial affidavit, in which he stated that the picture taking was at the May organizing meeting, and admitted that such was correct. Further, Arreola admitted that his pretrial affidavit statement, that no employer surveillance occurred at the second organizing meeting in North Park, was also correct. Finally, during cross-examination, Arreola averred that the camera, utilized by the individuals behind the tree, was ''the kind that take movies'' and conceded that, rather than seeing it, he knows the supervisor, inside the pickup truck, had a camera ''because . . . Raul told us.'' The final witness, with regard to surveillance at North Park, was alleged discriminatee Jesus Rosas. Asked if he saw anyone with a camera, Rosas testified, ''What I saw was . . . two pickups from Athens Com-

[11] During cross-examination, Arreola reiterated that the camera utilized was a video camera—''the surest thing is that it must be a video camera,'' a ''VCR'' camera. As with Ruben Real, when confronted with his pretrial affidavit wherein he said he could not recall what kind of camera it was, Arreola stated that his reference was to the brand.

[12] During cross-examination, with regard to the camera, Carrillo said, ''I can see the bulk of the camera only. . . . I think it was a video camera; it looks large to me.'' Thereupon, when asked if he could discern whether it was a video camera or a photographic camera, Carrillo replied, ''no.'' He added that others said the camera was a video camera and, according to the witness, rather than holding the camera in front of his face, the photographer ''was balancing this camera on his shoulder.'' Finally, while in his pretrial affidavit, Carrillo stated that he did not know what the type of camera being used, during redirect examination, he explained that he meant ''because of the distance I was not able to distinguish it.'' He added that he believed the camera was a video camera as ''it still looks somewhat larger so that's why I say it [was] . . . a video camera.''

pany . . . a red pickup . . . and another pickup truck grey in color.'' There were two people in the red pickup, which was parked in the parking lot, with the driver being Supervisor Frank Uicab. Rosas did not recognize the passenger as ''his face was covered . . . with a small video camera'' with which he was taking pictures of the meeting. Rosas added that, at all times, he observed the two men inside the pickup and that he believes the passenger was using a video camera because ''I saw this man holding [the camera] against his face with one hand.'' Rosas continued, stating that, after a few minutes, everyone in the group ''ran to the pick-up truck to try to get ahead of the man,'' but ''the pickup truck left the parking lot.'' As to the grey pickup, Rosas recalled that it was driven by an Athens Disposal Company employee, Pedro Esparza. According to the witness, the grey pickup was also ''inside of the parking lot'' and the red and grey pickup trucks ''left together at the same time.''

At the conclusion of the North Park meeting on June 13, Raul Lopez invited the West Covina employees to attend the meeting between Teamsters Union representatives and Respondent's employees scheduled for 4 p.m. that day at the Teamsters Local 420 meeting hall on Peck Road in El Monte.[13] Later that afternoon, accompanied by several of West Covina's employees, Lopez went to the Local 420 meeting hall but discovered that the building was locked. Thereupon, the group went across the street to a gas station where they were joined by several of Respondent's employees including alleged discriminatees Jesus Ramirez, Jesus Rosas, and Miguel Salas, thereby increasing the size of the group to approximately 30 employees. According to Lopez, while the people were milling about prior to the start of the formal meeting, someone said that an Athens Disposal Company supervisor had driven by for the second time, and Lopez' attention was directed to a white pickup truck, which was stopped at a stoplight at the intersection of Peck Road and Durfee. Leaving the group, Lopez walked over to the pickup, in which a driver and a passenger were seated, and accused the driver of doing something illegal. He asked the driver to identify himself, and the man gave Lopez a name. The union official then returned to the group, informed them of the man's name, and the individual, who had initially observed the vehicle passing by, said that such was not his name and that his real name was ''Guadalupe.'' While, apparently, Lopez did not observe the vehicle, allegedly driven by a Respondent supervisor, twice drive past the assembled employees, Sergio Carrillo[14] testified that he saw the aforementioned pickup truck drive past the group and, shortly thereafter, drive past them again only to be stopped by a red light.[15] Particularly enlightening is the testimony of alleged discriminatee Jesus Ramirez, who stated that, on June 13, aware that a union meeting was scheduled, he arrived at the corner of Peck Road and Durfee at approximately 3 p.m., finding a group, composed of his fellow employees and West Covina's employees, standing at a gas station across from the Teamsters 420 building. He parked his car across from the gas station and was crossing Peck Road when another employee, who had accompanied him, said that Ramirez' supervisor was approaching. Ramirez turned to look and saw Guadalupe Diaz and Steve Uribe, the latter being his foreman, coming toward them in a pickup truck. ''They were crossing the street inside of the vehicle looking to the group. . . . They went by and a few minutes later they returned. At that moment, the light turned red. [The union official] went to talk to them, and they had a conversation.'' Shortly after the incident, according to Lopez, as everyone seemed ''fidgety,'' the group moved to Legg Lake Park in order to convene the formal meeting.

There is no dispute that Respondent's supervisorial hierarchy was aware of the scheduled June 13 union organizing meetings and conspired to, and did, engage in surveillance of the North Park and Peck Road meetings; what is in dispute are the activities of Respondent's supervisors. In this regard, the record discloses that, admittedly aware of the scheduled union meetings on June 13, Respondent's supervisors conspired to engage in surveillance of their employees suspected union activities on that day and, in fact, engaged in such conduct. Thus, Tony Rodriguez, the Athens Disposal Company operations manager, testified that, in early June, a few of his company's drivers showed him a flyer, announcing a union meeting for June 13; that, on June 12, he met with his field supervisors; and that, after a ''discussion,'' the decision was made ''just to see if any of . . . Respondent's personnel were involved in this meeting.'' Therefore, the next morning, ''just to see if any of our men were involved in it,'' accompanied by a friend, who happened to be driving because ''he likes pickups'' and ''he wanted to drive,'' Rodriguez rode, as a passenger, in a company white Chevrolet Silverado pickup truck, to the site of the suspected union meeting at North Park in West Covina. According to the witness, they approached the park on Sunset, made a right turn onto Rowland, and drove past a group of people, who were ''scattered'' and resembled a ''family gathering.'' They turned left at the next corner and parked on the left or wrong side of the street, with the group about 100 yards to their left. Remaining for no longer than a minute and affording Rodriguez the opportunity to no more than glance at the group, the operations manager and his friend drove away.[16] Rodriguez further testified that, no more than a half hour later, in the same pickup truck, he and his friend returned to North Park, driving past without stopping. Denying taking any photographs or getting out of the truck, Rodriguez said he did not recog-

[13] While the record is not entirely clear, Raul Lopez became aware that Local 495 was engaged in an organizing campaign among Respondent's employees subsequent to the aforementioned May 22 meeting. Thereafter, as the Union has Teamsters Union jurisdiction over the rubbish industry, Lopez spoke to the secretary/treasurer of Local 495 and, as a result, the latter relinquished the organizing of Respondent's employees to the Union. Lopez further testified that the June 13 afternoon meeting had been previously scheduled by a Local 495 business agent and that he (Lopez) decided to attend in order to ease the transition.

[14] Carrillo testified that Respondent's employees identified one of the individuals in the pickup truck as a supervisor named Guadalupe.

[15] Martin Santiago testified that he only observed the pickup truck, the driver of which was identified by one of Respondent's employees as being a company foreman, drive slowly past the group and stop at a red light. The pickup truck was in the traffic lane closest to the assembled employees, and the driver was ''looking at us.''

[16] Describing the group as being comprised of from 12 to 15 people and some women, Rodriguez doubted that anyone, in the group, noticed him from such a distance and denied that anyone walked toward his pickup.

nize anyone and ''saw no reason to go back and look any more.''

Field Supervisor Frank Uicab admitted that Respondent's supervisors had ''decided'' to learn what was going on and that he was at North Park in West Covina on June 13 ''to see if there was any Athens people at the so-called union gathering.'' According to Uicab's testimony at the hearing and a stipulation as to his testimony, at approximately 1 p.m., driving a company-owned, burgundy-colored pickup truck, he and Pedro Esparza, who was a ''spare driver'' and whom Uicab was taking home, arrived at North Park, drove completely around the park, observed a group of 30 to 40 people standing in the grass picnic area, turned into the parking lot and parked. Watching the group from the truck, Uicab was unable to recognize anyone. Then, carrying a company Polaroid camera,[17] Uicab, accompanied by Esparza, walked to the third-base side of the baseball field and seated themselves in the bleachers, where other people were sitting and watching a Little League baseball game. From his location, according to Uicab, the 30 to 40 person group was ''probably . . . a little bit more'' than the length of a football field or 400 feet away. Uicab and Esparza sat and observed the group for approximately 5 minutes, during which time Uicab took two photographs but was unable to recognize anyone.[18] As they climbed down from the bleachers, Uicab noticed that the members of the group had started to walk toward ''where our vehicle was parked.'' Thereupon, he and Esparza ran toward the parking lot, dropping the two photographs while doing so. Arriving at the truck before anyone from the group and tossing the camera onto the front seat, Uicab started the engine and drove away; one man came within 2 feet of the truck but did not touch it.[19]

According to the stipulated testimony of Respondent's field supervisors, Steve Uribe and Guadalupe Diaz, the two drove together in a beige pickup truck to the area near Peck Road and Durfee in El Monte at approximately 1 p.m. on June 13 specifically in order to engage in surveillance of company employees at a union meeting at that location. Testifying at the hearing, Uribe, who was driving, initially averred that they drove there because ''we were going to a bar'' but subsequently conceded that their purpose was as stipulated. In any event, Uribe admitted that, nearing the intersection of Peck Road and Durfee, he slowed down enough so that he and Diaz could look to see what was happening; Uribe and Diaz each admitted observing a group of six to eight people standing at a corner gas station, and Diaz denied recognizing anyone in the group. According to their stipulated testimonies, they stopped at a red light at the intersection of Peck Road and Durfee, and a man, whom neither recognized, approached the passenger window and asked Diaz for his name. Diaz gave him a false name, and, when the light changed, Uribe drove away. Finally, each man denied driving back and forth in the vicinity of the employee meeting that day.

There is no dispute that, subsequent to the June 13 organizing meetings at approximately noontime on a Monday, alleged discriminatee Miguel Salas had a conversation with his supervisor, Frank Uicab, in the city of Covina at the intersection of Front and Larkin Streets. According to the alleged discriminatee, who signed an authorization card for the Union at the Peck Road meeting with representatives of the Union, Uicab, who normally would oversee Salas' route by driving by and asking if there were any problems, approached him and first inquired, ''How are you, Miguel,'' and then asked, ''What do you know about the Union?'' Salas responded that he knew ''nothing,'' but Uicab answered that he thought Salas was ''one of the leaders of the Union.'' Salas denied it, saying that he did not need it and that he was fine the way he was. Thereupon, Uicab warned, ''Well, everyone who's mixed up in the Union is going to get fired.'' The supervisor then turned to leave, stopped, said, ''We do not need a Union. We have good bonuses, good salary, and good benefits,'' and then left. Uicab, who believed their conversation occurred before he left for vacation on June 23, denied Rodriguez' version and testified that the conversation was brief with Salas asking ''if I new [sic] anything about the Union'' and him replying that he ''knew nothing about it.''

Turning to the discharges of the four alleged discriminatees, Trinidad Rodriguez, who stated that, from February through May, he attended three union organizing meetings, conducted by Harvey Lomeli of Teamsters Local 495,[20] and that he signed authorization cards for both Local 495 and the Union, testified that he was discharged by Respondent on June 12, the day before the scheduled meetings between Respondent's employees and representatives of the Union and Local 495. That afternoon, Rodriguez, who drove a pickup truck for Respondent, returned to the truck depot facility at approximately 2 p.m. and was told to report to Tony Rodriguez' office. According to the alleged discriminatee, Field Supervisor Steve Uribe was waiting for him, gave Rodriguez his final check, and said, ''there's no more work.'' Rodriguez asked why he was being terminated, and Uribe replied ''he was going to give the reason to the person who was going to represent me.'' As to the rationale underlying the alleged discriminatee's discharge, Rodriguez' termination report, Respondent's Exhibit 6, states that such was based on ''the current accident trend of this individual . . . along with a written reprimand . . . for carelessness. . . . Termination was based on accidents.'' In this regard, there is no dispute that Rodriguez was involved in two accidents in May 1992. According to him, the first accident occurred in a supermarket parking lot in which he had parked his truck in order to have lunch and, driving his truck out of the parking lot, he collided with a station wagon, driven by an elderly man, causing substantial damage to the area above the rear bumper of the station wagon. Rodriguez testified that, when the vehicles collided, his truck was moving forward and the station wagon was backing up; that ''I think

[17] Uicab specifically denied having a video camera with him that day. With regard to the Polaroid camera, Uicab stated that it was the type which requires use of two hands in order to take a picture and that it was not equipped with a telephoto lens.

[18] Uicab opined that the group could have been a gathering of soccer players; he nevertheless took photographs ''because I knew there was something going on with the union gathering.''

[19] Pedro Esparza, a ''spare driver'' for Respondent, essentially corroborated Uicab's version of the latter's activities at North Park on June 13.

[20] In his pretrial affidavits, Rodriguez failed to mention attending any union organizing meetings prior to May 1992 and stated that none of Respondent's supervisors were present at any of the three organizing meetings, which he attended.

he hit me''; and that the driver asserted ''it was my fault because I hit him from the behind.'' Steve Uribe drove to the scene of the accident and listened the alleged discriminatee's and the station wagon driver's versions of what occurred. According to Rodriguez, he explained to Uribe that, as described above, the station wagon driver was backing up and collided with his pickup truck, but Uribe did not believe him. Contradicting Rodriguez, Uribe testified that the former admitted he was at fault ''because he didn't step on the brake right on time'' and that, as a result, he issued a written warning notice to Rodriguez. On said document, Respondent's Exhibit 4, Uribe wrote that he informed Rodriguez it would be his ''last chance'' and that ''[Rodriguez] said he will be more careful next time,'' and, during cross-examination, Rodriguez admitted telling Uribe he would be more careful and being told, by Uribe, such was his ''last chance.''

As to the second accident, Rodriguez testified that, 2 weeks later, while at a dump site waiting to deposit a load of trash, he accidentally placed his pickup truck into reverse, pressed down on the gas pedal, and collided with the truck, which had been waiting behind his, severely damaging the latter vehicle's front bumper, and that the damaged vehicle happened to be another of Respondent's pickup trucks. According to Rodriguez, Frank Uicab drove out to the dumpsite to investigate the accident, and he (Rodriguez) did not speak to Steve Uribe about this accident until a week later. On that occasion, Uribe approached Rodriguez at a dumpsite and said that ''the bumper could be fixed at the shop'' but ''if I wanted my job, for me to give him 100 bucks, and he would not report it to the Company.'' Rodriguez testified further that he told Uribe he would pay the money, but, during cross-examination, admitted that he never did so and never mentioned the bribe demand during his discharge conversation as ''I saw [Uribe] was a little bit bothered.'' Contrary to Rodriguez, Uribe testified that he was the field supervisor who investigated the dumpsite accident and that he spoke to Rodriguez, who admitted that the accident was his fault as he did not see the pickup truck behind his. Uribe further testified that he immediately informed the alleged discriminatee that he would report the accident to the operations manager and, given his poor driving record, Rodriguez would possibly be terminated. Uribe specifically denied soliciting the asserted bribe from Rodriguez. According to Uribe, the decision to recommend the termination of Rodriguez was jointly reached, on June 12, by himself, Tony Rodriguez, and Dave Harpov, Respondent's safety coordinator, based on the alleged discriminatee's two May accidents and numerous prior work warnings,[21] and the alleged discriminatee's union sympathies or activities were not a factor in the decision. Dennis Chiappetta[22] testified that he was given the foregoing recommendation on June 12, ''and I concurred that he should be terminated.'' Thereupon, according to Uribe, he met with Trinidad Rodriguez in the supervisor's room, showed him his termination report, and said his termination was based on having ''too many incidents which was accidents and damages.'' To this, Rodriguez replied, ''Do you have any balls to tell me the truth,'' and Uribe denied that the alleged discriminatee asked him the reason for his discharge.

Jesus Ramirez, who was a garbage truckdriver for Respondent and who testified that he executed an authorization card for the Union at the afternoon June 13 meeting, which began on Peck Road in El Monte, was terminated 4 days later on June 17. On that day, according to Ramirez, he finished his route[23] and returned to Respondent's truck depot at approximately 4:30 p.m. Uribe approached and said he wanted to speak to both Ramirez and his helper. Thereupon, they walked to Tony Rodriguez' office, and Uribe began speaking, asking, ''What's happening, Jesus?''' Ramirez replied that ''nothing'' was happening, and Uribe said.'' ''Tony told me to fire you because there is no more work.'' Ramirez asked why, and Uribe said he did not know, ''ask Tony.'' Thereafter, Ramirez went looking for Tony Rodriguez, the operations manager, but was unable to find him and to learn the reason for his termination. Respondent's Exhibit 9 is Ramirez' termination report, with the stated reason for Ramirez' termination being as follows: ''Almost lost a big account because driver had not been placing trash bins in their proper place and lids not being kept closed, Driver had been warned back in May, Also had been picking up approx. 45 to 50 stops that were not on backyard service but were curb service stops, Cost a great deal of money to the company by [picking up] stops that were not paying for the service.'' As to the latter problem, the record establishes that residential route pickups are routinely canceled due to death or are the subject of stop service notices resulting from failures to pay the monthly service fees; that drivers are given written notices of the foregoing and are required to remove applicable service address cards from their route books; that, conversely, when a homeowner pays his debt, a new route card is issued and the driver, on the applicable route, is required to reinsert it in his route book; and that Respondent's route supervisors regularly check the routes of the drivers, whom they supervise, to ensure, among other things, they are giving effect to the cancellation or stop service orders that, accord Steve Uribe testified that, in or about May 1992, he was rou-

[21] Trinidad Rodriguez admitted having received no less than 10 work reprimands in 1991, with each containing a warning of possible future termination. One such reprimand involved an incident in which, while driving his route, Rodriguez slowly followed a woman, who was walking to work. While the alleged discriminatee maintained that he denied engaging in such misconduct, Steve Uribe testified that the former denied whistling at the woman but admitted following her. Rodriguez received another warning notice in 1992 for mixing recyclable materials and trash during a residential route. Once again, the alleged discriminatee stated that he denied the allegation to Uribe, but the latter maintained that Rodriguez admitted the conduct and offered the excuse that there had been no more room for recyclable material. It must be pointed out that these work warnings are not mentioned in Rodriguez' termination report.

[22] Denying any knowledge of a videotape of the June 13 North Park union organizing meeting, Chiappetta testified that he initially learned of Respondent's employees' union organizing activities on Monday, June 15, when Tony Rodriguez informed him of the Saturday organizing meetings and of the supervisors' surveillance of them. According to Chiappetta, he informed Rodriguez ''how unhappy I was'' at the supervisors' conduct and immediately telephoned Respondent's attorney, who visited Respondent's office 2 days later and gave Chiappetta and Respondent's field supervisors copies of a detailed list, setting forth what management could and could not do during a union organizing campaign.

[23] Ramirez testified that he performed both commercial and residential routes, with Frank Uicab supervising his commercial routes and Steve Uribe supervising his residential routes.

tinely monitoring one of Jesus Ramirez' residential routes[24] and observed that the alleged discriminatee was collecting trash from addresses which had been the subject of stop service notices. Thereafter, according to Uribe, Tony Rodriguez directed Respondent's route auditor to follow Ramirez in order to determine the extent of Ramirez' failure to adhere to company practice,[25] and the auditor subsequently reported that the alleged discriminatee had been servicing, at least, 30 stop-service addresses. However, there is no record evidence that Ramirez was ever disciplined over this matter, and exactly what Respondent perceived as his indiscretion is not entirely clear. Thus, one may infer from Steve Uribe's testimony (after the auditor reported his findings, the field supervisor spoke to Tony Rodriguez, who said what Ramirez had done ''was no good,'' and the two decided to terminate Ramirez ''for not paying attention to his route) that Respondent's main concern was with Ramirez' collection of trash from the numerous stop service addresses. In contrast, Dennis Chiappetta's concern over the auditor's report seems to have been with Ramirez' ''sloppy paperwork,'' a subject about which he had been previously warned—''it was discussed that [Ramirez] continually had disorganized paperwork and that it was pointed out to him previously.''[26] That the latter appears to have been Respondent's concern is evident from the testimony of Ramirez, who stated that, approximately 2 months before his discharge, Tony Rodriguez met with him and asked why he retained address cards, about which there had been stop service orders, in his route book, and he explained to Rodriguez that the normal situation was that stop service orders lasted no longer than a week or, at most, a month and, rather than remove the address card from his route book, ''I'd have the cards already for when they gave me the order.'' According to Ramirez, the conversation ended with Rodriguez saying that the alleged discriminatee's route book contained ''too many papers'' and instructing him to clean it out. Such was done the next day. Nothing more was said on the subject, and Ramirez denied ever picking up trash from addresses, which were the subject of cancellation notices, and ever being accused by Rodriguez of picking up trash from 30 to 40 canceled accounts.[27]

With regard to the matter of the averted loss of a large account, caused by Ramirez' alleged failure to close trash bin lids and place the bins in their proper location, the record establishes that, on May 11, Respondent received a complaint, by telephone, from the manager of Spyglass Villas, a condominium complex located in the city of Whittier, that, after collecting the trash that day, Respondent's truckdriver and helper had failed to close the lids on the trash bins and return the bins to the trash room.[28] Frank Uicab testified that, as is the normal practice with a customer complaint,[29] he immediately drove to the Spyglass Villas and observed that the complex's trash bin lids had been left open and ''trash was all over, scattered all over the place.'' Thereupon, Uicab cleaned the mess, spoke to the manager, who was upset, and convinced her not to cancel Respondent's service, saying the incident would not be repeated. Uicab testified further that, the next day, he informed Tony Rodriguez about what had occurred and, upon ascertaining that the driver of the truck was Jesus Ramirez, spoke to the alleged discriminatee and his helper, explaining that he had personally observed the scene and that he had to clean the area by himself. Then, according to Uicab, he told Ramirez that such ''is poor service. We can not have this. This is a very large account,'' which Respondent ''cannot afford to lose.'' After Ramirez admitted it ''probably'' happened and would not again, Uicab warned the alleged discriminatee ''if this happens again, you're gone.'' Notwithstanding Uicab's warning to Ramirez, slightly over 3 weeks later, on June 5, Respondent received a letter from the Spyglass Villas management service, stating, in part, ''that the lids on the trash containers are not being returned to a covered position after the dumpster is emptied, and in many instances the trash container is not fully replaced into the trash enclosure which creates difficulties for persons to access the trash containers.'' The letter continued, requesting that Respondent remedy the situation by ensuring that the trash bin lids are closed and that the bins are again placed in the trash enclosure. Uicab testified that, on reading the letter, he again visited the Spyglass Villas, and ''I looked at the enclosures, and sure enough, the lids were open, the trash on the ground . . . flies everywhere.''[30] Thereupon, he again spoke to the manager and placated her by promising to replace the driver and assuring her such would never happen again. According to Uicab, he subsequently reported to Rodriguez on his findings and conversation with the Spyglass Villas' manager and learned that Respondent's sales manager also had spoken to the management company and convinced it to retain Respondent as Spyglass Villas' trash removal service. Uicab testified that, based upon the foregoing, he made the recommendation, to Rodriguez, at the next safety meeting that Ramirez should be removed from his supervisorial area and terminated.[31] The recommendation

[24] According to Uribe, Ramrirez' route entailed mostly ''backyard services,'' meaning that the driver or helper must push a large bin, equipped with wheels, to the back of a home in order to collect the homeowner's garbage.

[25] Dennis Chiappetta explained that the picking up of bad accounts is costly to Respondent ''because we continue to have all of the labor costs, the landfill costs, the administrative costs of picking up that account, and yet we get no revenue for [it].''

[26] Asked, during cross-examination, whether Ramirez exhibited paperwork organization problems from the day he was hired, Chiappetta replied ''could be,'' and admitted that, in his pretrial affidavit, he said Ramirez' paperwork problem had been discussed on a ''daily basis'' since his hire. Finally, after denying that, until his termination, Ramirez had never been disciplined for his continuing paperwork problem, Chiappetta was again confronted with his affidavit wherein he said that, until his discharge, Ramirez had never been disciplined for paperwork problems.

[27] Steve Uribe, who admitted that weekly service for a customer may be stopped 1 week and resumed the next, contradicted Ramirez, stating that the latter's only explanation for what occurred was that he never followed the route book and ''he was just picking them up normally like every week.''

[28] The complaint form, R. Exh. 7, notes that the manager was ''upset.''

[29] Uicab testified that the manager also complained that trash was left ''all over the place, inside and outside the trash enclosures.'' However, R. Exh. 7, the complaint form, contains no such complaint.

[30] There is nothing in the June 5 letter regarding trash being left on the ground or a threat to terminate Respondent's trash removal contract.

[31] Ramirez testified that, approximately a month before his discharge, on returning to the yard from his route, he met with Frank

to terminate Ramirez went to Chiappetta, who was informed that Uicab and the sales manager had assured the manager that the driver, who was responsible for the problem, would likely be terminated and had been required to ''basically [resell] our service'' and who testified that the potential loss of an account or ''an event where one of our drivers has angered . . . customers, we consider that grounds for termination.'' Therefore, he approved the recommendation to discharge Ramirez. Steve Uribe corroborated Ramirez that he informed the latter of the discharge but denied starting the conversation with ''what's happening.'' According to Uribe, he informed Ramirez that the reason for his discharge ''was picking up accounts that were on stop service'' and his problem with Uicab regarding not closing the garbage bin lids. Finally, with regard to the discharge of Ramirez, Dennis Chiappetta stated that, absent the Spyglass Villas matter, the alleged discriminatee would not have been terminated. In contrast, Steve Uribe averred that the precipitating reason for Ramirez' discharge was his picking up of canceled accounts and, asked if Ramirez would have been discharged if such had not occurred, Uribe replied, ''maybe not.''

The third alleged discriminatee, Jesus Rosas, who, in addition to attending the two June 13 meetings with the Union, signed an authorization card for the Union prior to his termination, was employed as a welder in Respondent's maintenance shop and, according to his termination report, was discharged by Respondent on July 21 for ''insubordination'' resulting from approaching his Supervisor Dal Hile ''in a threatening manner'' and ''swearing'' at the supervisor and about Respondent. There is no dispute that, if Rosas was insubordinate to Hile, such occurred during a confrontation between the two, in English, on Friday, July 10, concerning the pay, which Rosas received for the Fourth of July holiday.[32] What is in dispute is exactly what Rosas said during this meeting. According to Hile, at approximately 12:45 p.m. on that Friday, he was walking through the shop when one of the employees pointed to Rosas and asked that Hile find what was his problem. Hile approached Rosas, ''and Jesus said he was very unhappy about his holiday pay.'' Hile asked him what the problem with his pay was, ''and he said that we were stealing from him.'' Hile asked him to explain, ''and [Rosas] proceeded to tell me that he was unhappy about his pay, and I explained to him that everybody got the same thing, that he wasn't picked on . . . and he got very mad about it and said I was a fucking dog and that the Company was nothing but a fucking dog and that the owners were a fucking dog . . . .'' At that point, Hile interrupted Rosas, saying that Rosas wasn't being forced to work for Respondent and could always quit. To this, Rosas said, no, and added '''I'd rather have you fire me. Then I can get workman's compensation.' And I just walked away from him.''[33] Hile testified further that no less than six employees were in the vicinity and could have overheard Rosas' outburst and that, at least, four of them speak English. Contrary to his supervisor, Rosas, who stated that three other employees were within 8 feet of Hile and him and that none ''understand much English,'' testified that the conversation began with him showing his paycheck to Hile, saying it was incomplete, and asking why—''Are they stealing or something.'' Answering in what Rosas described as ''a harsh manner,'' Hile said ''no'' and ''everybody got the same.'' Hile then asked, ''So how come you are complaining?'' Rosas responded, ''My holiday is not complete, and I should not have to work on Saturdays.'' The conversation ended with Hile saying he could decide and ''If you want to, there is the door. You can leave,'' and him replying that he needed the job. Nothing more was said and, while admitting being angry at Hile's comments, Rosas specifically denied ever cursing at Hile during the conversation or threatening to file a worker's compensation claim. During cross-examination, Rosas maintained that his accusation about stealing was said ''discreetly'' and that he does not know how to utter curse words in English.

Dal Hile further testified that he mentioned the confrontation with Rosas to the other maintenance shop supervisor, Al Arzola, and that they decided to raise the matter of Rosas' behavior at the next monthly meeting when shop problems were discussed. Such a meeting occurred on July 21 and, according to Hile, ''I repeated exactly what happened.'' When he concluded, Dennis Chiappetta, who was at he meeting, instructed him to terminate Rosas. According to Chiappetta's rather colorful account of Hile's purported description of his confrontation with Rosas—''Mr. Hile confronted Mr. Rosas, and he immediately jumped in a very threatening manner in his face. He said, 'Look, I got a problem with the way I was paid for a holiday,' and 'You people are a bunch of fucking dogs. Your company's a fucking dog. You're a fucking dog, and I don't have to take this stuff.''' Hile asked what was his problem and, ''in a very threatening manner,'' Rosas said he should have been paid for a holiday but wasn't. Hile told the alleged discriminatee that he had been properly paid and that ''we weren't holding a gun to his head; he didn't have to work there if he didn't want to.'' At point, Rosas threatened to file a worker's compensation claim if Respondent fired him. Chiappetta confirmed that, on hearing what Rosas said, he instructed Hile to terminate the alleged discriminatee that afternoon. Accordingly, Hile met with Rosas later that

Uicab, who ''said that there were some problems in an apartment because we were leaving the cans without lids. The reason that I told him we left them uncovered is because the people will put the garbage on top of them and the box was empty. Then Uicab told me continue leaving them closed because if I see that same problem continued, to let him know so he could speak with the clients.'' During cross-examination, Ramirez denied being told it was a major problem and denied telling Uicab that he closed the trash lids on all occasions. Further, Ramirez denied being told by Uicab that the client had threatened to cancel the account or that Respondent could not afford to lose the account.

[32] According to Rosas, while he ordinarily did not work on Saturdays, in order to be paid for July 4 in 1992, his supervisors required him to work that Saturday, and he, in fact, did work 4 hours. Rosas' complaint on the following Friday, payday, was that his wages were ''incomplete'' as he should have been paid as if he had worked 8 hours on July 4. He added that he is certain that he worked that day. Dal Hile disputed Rosas as to whether the latter worked on Saturday, July 4, stating that he reviewed Respondent's payroll records, which show that Rosas did not work on that day. He added that all employees, who did not work on July 4, received 4 hours' ''straight time'' for the day.

[33] During cross-examination, Hile stated that, while profanity is regularly used by employees in the shop, he never had heard Rosas use profane language. He added that what concerned him was Rosas' cursing being directed at him and uttered in the presence of other employees.

day. As to what was said, Rosas recalled that Hile told him ''he had spoken with the owner [about] . . . my problem, that [the owner] had decided to let me go.'' Rosas responded that he needed a job and asked why he was being fired, and Hile merely replied that Rosas ''was not a good [employee] for the Company.'' Contradicting Rosas, Hile recalled informing the former that he was being terminated ''for insubordination'' and ''he was no longer needed in the shop.''[34]

The final alleged discriminatee, Miguel Salas, who was a driver for Respondent and who, besides attending the June 13 Peck Road meeting, signed an authorization card for the Union on July 16, was discharged on August 4. While, according to Salas' termination report, Respondent discharged him based on a July 28 customer complaint, no less than 153, 1992 overweight load citations, a ''careless'' accident on July 3, and his ''poor attitude towards customers and fellow workers,'' Dennis Chiappetta testified that the precipitating reason for the termination of Salas was the July 28, service complaint and that, while the other items listed were factors,[35] ''[Salas] would not have been terminated if [the service complaint] never would have occurred.''[36] With regard to the July 28 incident, according to Chiappetta, an ''irate'' customer, named Gonzalez, telephoned Respondent's office with a complaint that one of Respondent's drivers had thrown garbage cans all over the street and had a bad attitude. Apparently, it was determined that Miguel Salas was the driver of the truck, and his Supervisor Uicab was assigned to investigate the complaint. According to Uicab, the complaining individual was a residential homeowner, and he (Uicab) initially spoke by telephone to the individual and then visited the residence, observing garbage cans thrown on to the front lawn and in the street and newspapers and plastic bags, filled with garbage, scattered around. He spoke again to the ''unhappy'' customer, who said he had been outside when the garbage was collected and had witnessed Salas leave the resulting mess. The customer screamed about the ''sloppy'' quality of Respondent's service and threatened to stop utilizing Respondent and to urge his neighbors to do likewise. Uicab apparently was able to appease the customer and to convince him to remain a customer of Respondent by promising, among other things, to discipline or terminate the driver. Although uncorroborated by Uicab, Chiappetta testified that, after investigating, Uicab reported to him that, in addition to the July 28 incident, there had been four previous confrontations between the customer and Salas and that some of these had been ''face-to-face'' during which ''swear words'' were uttered.[37] Thereafter, according to Chiappetta, he met with Uicab, Tony Rodriguez, and Terry Schneider regarding Salas' ''overall performance,'' and the four reached the conclusion that, given his throwing garbage cans on this occasion and, on an earlier occasion, ''throwing some piece of furniture,'' there seemed to be a ''trend'' or ''consistency'' to his actions. Believing that these actions indicated ''careless work'' and in light of a significant number of load overweight citations and other customer complaints, the recommendation of the others was to terminate Salas, and Chiappetta concurred. Thereafter, Uicab met with Salas and, according to the latter, said that Salas was being fired. The alleged discriminatee asked why, and Uicab said, ''You have too many complaints from the people. You have too many [overweight tickets] . . . .'' As to his recollection of their conversation, Uicab testified that ''I told him about the seriousness of the complaint and what that customer had told us, that he didn't want to see [Salas] on that route . . . . And that it was a very serious complaint.'' Then, Uicab accused Salas of lying to him and said ''we couldn't deal with it. Plus the accident that he had and the overweights.''

Asked if Respondent had terminated any employees in 1991 and 1992 for conduct, similar to that for which the alleged discriminatees were assertedly terminated, Dennis Chiappetta testified that 18 employees were terminated in 1991 and 27 employees were terminated in 1992 ''for a variety of reasons, including complaints, overweights, insubordination . . . .'' Respondent's Exhibit 15 is a compilation of Respondent's discharge records and corroborates Chiappetta, except to the extent that the 27, 1992 discharges include the alleged discriminatees, that employees have been terminated for the above-stated conduct. However, said exhibit also discloses disparate usage of the discharge penalty. Thus, while some individuals have been terminated after one accident or two or three within a short period of time, driver Miguel Ameruiz was not terminated until February 1992—after he had been involved in no less than five at-fault accidents during the preceding 12 months, and driver Antonio Robles was not terminated until June 1992—after being involved in four at-fault accidents within the preceding 10 months. Moreover, it is also true that Respondent does not consistently terminate employees for the above conduct and, in fact, in some instances, tolerates such to the point of awarding raises to miscreants. Thus, during cross-examination, when confronted with the employment records of several employees, Chiappetta confirmed that driver David Gonzalez was given a $1-an-hour wage increase in December 1992, despite being involved in at-fault accidents in June, July, and September; that driver Felix Silver was involved in an at-fault accident in July 1992 and, while driving his route on January 26, 1993, struck and killed a pedestrian but was not terminated;[38] that, in November 1992, driver Ronald Santallan was not terminated despite being given a written reprimand

[34] The supervisor admitted that Rosas uttered no curse words during the discharge conversation.

[35] There is no dispute that, on or about July 3 Salas was involved in an accident in the city of Covina, resulting in damage to a passing vehicle. According to Salas, ''We're making a pick-up at a stop. There was a furniture made out of metal, like a little table. . . . So then I threw it, and the thing . . . fell over, and it went into the street. . . . [A] car came by fast and scratched against the furniture.'' Salas added that he threw the metal furniture piece toward his truck's garbage bin, but ''it bounced. It went in, but it bounced out towards the street.'' According to Respondent's accident report, Respondent's Exh. 13, the damage, caused by Salas to the passing vehicle, was in excess of $567. Also, Respondent's ''bonus summary'' record for Salas shows that he had received no less than 152 overweight load citations and had been the subject of 12 customer complaints during the first 6 months of 1992. Salas denied having so many overweight citations and did not believe there had been 12 customer complaints in 1992.

[36] Chiappetta maintained that a ''significant customer service complaint'' could be grounds for termination.

[37] Salas had no recollection of this incident or of four previous confrontations with the same individual.

[38] Chiappetta asserted that Respondent's insurance carrier advised against terminating Silva until litigation over the matter was resolved.

after a customer complained about his use of abusive language and, the next day, being involved in an at fault accident;[39] that driver Martin Solano was not terminated after colliding with a vehicle while parking his truck; that driver Jesus Valdez was given a raise in 1992 despite being given a written reprimand and a suspension for consistently receiving overweight load citations; that driver Mario Morales was not discharged despite a complaint, from an upset customer, that he had backed his truck into the customer's garage door, causing extensive damage and, subsequently, being reprimanded for failing to report the accident; that driver Jose Torres was not terminated after an at-fault accident in which he negligently backed into a water pipe, resulting in internal damage to a building; and that driver Manuel Montiel was given a 50-cent-an-hour raise despite receiving two or three complaints a month for failing to collect garbage from some bins.

B. *Legal Analysis*

The consolidated complaint alleges and counsel for the General Counsel argues that, subsequent to becoming aware that its employees had embarked on a union organizing campaign, Respondent engaged in surveillance of the initial meetings with representatives of the Union, engaged in acts designed to coerce and restrain employees from continuing to support the Union, and discharged four known or suspected union adherents—acts and conduct specifically denied by Respondent. At the outset, I consider the acts and conduct, violative of Section 8(a)(1) of the Act, allegedly engaged in by Respondent's supervisors. Initially, with regard to the employee meetings, conducted by the Union, on June 13, at North Park and on Peck Road, the record evidence establishes that Respondent's employees were present amongst the gathered employees at both meetings, and Respondent admits that Tony Rodriguez and Frank Uicab were each at North Park with the intent to discover which of Respondent's employees attended the scheduled meeting and to observe the events at the location and that Steve Uribe and Guadalupe Diaz drove slowly past the gathering on Peck Road in order to discover whether Respondent's employees were present and to observe what occurred. The only issue of fact, concerning these admitted acts of unlawful surveillance, pertains to the surveillance, in which Frank Uicab and ''spare driver'' Pedro Esparza engaged[40] and, in particular, exactly where they were situated in the park (seated in the baseball field bleachers or standing in the midst of a row of trees) the type of camera (a Polaroid camera or a video recording camera) with which Uicab photographed the employees' organizing meeting with representatives of the Union. As to this, while the witnesses, proffered by the General Counsel, were contradictory regarding what occurred as the employees, who were chasing after Uicab and Esparza, reached the latters' red pickup truck in the North Park parking lot, there is virtual unanimity as to what precipitated the group's actions. In this regard, I was particularly impressed by West Covina employee Ruben Real, whose testimonial demeanor was that of an honest and straightforward witness, one who clearly was truthfully recounting events to the best of his recollection. Crediting Real's testimony, I find that, arriving late for the meeting, he immediately observed two persons, standing beneath a tree approximately 100 feet from the group of employees, with one pointing what appeared to be a video recording camera[41] directly at the group. Suddenly, the group began running toward the two men, one of whom was later identified as one of Respondent's foremen, and, simultaneously, the two men began running toward the parking lot. Given what I perceive as Real's veracity, I likewise credit the corroborative testimony of Union Official Raul Lopez and West Covina employees Mario Rubio, Jose Arreola, Martin Santiago, Jesus Arreola, and Efrain Carrillo, noting that, as did Real, each candidly testified that what precipitated the undisputed pursuit of Uicab and Esparza was the group's sighting of two men, standing beneath some trees, approximately 100 to 150 feet from the site of the organizing meeting, and photographing those at the meeting with a video camera.[42] Providing support for this view, I believe, is the rather inexplicable version of events as described by Frank Uicab and his corroborating witness, Pedro Esparza. In this regard, not only did I perceive Uicab's testimonial demeanor as that of a inherently disingenuous witness but also I can not understand why, notwithstanding having driven past the group of 30 to 40 individuals and assertedly failing to recognize anyone and, presumably, being unknown to any member of that group, Uicab and Esparza believed it necessary to conceal themselves among the spectators in the baseball field bleachers, situated as much as 400 feet from the meeting site, in order to engage in further surveillance of individuals, with whom they assertedly were unacquainted. Also, if, in fact, Uicab was unable to recognize any of Respondent's employees, why, utilizing a Polaroid camera without a telephoto lens, did he feel compelled to take two photographs of the meeting from where he and Esparza were seated rather than moving closer in order to obtain a more focused picture. Moreover, if, as asserted, Uicab and Esparza were seated among several spectators in the baseball bleachers 400 feet from the meeting site, it seems highly unlikely that any of the group would have been able to recognize either of them and, therefore, it is difficult

[39] Chiappetta explained that his driving entailed backing into areas, causing accidents to occur more frequently.

[40] Some of the former West Covina employees asserted that Tony Rodriguez' surveillance of the North Park meeting included taking photographs. However, other witnesses directly contradicted this testimony, and Rodriguez himself denied said conduct. In these circumstances, I must conclude that there exists insufficient record evidence on which to make a finding that Rodriguez did, in fact, photograph the meeting.

As to the Peck Road surveillance, I credit the frank testimony of Jesus Ramirez, who appeared to have been far more candid than either Steve Uribe or Guadalupe Diaz, that the pickup truck, in which Uribe and Diaz were riding, slowly drove past the employees gathering at the gas station two times. Further, as Ramirez was crossing the street as the supervisors drove past, it is hard to believe that they did not recognize him.

[41] Real credibly clarified any confusion caused by his pretrial affidavit, explaining that his reference to not knowing the type of camera meant the brand and not to its identity as a video camera.

[42] I am confident that the camera, which they observed, was, in fact, a video recording camera. Thus, as described by Mario Rubio, Martin Santiago, Jesus Arreola, and Efrain Carrillo, the photographer rested the camera on his shoulder while pointing it at the group and recording what he observed. Such, of course, is the position in which one uses an older-model video camera and not the position for taking pictures with, for example, a Polaroid camera.

to understand why, when members of the group began running toward the parking lot, Uicab and Esparza panicked and ran to their truck. Accordingly, I find wholly incredible Uicab's version of his June 13, surveillance,[43] and what seems more logical and likely is that, contrary to his assertions, as he drove by them, Uicab did, in fact, recognize Respondent's employees among the group at North Park; that, inside the park and in order to engage in surveillance and to photograph the meeting, Uicab and Esparza came as close as possible to the group, standing in a row of trees; that they were observed and recognized by the group, some of whom began running toward where Uicab and Esparza were standing; and that, realizing that they had been spotted, Uicab and Esparza began running toward their red pickup truck. Further, of course, contrary to their express denials, I believe that Uicab used a video camera to photograph the employee gathering.

Based on the parties' stipulations and the credited testimony, the record conclusively establishes that, on June 12, Respondent's supervisors conspired to engage in surveillance of their employees' scheduled union organizing meetings and that, on June 13, Respondent's supervisors, Antonio Rodriguez, Steve Uribe, Frank Uicab, and Guadalupe Diaz did, in fact, engage in surveillance, including one instance of videotaping, of the organizing meetings for the Union, attended by Respondent's employees. There can be no question that an employer engages in conduct violative of Section 8(a)(1) of the Act, by engaging in surveillance of union organizing meetings, attended by its employees. *Action Auto Store*, 298 NLRB 875, 887 (1990). Moreover, photographing employees while they are engaged in activities protected by the Act is deemed to be surveillance, violative of Section 8(a)(1), absent some ''legitimate justification.'' *John Ascuaga's Nugget & Hotel*, 298 NLRB 524, 554 (1990); *United States Steel Corp*., 255 NLRB 1338, 1338–1339 (1981). Respondent has presented no evidence justifying the foregoing conduct. Accordingly, I find that Respondent's admitted surveillance of its employees' meetings with union representatives on June 13 constitutes conduct violative of Section 8(a)(1) of the Act.

I believe that, in addition to the above-described unlawful surveillance, Respondent engaged in additional conduct violative of Section 8(a)(1) of the Act. Thus, crediting Miguel Salas, who appeared to be testifying in an honest and straightforward manner, over Frank Uicab, who, as stated above, did not appear to be testifying candidly and, as will be discussed infra, appeared to lack any compunctions against embellishing his testimony, I find that, within weeks of the June 13 surveillance, while Salas was working his route, Uicab approached him and, after greeting the alleged discriminatee, asked ''What do you know about the Union?'' Then, after Salas denied any knowledge of a union, Uicab said that he thought Salas was ''one of the leaders of the Union.'' Finally, after the latter denied the accusation and replied that he was happy with his present circumstances, Uicab warned that ''everyone who's mixed up in the Union is going to get fired.'' As to the interrogation, utilizing the surrounding circumstances test and the criteria set forth in *Rossmore House*, 269 NLRB 1176, 1178 at fn. 20 (1984), there is no record evidence that Salas was an open and avowed supporter of the Union and, as will be discussed, Uicab's question was posed in the context of other unlawful comments and conduct. In these circumstances, I find that Uicab's interrogation of Salas constituted conduct violative of Section 8(a)(1) of the Act. Further, Uicab's comment that he thought Salas was one of the leaders of the Union clearly was the type of comment, the effect of which is to create the impression, in the mind of an employee, that his employer had been engaged in surveillance of its employees' union organizing activities and, therefore, said comment was violative of Section 8(a)(1) of the Act. *Escada (USA), Inc*., 304 NLRB 845, 849 (1991); *Livingston Pipe & Tube*, 303 NLRB 873 (1991). Finally, of course, Uicab's warning that, any employees who were ''mixed up'' with the Union's organizing campaign would be fired, was blatantly violative of Section 8(a)(1) of the Act. *Gold Bond Building Products*, 293 NLRB 1138, 1139 (1989); *Norco Products*, 288 NLRB 1416, 1420 (1988).[44]

I turn now to consideration of the allegations that Respondent discharged employees Trinidad Rodriguez, Jesus Ramirez, Jesus Rosas, and Miguel Salas because of their activities in support of the Union and, therefore, in violation of Section 8(a)(1) and (3) of the Act and note that my determination of the legality of the discharges is governed by the traditional precepts of Board law in alleged union animus discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1990), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 453 U.S. 989 (1982), approved in *Transportation Management Corp*., 462 U.S. 393 (1983). Thus, in order to prove a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of establishing that the alleged discriminatees engaged in union activities; that Respondent had knowledge of such conduct; that Respondent's actions were motivated by union animus; and that the discharges and layoffs had the effect of encouraging or discouraging membership in the Union. *WMRU-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the foregoing matters by a preponderance of the evidence. *Hampshire Woolen Co*., 141 NLRB 201, 209 (1963). However, while the above analysis is easily applied in cases in which a respondent's motivation is straightforward, conceptual problems arise in cases in which the record evidence discloses the presence of both a lawful and an unlawful cause for the allegedly unlawful conduct. In order to resolve this ambiguity, in *Wright Line*, supra, the Board established a causation test in all 8(a)(1) and (3) cases involving employer motivation. ''First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.'' Id. at 1089. Two points are relevant to the foregoing analytical approach. First, in concluding that the General Counsel has established a prima facie showing of unlawful animus, the Board will not ''quantitatively analyze the effect of the unlawful motive.

[43] In these circumstances, I do not credit the testimony of Esparza, who appeared to be a sycophant and not worthy of belief.

[44] I believe that Uicab engaged in the above-described unlawful conduct notwithstanding whatever admonishments might have been advised by counsel.

The existence of such is sufficient to make a discharge a violation of the Act.'' Id. at 1089 fn. 4. Second, once the burden has shifted to the employer, the crucial inquiry is not whether Respondent could have engaged in the discharges and layoffs here but, rather, whether Respondent would have done so in the absence of the alleged discriminatees' union activities and support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene's Department Stores*, 299 NLRB 183 (1990).

Analysis of the record, as a whole, convinces me that the General Counsel has made a prima facie showing sufficient to establish that Respondent was unlawfully motivated in discharging at least three of the alleged discriminatees—Jesus Ramirez, Jesus Rosas, and Miguel Salas. Initially, in this regard, while the record is silent as to which of Respondent's employees were the leaders of the union organizing campaign among Respondent's employees, each of the these three alleged discriminatees appears to have been a union adherent and to have signed an authorization card for the Union prior to his termination; Jesus Rosas attended the June 13 morning meeting at North Park in West Covina; and each of the three alleged discriminatees was among the individuals, who gathered with Union Official Lopez on Peck Road in El Monte that Saturday afternoon. Moreover, given the videotape of the North Park meeting, which, I believe, was recorded by Uicab, and the admitted observations of the North Park meeting by Uicab and Rodriguez and of the Peck Road meeting by Uribe and Diaz, the inference is warranted that Respondent was able to identify those of Respondent's employees, who attended, including Rosas, Ramirez, and Salas. Further, there is record evidence that not only did Respondent's supervisors conspire to and, in fact, engage in surveillance of the June 13 union organizing meetings but also at least one (Uicab) interrogated an employee, created the impression of surveillance of the employees' union organizing activities, and, most significantly, on behalf of Respondent, threatened to terminate employees who were ''mixed up'' with the Union. In the foregoing circumstances, I find that the General Counsel has made a prima facie showing sufficient to support the inference that the discharges of Jesus Ramirez, Jesus Rosas, and Miguel Salas were motivated by their activities and support for the Union.[45]

In accord with the *Wright Line*, supra, analytical approach, the burden shifted to Respondent to demonstrate that it would have discharged Ramirez, Rosas, and Salas notwithstanding the union activities and sympathies of each individual. Initially, with regard to the discharge of Jesus Rosas, the issue is whether, on the Friday after the Fourth of July holiday, during his confrontation with Shop Supervisor Dal Hile, the alleged discriminatee was insubordinate to such an extent that, in the ordinary course of events, Respondent would have terminated him for his misconduct, and, on this point, it is first necessary to discern what is not in dispute concerning what happened and what was said. As to this, there is no dispute that the confrontation concerned Rosas' complaint that there was a discrepancy in the amount of pay he received for the Fourth of July holiday; Hile admitted that, acting on suggestions from employees, he initiated the resulting confrontation with Rosas by inquiring about the nature of the latter's problem; the alleged discriminatee conceded that, at one point, he accused Respondent of ''stealing or something'' and that he became upset during the confrontation; and there is no dispute that, toward the end of the confrontation, Hile stated that Rosas could quit if he so desired. However, as conceded by Hile, the crux of Rosas' insubordination, if any, was his asserted cursing—directed toward Hile and Respondent—in the presence of other employees and an asserted threat to file a worker's compensation claim if terminated. The alleged discriminatee denied either cursing at Hile or threatening to file a worker's compensation claim during their confrontation, and I find his denials to be credible. Thus, notwithstanding his rather poor recollection of exactly what occurred at the June 13 North Park meeting, in relating his version of what occurred between himself and his supervisor, Rosas impressed me as being a truthful witness, one worthy of reliance. In contrast, the circumstances convince me that both Hile and Chiappetta dissembled as to the Rosas incident. In this regard, I note that, while Rosas' termination report accused the alleged discriminatee of initiating the confrontation, Hile admitted that he did so. Further, Hile admitted that, while cursing was not uncommon in the repair shop, he had never previously heard Rosas use profanity and, most significantly, that Rosas did not utter any curse words upon being informed that he had been fired.[46] Moreover, the fact that Respondent failed to offer the testimony of any of the supposed employee witnesses to the incident indicates that Rosas should be credited that none understand much English or specifically what Rosas and Hile said during their confrontation. As to Chiappetta, his version of the confrontation, as supposedly related to him by Hile, was sus-

[45] I do not believe that the General Counsel has made the requisite prima facie showing with regard to Trinidad Rodriguez. At the outset, it must be noted that Rodriguez was discharged on the Friday before the June 13 organizing meetings with the Union. Further, while asserting that he attended several union organizing meetings beginning in February, said assertion was undermined and contradicted by his pretrial affidavits, in which Rodriguez mentioned attending no organizing meetings earlier than May. In any event, assuming that he did attend some of the early 1992 organizing meetings, conducted by Teamsters Local 495, Rodriguez admitted that none of Respondent's supervisors were present at said meetings, and there is no record evidence that Respondent was ever aware of them or of the alleged discriminatee's union sympathies or activities. Moreover, Rodriguez' testimonial demeanor was that of an utterly unreliable witness, one not worthy of belief. Accordingly, and in light of Rodriguez' failure to mention such a comment in his pretrial affidavits, I cannot, and do not, credit his assertion that Uicab threatened that Respondent would terminate anyone who joins a union. Nor, in these circumstances, can I credit his testimony that, during his discharge conversation, Steve Uribe assertedly uttered the oblique comment that he would tell the reasons for Rodriguez' discharge to the person who was going to represent him. Therefore, while I do believe that Respondent harbored unlawful animus toward those employees, who it believed or suspected were supporters of union organization, and while the alleged discriminatee may have engaged in union activities prior to his termination, there is no credible evidence that, at the time of the discharge, Respondent was aware of or suspected his involvement in said activities and, accordingly, I shall recommend dismissal of those portions of the consolidated complaint pertaining to the discharge of Rodriguez.

[46] Surely, if an individual would freely utter curse words while complaining about a pay problem, he would feel no inhibitions against using such language at the time of termination. Put another way, the fact that Rosas did not use profanity on the latter occasion strongly suggests that he did not do so on the Friday after July 4.

piciously far more vivid than that of the latter particularly regarding Rosas' confronting Hile and jumping in the latter's face ''in a very threatening manner.'' Finally, with regard to Rosas' asserted threat to file a worker's compensation claim if fired, given what I perceived as his testimonial demeanor and awareness, I believe it as likely that Rosas would have known enough to have threatened such a lawsuit if terminated as a neo-Nazi repenting and acknowledging the tragedy of the Holocaust. In the above circumstances, given my belief that Respondent found it necessary to, and did, fabricate the seriousness of the termination incident, I believe that, absent Rosas' activities and sympathies in support of the Union, Respondent would not have discharged him, and, accordingly, I find that the termination of Rosas was violative of Section 8(a)(1) and (3) of the Act.

Turning to the discharge of Jesus Ramirez, I note at the outset that, while Respondent's termination report rationale seemingly assigns equal weight to Ramirez' causing the near loss of the Spyglass Villas account and his providing trash removal services for 45 to 50 customers who had either canceled their accounts or for whom Respondent had issued stop service orders, Respondent's witnesses were contradictory regarding the relative import of each. Thus, while Dennis Chiappetta averred that, absent the Spyglass Villas matter, the alleged discriminatee would not have been terminated, Steve Uribe stated that the precipitating reason for Ramirez' termination was his picking up of canceled accounts and, when asked if Ramirez would have been terminated if such had not occurred, Uribe replied, ''maybe not.'' In any event, close scrutiny of each asserted discharge reason reveals less than asserted by Respondent. As to the matter of Ramirez' picking up of canceled or stop service accounts, I note, initially, that Respondent failed to make clear exactly what it viewed as Ramirez' malfeasance. Thus, the only reasonable inference to be drawn from Uribe's testimony is that Respondent's concern was with the alleged discriminatee's collection of trash from the supposedly numerous stop service or canceled service addresses; however, Chiappetta, who assertedly gave ultimate approval for the discharge, implied that Ramirez' ''sloppy paperwork,'' resulting in his failure to remove, from his route book, the service cards for stop service or canceled service addresses, was the problem. If the latter, indeed, was Ramirez' transgression, given Chiappetta's admission, during his testimony, that, from his hire date, Ramirez had exhibited paperwork problems and Chiappetta's acknowledgment of his pretrial affidavit admission that Ramirez had never been given disciplined for his continued paperwork problems, one may justifiably conclude that, prior to discharging Ramirez, Respondent had condoned the very matter, which formed a basis for his termination. If, on the other hand, Uribe's understanding of Ramirez' indiscretion was what concerned Respondent, despite Uribe's assertion that he and Tony Rodriguez discussed the matter and decided to terminate Ramirez, there is no record evidence that the alleged discriminatee was ever disciplined by Respondent for servicing approximately 40 canceled or stop service addresses. Inasmuch as Uribe and Chiappetta clearly contradicted each other with regard to what Respondent regarded as Ramirez' problem and, noting Uribe's rather crass testimony as to why he was in the vicinity of Peck Road and Durfee in the afternoon of June 13, as I did not perceive Uribe's testimonial demeanor to be that of an honest and credible witness, I credit Ramirez' denial that he ever actually serviced any canceled or stop service addresses and find that no matter the degree of seriousness of Ramirez' paperwork problems, Respondent condoned these until his termination.[47]

Turning to the Spyglass Villas matter, while clearly, on two occasions, the said customer complained regarding deficient service, I believe that Respondent fabricated the extent and seriousness of the problem. Thus, Respondent's defense depends on the testimony of Frank Uicab, a witness, upon whom, I previously concluded, one may not rely for any degree of candor. Such was never more evident than in the Spyglass Villas matter testimony. Thus, if one were to credit Respondent's field supervisor, one would have to conclude that, as Uicab colorfully described, on numerous occasions, Ramirez and his helper left rotting and decaying garbage lying on the ground all over the trash receptacle area and that, as is the cornerstone of Respondent's defense, Uribe was required to convince the management company not to cancel Respondent's service contract. However, the difficulty with this is that there is no corroboration in the record, where such should exist, for the foregoing. In this regard, I refer to the initial complaint form, which mentions nothing about garbage being left on the ground, and to the Spyglass Villas management company's June 5 complaint letter, which recited two very specific complaints: the failure to close the trash bin lids and the failure to place the empty bins in the trash receptacle area. Such a health and safety risk as decaying garbage left on the ground surely would have been a matter of utmost concern to the Spyglass Villas residents, and the fact that the above condition was not mentioned indicates nothing less than that this was a nonexistent problem. Moreover, rather than threatening to cancel Respondent's service,[48] said letter merely, and politely, requests that Respondent rectify the situation. In these circumstances, while Ramirez did not appear to be testifying candidly in describing what the Spyglass Villas problem entailed, I do believe that Respondent clearly and egregiously exaggerated the extent and seriousness of the problem. Based on the foregoing, the conclusion is warranted that Respondent's decision[49] to terminate Jesus Ramirez was based on behavior, which it had heretofore condoned, and on service complaints, about which it mendaciously embellished the magnitude of the problem in order to justify discharge, and, accordingly, I do not believe that, absent Ramirez' support for the Union, Respondent would have done so. Therefore, I find that Respondent's discharge of Ramirez was violative of Section 8(a)(1) and (3) of the Act.

With regard to alleged discriminatee Miguel Salas and Respondent's proffered rationale for discharging him, I note that Salas had no recollection of any complaints by a resi-

[47] Ramirez' testimony was uncontroverted that Tony Rodriguez merely questioned him as to why he retained the canceled or stop service address cards in his route book and instructed him to ''clean out'' his route book. Rodriguez was not called as a witness by Respondent.

[48] Frank Uicab asserted that Respondent's sales manager also spoke to the Spyglass Villas management company in order to convince it to retain Respondent's service; however, the latter individual was not called as a witness, by Respondent, to corroborate Uicab.

[49] As stated above, I was not impressed with Dennis Chiappetta's candor and, therefore, I do not rely on his recitation of the reasons for the termination of Ramirez.

dential customer named Gonzalez, including that which assertedly precipitated his discharge, Gonzalez' July 28, complaint that Salas had left garbage scattered all over his street and had a bad attitude, that the alleged discriminatee conceded negligently causing his July 3 accident, and that, except for denying the number of such, did not dispute having received numerous overweight load citations during 1992. However, I also note that Respondent's defense rests, almost entirely, on the testimony of Frank Uicab and, inasmuch as I believe that the testimonial demeanor of Respondent's field supervisor was that of a decidedly dishonest witness and that he dissembled regarding virtually all matters about which he testified, including embellishing certain matters in order to buttress Respondent's defense, I have absolutely no confidence in his veracity and am loath to accept all aspects of his testimony with regard to the Gonzalez July 28, complaint—in particular his assertions as to what he observed at Gonzalez' residence and the customer's threat to terminate Respondent's service. Likewise, no credence may be placed on the uncorroborated assertion of Chiappetta, who was inherently unreliable, that there had been previous confrontations between the customer and Salas. Further, while, during 1991 and 1992, Respondent did, in fact, terminate employees for similar conduct, Chiappetta conceded that, in 1992, driver Ron Santallan was not terminated despite being given a written reprimand over a customer complaint about his abusive language and being involved in an at-fault accident the next day and driver Mario Morales was not discharged despite a complaint, from an irate customer, that he had backed his truck into the customer's garage door, causing extensive damage, and his subsequent reprimand for failing to report the accident. Moreover, I cannot neglect the fact that, no more than a month prior to investigating the Gonzalez complaint and being involved in the decision to terminate the alleged discriminatee, Uicab had accused Salas of being one of the leaders of the Union's organizing campaign and had warned that Respondent would terminate employees who were ''mixed up'' with the Union. Based on the foregoing and the record as a whole, I conclude that the Gonzalez complaint, the admitted precipitating reason for Salas discharge was not nearly as serious as asserted by Respondent and that Respondent does not consistently discharge employees for similar conduct and, as I do not believe, in these circumstances, that Respondent has established herein that it would have terminated Miguel Salas absent his suspected sympathies and support for the Union, find that his termination was violative of Section 8(a)(1) and (3) of the Act.[50]

CONCLUSIONS OF LAW

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

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

3. Respondent violated Section 8(a)(1) and (3) of the Act by terminating employee Jesus Ramirez on June 17, employee Jesus Rosas on July 21, and employee Miguel Salas on August 4, because each engaged in activities in support of the Union.

4. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by engaging in surveillance of its employees' activities in support of the Union.

5. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by interrogating employees concerning their sympathies and activities in support of the Union.

6. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by creating in the minds of its employees the impression that it had been engaged in surveillance of their activities in support of the Union.

7. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by warning employees that they would be fired for supporting the Union and engaging in activities in support of the Union.

8. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Unless specifically found above, Respondent engaged in no other unfair labor practices.[51]

REMEDY

Having determined that Respondent engaged is serious unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist from engaging in such conduct and to take certain affirmative action designed to effectuate the purposes and policies of the Act. I have concluded that Respondent unlawfully terminated employee Jesus Ramirez on June 17, 1992, employee Jesus Rosas on July 21, 1992, and employee Miguel Salas on August 4, 1992, because of the activities of each in support of the Union. Accordingly, I shall recommend that Respondent be ordered to reinstate each discriminatee to his former position of employment or, if such no longer exists, to a substantially equivalent position. Further, I shall recommend that Respondent be ordered to make each whole for any lost earnings, he may have suffered as a result of the discrimination practiced against him, as proscribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *Isis Plumbing Co*., 138 NLRB 710 (1963), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[52] Additionally, I shall recommend that Respondent be ordered to post a notice, setting forth its obligations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[53]

[50] Assuming arguendo that the General Counsel had established a prima facie showing that Respondent was unlawfully motivated in terminating Trinidad Rodriguez on June 12, I believe that Respondent did establish that he would have been terminated notwithstanding his support for the Union. Thus, there is no dispute that he had been involved in two accidents during May, and the record, as a whole, warrants the conclusion that he was at fault in both. As the record also establishes that Respondent had terminated other employees for multiple accidents within a short time period, it is clear that Rodriguez would have been terminated notwithstanding whatever support Respondent believed he may have manifested for the Union.

[51] In his posthearing brief, counsel for the General Counsel withdrew the allegation that Steve Uribe engaged in conduct violative of Sec. 8(a)(1) of the Act by his comment to Jesus Ramirez on June 17, ''What's happening, Jesus?''

[52] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set forth in the 1986 amendment to 26 U.S.C. § 6621.

[53] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

Continued

ORDER

The Respondent, Athens Disposal Company, Inc., City of Industry, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engaged in activities in support of the Union.

(b) Engaging in surveillance of its employees' activities in support of the Union.

(c) Interrogating employees concerning their sympathies and activities in support of the Union.

(d) Creating in the minds of employees the impression that it had been engaging in surveillance of their activities in support of the Union.

(e) Warning employees that they will be fired for becoming involved with and supporting the Union.

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

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

(a) Offer reinstatement to employees Jesus Ramirez, Jesus Rosas, and Miguel Salas to their respective former positions of employment or, if such jobs no longer exist, to substantially equivalent positions of employment and make each whole for the discrimination against him in the manner set forth in the remedy section of the decision.

(b) Expunge from its files any reference to the respective June 17, July 21, and August 4, 1992, discharges of Ramirez, Rosas, and Salas and notify each, in writing, that this has been done and that evidence of the discharge of each will not be used as a basis for any future personnel action against him.

(c) Preserve and, on request, make available to Board agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports; and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at Respondent's office and truck depot facility in City of Industry, California, copies of the attached notice marked ''Appendix.''[54] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint, insofar as it alleges that Respondent violated Section 8(a)(1) and (3) of the Act by terminating employee Trinidad Rodriguez and Section 8(a)(1) of the Act by other acts and conduct, be dismissed.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT interrogate our employees with regard to their union sympathies or activities.

WE WILL NOT create in the minds of our employees the impression that we are engaging in surveillance of their union activities.

WE WILL NOT threaten to fire our employees in order to induce them not to engage in any union activities.

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

WE WILL offer Jesus Ramirez, Jesus Rosas, and Miguel Salas immediate and full reinstatement to their former jobs or, if these jobs no longer exist, to substantially equivalent ones, without prejudice the seniority or other rights or privileges previously enjoyed by each and WE WILL make each discriminatee whole for any loss of earnings and other benefits resulting from his discriminatory layoff, less any net interim earnings, plus interest. WE WILL notify Jesus Ramirez, Jesus Rosas, and Miguel Salas, in writing, that we have removed from our files any reference to their respective discriminatory discharges and that the respective discharges will not be used against them in any way.

ATHENS DISPOSAL COMPANY, INC.