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Dobbs International Services, Inc., Catering Unit No. 233 *and* District 6, International Union of Industrial, Service, Transport and Health Employees

Dobbs International Services, Inc., Catering Unit No. 233 *and* Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO

Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO *and* District 6, International Union of Industrial, Service, Transport and Health Employees. Cases 22–CA–21477, 22–CA–21580, 22–CB–8289, and 22–CB–8386

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On June 23, 1998, Administrative Law Judge Robert T. Snyder issued the attached decision. The Respondents, Dobbs International Services, Inc., and Local 69, Hotel Employees and Restaurant Employees International Union, each filed exceptions and supporting briefs, and the Charging Party, District 6, International Union of Industrial, Service, Transport and Health Employees, filed cross-exceptions and a supporting 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[2] as modified.[3]

This case involves a struggle for employee support between an incumbent union (Local 69) and a rival outside union (District 6), and the employer's conduct during that struggle in the spring and summer of 1996. As fully discussed in his decision, the judge found that Respondent Dobbs International Services, Inc. (Dobbs) violated Section 8(a)(2) and/or (1) of the Act by at times unlawfully assisting District 6 in its attempt to organize Dobbs' employees, and by also at times unlawfully assisting the incumbent union, Local 69, in repelling District 6's organizing drive. He also found that Dobbs violated Section 8(a)(3) and (1) by unlawfully suspending an employee who supported District 6. Finally, he found that Local 69 violated Section 8(b)(1)(A) in several instances in its attempts to convince employees not to support District 6. We affirm the judge's findings.

Our dissenting colleague joins in affirming the judge's decision, except with respect to the 8(a)(2) allegations involving Dobbs' assistance to District 6. We reject our colleague's position for the reasons set forth below.

The complaint alleges that Dobbs permitted District 6 to organize on its premises and to conduct meetings in its cafeteria, thereby rendering assistance and support to District 6 in violation of Section 8(a)(2).[4] The judge found that organizers for District 6 were present on Dobbs' property on multiple occasions for solicitation, distribution of literature, and the conduct of organizing meetings. Although General Manager Stuart Manore testified that he personally was unaware of such conduct, the judge discredited his testimony. The judge did so in light of other witnesses' testimony that Supervisor Benson Yu was present in the cafeteria during a District 6 meeting, Dobbs' failure to call Supervisor Yu to contradict that testimony, and Dobbs' earlier admissions in its position statement that supervisors were present during the meetings and they neither enforced Dobbs' no-trespassing policy nor otherwise interfered. The judge found that Dobbs possessed "an awareness of, and tolerance toward, the presence of District 6 organizer's (sic) at various places in the facility, including its lunchroom." Accordingly, the judge concluded that Dobbs violated Section 8(a)(2) by rendering unlawful assistance to District 6 during a time that a rival union was competing for the employees' support. See *Ryder System*, 280 NLRB 1024, 1045–1046 (1986), enfd. 842 F.2d 332 (6th Cir. 1988) (table); *Monfort of Colorado, Inc.*, 256 NLRB 612 (1981), enfd. sub nom. *National Maritime Union v. NLRB*, 683 F.2d 305 (9th Cir. 1982).

[1] The Respondents and Charging Party District 6 have 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.

[2] We find it unnecessary to pass on the judge's remedial recommendations concerning Case 22–RC–11252. That representation case was not consolidated with the instant unfair labor practice cases and accordingly was not before the judge for consideration. See, e.g., *Transit Service Corp*., 312 NLRB 477, 484–485 (1993).

[3] We will modify certain paragraphs of the Order to conform with the Board's current standards.

We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.,* 335 NLRB No. 15 (Aug. 24, 2001).

[4] The complaint also alleged that Supervisor Benson Yu engaged in conduct supporting District 6, including interrogating and soliciting employees to support District 6. However, the complaint alleged, and the judge found, only that this conduct violated Sec. 8(a)(1).

In rejecting the judge's 8(a)(2) finding, our dissenting colleague relies on the testimony of General Manager Manore to find that Dobbs was unaware of any District 6 organizing activity on its property. However, as indicated above, the judge discredited his testimony in light of other witnesses' testimony, Dobbs' failure to call Supervisor Yu to rebut that testimony, and Dobbs' earlier admissions that its supervisors were present when District 6 was organizing at the facility.

In essence, Manore testified that he *personally* was unaware of such conduct. Whether he had personal knowledge, however, is not determinative given the presence of Yu and other supervisors during the District 6 organizing activity, which they did nothing to stop. It is well-established that a supervisor's knowledge of union activities is imputed to the employer. See, e.g., *Dr. Phillip Megdal, D.D.S., Inc.*, 267 NLRB 82 (1983). In addition, an employer is bound by the acts and statements of its supervisors whether specifically authorized or not. See, e.g., *Dorothy Shamrock Coal Co.*, 279 NLRB 1298, 1299 (1986), enfd. 833 F.2d 1263 (7th Cir. 1987); *Holiday Inn-Glendale*, 277 NLRB 1254, 1261 (1985). Thus, even if Manore's testimony were credited, it would not compel a different result.

Accordingly, for the foregoing reasons, we affirm the judge's conclusion that Dobbs rendered assistance to District 6 in violation of Section 8(a)(2).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Dobbs International Services, Inc., Catering Unit No. 233, Newark, New Jersey, its officers, agents, successors, and assigns, and Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO its officers, agents, and representatives, shall take the action set forth in the Order as modified below.

1. Substitute the following paragraph for paragraphs A.2 (b) and (c) and reletter the subsequent paragraphs accordingly.

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

2. Substitute the following paragraphs for A.2 (d) and (e).

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

"(d) Within 14 days after service by the Region, post at its Newark, New Jersey facility copies of the attached notice marked Appendix A.[11] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 1996."

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

Dated, Washington, D.C. August 27, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN HURTGEN, dissenting in part.

I join my colleagues in adopting the judge's findings that Respondent Dobbs, the Employer, and Respondent Local 69, the incumbent union, respectively violated Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) of the Act. As to Dobbs, I agree with my colleagues that Dobbs violated Section 8(a)(1) by threatening employees with discharge because they supported District 6, by prohibiting employees from wearing District 6 pins, by advising employees that it would be futile to select a union other than Local 69, and by prohibiting employees from distributing District 6 literature during their breaks. I also agree with my colleagues that Dobbs violated Section 8(a)(2) and (1) by rendering unlawful assistance to Local 69 to win employee ratification of a new contract between Dobbs and Local 69. I further agree with my colleagues that Dobbs violated Section 8(a)(3) and (1) by suspending an employee because he engaged in union activities in support of District 6.

Notwithstanding Respondent's unlawful conduct against the supporters of District 6, and its unlawful conduct in favor of the supporters of Local 69, one of its supervisors (Yu) engaged in certain conduct, i.e., interrogation and solicitation, in favor of District 6. I agree with my colleagues that this conduct, threatened, restrained or coerced employees, and that Respondent was legally responsible for this conduct of its supervisor. Thus, Yu's conduct violated Section 8(a)(1). The judge found that this conduct was not unlawful under Section 8(a)(2). There are no exceptions on this point. Further, in the circumstances of this case, I do not agree that other conduct of Yu establishes that Respondent "dominated or interfered with the formation or administration" of District 6 or "contributed financial or other support" to District 6.[1] Thus, there was no violation of Section 8(a)(2) in this respect.

More specifically, the complaint alleged and the judge found that the Respondent violated Section 8(a)(2) by permitting District 6 to hold a meeting on its property and by permitting District 6 representatives to distribute literature on its property. In finding that the Respondent permitted District 6 to hold a meeting at its facility, the judge inferred from Yu's presence at the meeting that the Respondent permitted District 6 to hold the meeting. The judge further found that the Respondent permitted District 6 representatives to distribute literature on its property. For the reasons set out below, I find that the Respondent did not knowingly permit District 6 to hold meetings or to distribute literature on its property. Therefore, I would find that there was no violation of Section 8(a)(2).

The facts, in brief, are as follows. Since about 1987, Local 69 has been the exclusive collective-bargaining representative of Dobbs' production employees. Dobbs and Local 69 were parties to a collective-bargaining agreement that ran from August 1, 1993 through July 31, 1996. In mid-July 1996,[2] Dobbs and Local 69 reached agreement on a new contract, subject to ratification. On July 12, Dobbs compelled employees to remain after their shifts had ended so that Local 69 officials could hold a meeting to vote on ratification of the new contract.[3] Following the unit employees' ratification of the new contract, Dobbs and Local 69 executed the contract. It ran from August 1, 1996 to July 31, 1999.

Meanwhile, in the late spring and summer, District 6 engaged in an organizing campaign at Dobbs in which it sought to supplant Local 69 as the exclusive collective-bargaining representative of the unit employees. During the District 6 campaign, Supervisor Yu engaged in certain activity in support of District 6. This activity was described by two witnesses. The first, Leander King, who was a Dobbs employee and a member of Local 69's negotiating committee, credibly testified that sometime before July 4, Yu told him he was getting a new union, District 6, and asked King if he was going to join. King replied no, that he was represented by Local 69. King had no further conversations with Yu about District 6.

King further testified that he observed people from District 6 on Dobbs' property talking and passing out leaflets to employees in the yard next to the loading dock. The yard is enclosed by a fence, which has an open gate through which trucks enter and exit Dobbs' property. Employees also use this gate. There is a guard booth by the gate, but the guard booth is not staffed. Finally, King testified that nothing he observed while at Dobbs during the summer led him to believe that Dobbs supported District 6.

The second witness, Kevin Bradley, a Dobbs employee and a Local 69 shop steward, credibly testified that the District 6 campaign started out with the distribution of pamphlets outside the facility, and that he later saw a District 6 representative inside the facility by the time-clock handing out pamphlets. He also saw a different District 6 representative inside the cafeteria at a meeting of about seven employees in July, and that he saw Yu at a table near the other employees at the meeting. When Yu saw Bradley, Yu came out of the meeting and asked Bradley if he was going to sign up, to which Bradley responded no. Bradley further testified that Yu replied, "Go ahead, go ahead, because Local 69 is not going to represent you." Earlier that day, Yu had tried to get Bradley to sign a District 6 pamphlet which contained a form membership authorization card. Later on the same day, Bradley saw Yu walking around and handing out the District 6 pamphlet to a couple of employees. Finally, Bradley testified that there was nothing to indicate that Dobbs supported Yu's efforts on behalf of District 6.

As noted above, I agree that Dobbs violated Section 8(a)(1) through, inter alia, Yu's interrogation of King and his interrogation and solicitation of Bradley. Since it is admitted that Yu is a Section 2(11) supervisor, and since, as the judge pointed out, the Board "impute[s] a manager's or supervisor's knowledge of an employee's union activities to the employer,"[4] Yu's interrogations and solicitations were coercive of the employees' Section 7 right to engage in union activity and therefore violated

[1] See the language of Sec. 8(a)(2).

[2] All dates hereafter refer to 1996.

[3] As noted above, I agree with my colleagues that Dobbs thereby violated Sec. 8(a)(2) and (1) by unlawfully rendering assistance to Local 69.

[4] *Dr. Phillip Megdal, D.D.S., Inc.,* 267 NLRB 82, 82 (1983).

Section 8(a)(1). I agree. As I have said elsewhere, a supervisor, by definition, holds the power to affect the employment status of employees, or at least the power to recommend the same. Thus, where, as here, a supervisor seeks to persuade an employee to support a union, and awaits a response (e.g., sign a card), that conduct is unlawful under Section 8(a)(1).[5]

However, it does not follow that other conduct of Yu, in fact or as perceived, was the pro-District 6—8(a)(2) conduct of the Respondent. That conduct is discussed below.

I turn first to the contention that Dobbs violated Section 8(a)(2) by allegedly permitting District 6 officials to hold a meeting at its facility and to distribute District 6 literature on its property. It is unreasonable to find that Dobbs permitted District 6 officials to come on its property when, in fact, there is no evidence that would indicate, much less establish, that Dobbs was aware that District 6 officials were on the property. In this regard, Stuart Manore, the general manager of Dobbs' facility, testified that he was unaware that District 6 came onto Dobbs' property to organize, and he received no reports of such activity. Manore further testified that he uniformly instructed supervisors to prohibit such entry and to request outside organizers or strangers to leave the premises and report the incident to him. Manore's testimony stands uncontradicted.

The judge found that Manore's testimony was "undermined" by a position paper submitted to the Region on November 22 by Dobbs' counsel. In that position statement, Dobbs stated that, after conducting an investigation, it appeared that District 6 representatives engaged in organizing activities at various times on its premises. From this, the judge concluded that Dobbs was aware of and tolerated the presence of District 6 organizers on its premises. Such a finding, however, cannot withstand scrutiny.

In its position statement, Dobbs' counsel spoke of an investigation that occurred after the fact. That is, the District 6 activity occurred in the spring and summer of 1996. The position paper was submitted on November 22, 1996. There is no evidence to show that, after uncovering the facts, Respondent continued to allow District 6 onto the property or, if it did, that it refused a similar request from Local 69. Indeed, Respondent's opposition to District 6 makes this most unlikely. Thus, the position statement is not inconsistent with Manore's uncontradicted testimony that he was unaware of District 6 representatives organizing on Dobbs' premises during the time in issue, i.e., in spring and summer. Since Dobbs' had no knowledge of District 6's organizing efforts on its property at the time that it occurred, it cannot be said that Dobbs rendered support to District 6 by permitting District 6 officials to organize on its property.

Thus, a violation of Section 8(a)(2) cannot be based on Manore's conduct. Nor can it be based on Yu's conduct. Concededly, Yu was present at a District 6 meeting held on Respondent's premises. However, it cannot be inferred from this that the *Respondent* was supporting District 6. Yu's conduct simply reflected his own preference for District 6. In the instant case, the Respondent was vigorously *opposed* to District 6. Indeed, it engaged in unlawful conduct in opposition to District 6. In these circumstances, it is patently unreasonable to view this conduct of Yu as Respondent's conduct in unlawful support of District 6. Nor, in such circumstances, would employees reasonably perceive it as such. Thus, in fact and as perceived, Yu's presence at the meeting was not tantamount to Respondent conduct in favor of District 6.

Similarly, Yu's knowledge of District 6 solicitation on the Respondent's premises does not establish that the Respondent knew of, or gave permission for, that solicitation. In fact, and as perceived, Yu's knowledge and permission would not be viewed as Respondent's conduct in favor of District 6.

For all these reasons, and contrary to my colleagues, I would reverse the judge and find that Dobbs, by the above conduct, did not violate Section 8(a)(2) and (1) of the Act by rendering unlawful assistance to District 6.

Dated, Washington, D.C. August 27, 2001

Peter J. Hurtgen, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

[5] In my dissent in *Millsboro Nursing & Rehabilitation Center*, 327 NLRB 879 (1999), a representation case, I set forth my view that a supervisor's solicitation of union authorization cards is inherently coercive.

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees regarding their union activities and sympathies, solicit employees to sign a petition against Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO and in support of District 6, International Union of Industrial, Service, Transport and Health Employees, threaten our employees with discharge because they supported District 6, prohibit our employees from wearing pins with District 6 insignia, advise employees that it would be futile to select a union other than Local 69, or prohibit our employees from distributing literature and paraphernalia for District 6 during their breaktime.

WE WILL NOT allow District 6 to organize on our premises and to conduct meetings in the lunchroom at our Newark facility or require our employees to attend a union meeting for Local 69.

WE WILL NOT suspend, or otherwise discriminate against our employees because they engage in concerted, protected activities in support of District 6 or any other labor organization.

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

WE WILL make our employee Octavio Valencia whole for any loss of earnings and other benefits he may have suffered as a result of our discrimination against him, with interest.

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

DOBBS INTERNATIONAL SERVICES, INC.
CATERING UNIT NO. 233

Chevella Brown-Maynor, Esq., for the General Counsel.
Fletcher L. Hudson, Esq. and *Mary Jane Palmer, Esq. (McKnight, Hudson, Lewis, Ford & Harrison, LLP),* for the Respondent Employer.
Joseph E. Gulmi, Esq. (Richards & O'Neil, LLP), for the Respondent and the Charging Party Local 69.
Jonathan Walters, Esq. (Markowitz & Richman, Esqs.), for the Charging Party District 6.

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. These consolidated cases were heard by me on November 12, 13, and 14, and December 18 and 19, 1997, in Newark, New Jersey. In Case 22–CA–21580, Dobbs International Services, Inc., Catering Unit No. 233, (Dobbs), is alleged to have interrogated employees regarding their union activities and sympathies (in support of Local 69 Hotel Employees and Restaurant Employees International Union, AFL–CIO (Local 69)), and to have solicited employees to sign a petition against Local 69 and in support of District 6, International Union of Industrial, Service, Transport and Health Employees (District 6), in violation of Section 8(a)(1) of the Act, and to have rendered assistance and support to District 6 by allowing District 6 to organize on its premises and conduct meetings in the luncheon at Respondent's Newark facility, in violation of Section 8(a)(1) and (2) of the Act.

In Case 22–CA–21477, Dobbs is alleged to have threatened employees with discharge because they supported District 6, prohibited employees from wearing hats or pins with District 6 insignia, advised employees that it would be futile to select another union (Local 69 being the incumbent union) and prohibited employees from distributing literature for District 6 during their breaktime, all in violation of Section 8(a)(1) of the Act. In the same case, Dobbs is also alleged to have suspended an employee, Octavio Valencia, because he engaged in union activities (in support of District 6) in violation of Section 8(a)(1) and (3) of the Act and to have rendered assistance and support to Local 69 by requiring employees to attend a union meeting for Local 69, in violation of Section 8(a)(1) and (2) of the Act.

In Cases 22–CB–8289 and 22–CB–8386, Local 69 is alleged to have threatened bodily harm by hitting an employee in the stomach with the butt end of a knife, because the employee supported District 6, a rival union, and to have threatened employees with loss of employment because they inquired about a grievance and to have promised employees money and better employment positions with Dobbs and Local 69 if they supported Local 69 instead of District 6, a rival union, in violation of Section 8(b)(1)(A) of the Act.

Each of the Respondents, Dobbs and Local 69, filed an answer denying commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Each of the parties has filed posthearing briefs. Each of these briefs has been carefully considered. Upon the entire record in these consolidated cases, including my observation of the witnesses and their demeanor, I make the following

FINDING AND CONCLUSIONS

I. JURISDICTION AND LABOR ORGANIZATION STATUS

At all material times Dobbs, a corporation, with an office and place of business in Newark, New Jersey, (Dobbs' facility), has been engaged in providing inflight food and beverage catering services for various airlines at Newark International Airport. During the 12 months preceding issuance of the consolidated amended complaint on July 7, 1997, Dobbs, in conducting its business operations, provided services in excess of $50,000 directly to customers located outside the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The consolidated complaint also alleges both Local 69 and District 6 as labor organizations within the meaning of Section 2(5) of the Act. While Dobbs, in its Answer, admitted the labor organization status of Local 69, it denied knowledge or information sufficient to form a belief as to such status for District 6. Most recently, in *Cedar Grove Manor Convalescent Center et al.,* 314 NLRB 642 (1994), the Board adopted my conclusion, based on District 6's representation of employer Cedar Grove's regular service and maintenance employees for many years in collective bargaining, that District 6 is a labor organization within the meaning of the Act. Accordingly, I find that both Local 69 and District 6 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Since approximately 1987, for the last 10 years, Local 69 has been the sole collective-bargaining representative of all production employees employed by Dobbs, including cooks, food transporters, finalizers, storeroom helpers, liquor packers, loader/helpers, porters, utility workers, sanitation, food preparation employees and lead employees, and excluding all other employees. At the time the events in the instant proceeding began unfolding, Local 69 and Dobbs were parties to a collective bargaining agreement, running from August 1, 1993, to July 31, 1996.

In the late spring and summer of 1996, District 6 engaged in an organizing campaign among the unit employees seeking to supplant Local 69 as their bargaining representative. On or about June 28, 1996, District 6 filed a representation petition in Case 22–RC–11252. On July 17, 1996, the Regional Director of Region 22 administratively dismissed the petition on the grounds of contract bar.

In mid-July 1996, Dobbs and Local 69 concluded negotiations on a successor collective-bargaining agreement, and, following a ratification vote conducted among unit members the same day, July 12, the circumstances surrounding which is alleged in this proceeding as a rendering of unlawful assistance and support by Dobbs to Local 69, the parties entered a new agreement covering the period August 1, 1996, through July 31, 1999.

District 6 filed with the Board on August 12, 1996, a request for review of the Regional Director's dismissal of the petition. Also, at some point in late July 1996, Dobbs employees filed a union security deauthorization petition in Case 22–UD–373. While the Region scheduled a hearing on the UD petition for late September 1996, it was not held and further proceedings on it were suspended as a result of the charge filed by Local 69 in Case 22–CA–21580 on September 19, 1996, alleging Dobbs' interference in support of District 6 and rendering support to District 6.

On November 6, 1996, the Board granted District 6's Request for Review, summarily reversed the Regional Director's dismissal, and concluded, as asserted by the petitioner, that the agreement contained an illegal union security clause, and held the agreement not to be a bar to District 6's petition. Nonetheless, the Region continued to block processing of the RC petition on the basis of its investigation of the instant charge in Case 22–CA–21580, which since has resulted in issuance of the complaint, later consolidated with the three other cases for hearing herein as previously described.

As a consequence, processing of both the RC and UD petitions continue to be blocked pending resolution of the instant complaint proceeding.[1]

B. Dobbs' Alleged Acts of Interference, Assistance, and Support in Favor of District 6

Counsel for the General Counsel called two witnesses in support of its case-in chief in Case 22–CA–21580. The first, Leander King, testified that he was a cook employed by Dobbs for three and a half years up to 1996. His immediate supervisor was Benson Yu, Dobbs' executive chief, whose status as a supervisor within the meaning of Section 2(11) of the Act was admitted by Dobbs in its answer, while denying his status as its agent under Section 2(13) of the Act.

King was aware that District 6 was at Dobbs' facility between May and July soliciting support among employees. Sometime before July 4, 1996, Yu told him he was getting a new Union, District 6, and asked King if he was going to join, to which King replied, no, he was represented by Local 69. King later noted that Yu did not have a petition in his hand.

During his cross-examination by Dobbs' counsel, King explained that he was at his workstation in front of a grill, grilling chicken, when Yu walked up to him and made the comments noted above. King insisted that Yu did not preface his remarks with any form of greeting as he had in the past when conversing with King.

When questioned as to whether he ever had any conversations at all about the Union at any time during his employment King replied "Of course. He had written me up." It turned out that those write ups were for being late to work and had nothing to do with the Union. King admitted he never had any other conversations with Yu about the Union. When asked whether Yu in any way, by any actions toward him or in his presence, gave him any reason to believe he was for District 6 and wanted him to sign a District 6 card, King at first repeated his testimony that Yu asked if he was going to sign up and then when the question was repeated started to reply he didn't know what his—and was at that point abruptly cut off in his answer at (Tr. p. 44, L. 4). Based on these exchanges, it is apparent that King could not even report Yu's own union preference, even apart from whether Yu, in expressing himself, could be reasonably said to represent the view of Dobbs or have his remarks and conduct imputed to Dobbs. Later King noted nothing he

[1] District 6 filed an application with the Board on May 9, 1997, seeking review of the Regional Director's decision contained in a letter of April 28, 1997, continuing to pend the petition until the violations alleged in Case 22–CA–21580 are remedied. At close of hearing herein, that application had not yet been ruled upon. In its submission District 6 argues that Dobbs and Local 69, the incumbent union, have engaged in collusive conduct, seeking to delay the processing of its petition and the opportunity for the unit employees to express their preferences in a Board conducted election. The alleged collusion includes a belated filing of the charge in 22–CA–21580 following the employees' filing of the UD petition in an effort to frustrate employee choice.

observed while at Dobbs during the summer of 1996 District 6 organizing period led him to believe that Dobbs supported District 6.

During cross-examination by District 6, King acknowledged he had been a member of Local 69's 8 to 15 member negotiating committee which negotiated between May and July for a successor labor agreement.

King also became aware that Jose Cardenas was passing out literature for District 6. When he saw Cardenas doing this it was at a meeting held among employees in the eating area of the lunchroom/cafeteria. He saw no Dobbs' manager or supervisor in the vicinity while the meeting was in progress.

King did recall observing people from District 6 on Dobbs' property talking and passing out leaflets to employees probably on break in the yard abutting the loading dock where Dobbs' trucks are kept and loaded for delivery of foods to airlines at nearby Newark Airport. The yard is enclosed by a fence containing an open gate through which the trucks enter and exit. Employees enter and exit through this yard as well. Although there is a guard booth near the gate it has not been manned. King did not see any supervisors or managers in the yard while the District 6 people were present.

According to King, employees could talk about union matters while at work but could not stop working while doing so; he was unaware of any Dobbs' rule prohibiting such conduct.

King described the workday, which included day and night shifts, as including a half hour break for lunch as well as a 15 minute break period. King, who worked in the kitchen as a cook explained that he took his break when he didn't have anything else, meaning work assignments, and he could get away. King's experience and understanding, which I credit, was later echoed and confirmed by the employee, Octavio Valencia, who is alleged to have been discriminatorily disciplined by Dobbs for supporting District 6 and whose case will shortly be considered.

The second witness to testify about Dobbs' assistance to District 6 was Kevin Bradley. He had been employed by Dobbs for 5 years in January 1996 and worked in the storeroom. For the past 2 years he had been a shop steward for Local 69. Bradley described the District 6 campaign in summer 1996 as starting outside, handing out pamphlets, then he saw a District 6 representative inside the facility by the timeclock handing out pamphlets to mostly Spanish speaking employees and then he saw a different District 6 representative inside the cafeteria at a meeting of employees in July.

The cafeteria is divided into two parts. A first section when one enters has soda and other food dispensers, and beyond a partition which is open some six to seven feet, another larger section contains tables and chairs for eating and socializing.

Bradley looked into the larger lunchroom section while getting a soda and saw a stranger from District 6 holding up a pamphlet and soliciting support. There were about seven employees present seated at a few tables. He saw Yu seated at a table near the other employees. When he looked in Yu saw him, came out to the food and drink dispenser area and asked Bradley if he was going to sign up, to which Bradley responded, no. Earlier that day Yu had tried to get him to sign a District 6 pamphlet (which contained a form membership or authorization card). Later that day, Bradley saw Yu walking around handing out the District 6 pamphlet to a couple of employees.

Bradley had seen nonemployees in the Dobbs' facility lots of times. They came in for job applications or they may be lost, but he has also seen strangers escorted out by Dobbs' supervisors. In later testimony Bradley recalled that Dobbs has signs posted at the plant entrance, visitor's report to the office and no soliciting.

Bradley didn't know if the seven employees he saw in the cafeteria were on break; the meeting was in the evening. Yu was seated facing the speaker and not more than four feet from a table at which five employees were seated. Bradley had concluded the speaker was from District 6 because he had pamphlets in his hand, and Bradley had never seen him before at the Dobbs' facility. He later described him as a dark skinned Spanish guy, thin, about 30 years of age. The District 6 representative in the yard was also Spanish looking, but short and not as dark, and the one at the timeclock was also Spanish, little taller than Bradley, who is 5 feet 6 inches, a little stocky and about 28 or 29 years old.

During his cross-examination by Dobbs' counsel, Bradley was obliged to acknowledge a conflict between his testimony, and pretrial affidavit dated September 18, 1996, which he gave to a Local 69 lawyer, in which he swore that Benson Yu had come to the door of the storeroom to solicit his signature to a card in support of District 6. Bradley insisted that his present testimony, that Yu approached him inside the cafeteria, is true and that his sworn statement is not. The storeroom is 10 feet away from the cafeteria. The significance of this conflict is that Bradley had particularized his testimony about the event, recalling on the stand that Yu approached him while he was getting a soda at the dispersing machine, after looking and seeing and being seen by Yu in the inner cafeteria. Bradley agreed his recollection of the occurrence was better on September 18, 1996, 2 months afterward, rather than at the trial on November 12, 1997.

As to the meeting Bradley briefly witnessed, in his affidavit Bradley fails to mention at all Yu's presence in the cafeteria at a District 6 meeting. Bradley confirmed on the witness stand that the meeting which Yu attended was the only one he observed, yet in his affidavit he related that, "during July 1996 I saw District 6 people holding meetings and passing out cards and literature in the Company cafeteria. I know the supervisors of Dobbs knew this because I saw several supervisors walk in and out of the cafeteria while this was going on." In later testimony, Bradley clarified that the supervisors were only in the dispensary portion of the cafeteria and not the larger, inner dining area.

Further testimony by Bradley established that entry into the Dobbs' facility through a locked door at the top of the loading dock normally requires knowledge of an access code which is punched into a lock attached to the door. Visitors who are seen through the glass portion of the door may gain access without knowledge of the code. An inner door past a small vestibule has the same code barring entry. The timeclock and timecards are on a wall past the inner door and close to a transportation

office with windows open onto the kitchen area which is occupied at times by transportation managers.

During further examination Bradley now added, for the first time in conformity with his affidavit and a leading question from Local 69 counsel, that in Yu's approach to him, Yu responded to his refusal to sign for District 6 with the statement, go ahead, go ahead because Local 69 is not going to represent you.

Just as with respect to King, Bradley similarly testified that he had no indication of information that would support a conclusion that Dobbs supported Benson Yu's support for District 6.

During the presentation of Respondent Dobbs' defense to the allegations in Case 22–CA–21580, Stuart Manore, Dobbs' general manager of the Newark facility during all relevant periods alleged, denied that any Dobbs' supervisor, including Benson Yu, to his knowledge, supported District 6. He first learned of Yu's alleged expressions of support for District 6 when the original complaint in Case 22–CA–21580 issued on or shortly after March 7, 1997.

Manore further testified that other than one instance of his personal observation of a nonemployee present in the Dobbs' employee parking lot, a matter as to which he took prompt responsive action to be later described, he was unaware of any other occasion when District 6 was allowed to come onto the property, or into the facility to organize, and he received no reports of any such activity. He was also unaware of any District 6 meeting addressed by a District 6 representative held in the cafeteria in the summer of 1996 and received no report of any such meeting. Manore uniformly instructed supervisors to prohibit such entry and to request any outside organizer or stranger to leave the premises and report the incident to him. Yet, in a position statement submitted by Dobbs counsel on November 22, 1996, to the Region's Board agent assigned to the investigation of the charges herein, it was Dobbs' stated position, based on its own investigation that ". . . it does appear that District 6 representatives both employees and nonemployees, were on the Employer's premises engaging in organizational activities at various times. . . . Organizational meetings were held in the cafeteria and to the best of the Employer's knowledge, supervisors were in the cafeteria and did not say anything to representatives." Such statements undermine Manore's contrary denials, and make evident, at the least, an awareness of, and tolerance toward, the presence of District 6 organizer's at various places in the facility, including its lunchroom.

Manore, during later cross-examination by District 6, related that during the 1996 organizing period he had talked personally with Yu, as he had with other supervisors, to make clear that the Company had no interests in favor of either of the two competing unions, the Company was to remain completely neutral, that if employees approached him about the campaign to respond that they had to make their own decision. Manore also met with Yu in 1997, as well as during the last 2 weeks preceding the trial in the conference room at the Newark facility. On this last occasion Respondent's attorney met with Yu in preparation for the trial. Attorney-client privilege as well as attorney-work-product privilege were interposed as objections to further questioning about this meeting. Yu ceased employment with Respondent prior to this interview. Nonetheless, as it involved the period of time when was a managerial or supervisory representative of Dobbs, I prohibited further questioning as barred by the attorney client privilege and probably attorney work product privilege as well. When District 6 president, William Perry, expressed an intention to testify about a recent conversation he had held with Yu as to his conduct in issue I rejected that offer as violating the hearsay rule. District 6 later withdrew an offer to produce Yu as its witness.

It is evident that Respondent chose not to call Yu as its witness to contradict the testimony of both King and Bradley. While no longer an employee, based on his availability to Respondent in the period immediately preceding this hearing, I am prepared to draw the reasonable inference that if he had testified his testimony would not have aided or buttressed its defense that Yu did not engage in conduct alleged as interference in support of District 6 and was not present during a District 6 organizing meeting held on its premises, knowledge of which may be imputed to Respondent.

While I have some question about King's reliability as a witness, based on his lack of responsiveness to questions posed to him, and while Bradley appears to have changed his testimony as to the location of his interchange with Yu, I am prepared to credit both of them regarding King's exchange with Yu, and Bradley's witnessing Yu at the District 6 meeting and their later conversation, particularly in the absent of any testimony from Yu. As the exchange between them was first claimed by Bradley to have taken place only 10 feet from his later description of the sites of their conversation, I conclude the difference is not significant. Neither is Bradley's failure to name Yu in his affidavit and his apparent exaggeration as to the supervisory witnesses being present at the District 6 meeting in the cafeteria.

Benson Yu's one man campaign on behalf of District 6 cannot be dismissed as an isolated act, unworthy of consideration. Neither can I accept either witnesses' failure to attribute Yu's conduct to Dobbs. While an employer might legitimately be held not responsible for knowledge of employee union activity where the supervisor privy to such knowledge denies having informed the employer, *Dr. Medgal*, 267 NLRB 82 (1983), here the supervisor agent failed to deny his conduct, no other witness denied Yu's conduct, and the test for determining the impact of Yu's conduct on employees is not subjective but the reasonable inference which flows from his activity. Yu's interrogations and solicitations on behalf of District 6 may be appropriately imputed to Dobbs, based on his status as a Section 2(13) supervisor and agent (contrary to Dobb's denial), even though Dobbs had not specifically authorized or, indeed, may have specifically forbidden Yu's conduct. *Plumbers Local 250 (Murphy Bros.),* 311 NLRB 491, 496 (1993); and *Longshoremen Local 6 (Sunset Line*), 79 NLRB 1487, 1509 (1948). I conclude that by questioning, and then suggesting strongly, through Yu, to at least two employees that they signify in writing their support for District 6, and that District 6 was replacing Local 69 as their representative, and by distributing District 6 literature to other employees, and further by permitting a District 6 organizing meeting to be chaired by an apparent District 6 representative to take place on its facility attended by its su-

pervisor, Yu, and a District 6 representative to distribute literature and solicit at the time/clock and in the yard, Respondent engaged in acts of unlawful interrogations, solicitation on behalf of one of two competing unions, and rendered assistance and support to District 6 in violation of Section 8(a)(1) and (2), respectively, of the Act. See, generally, *Momfort of Colorado, Inc.,* 256 NLRB 612 (1981).

C. Dobbs' Alleged Acts of Interference and Threats, Assistance and Support in Favor of Local 69, and Suspension of Employee Octavio Valencia Because of His District 6 Activities

Counsel for the General Counsel called four witnesses in support of its case-in-chief in Case 22–CA–21477. Pedro Rosa had been employed for 6 years in the dishroom as a dishwasher. He worked a shift from 3 to 11:30 a.m. He spoke to other employees during the summer of 1996 in favor of District 6.

Rosa testified that on July 4, admitted Assistant Manager and Supervisor Fernando Dantas told him and 13 other employees present in the dishroom they were going to see a training movie about food service. Another supervisor in the warehouse, Sheridan, also told them to see the movie. At the time he and the other employees were directed to view the movie their workshift had concluded. They were then directed into the kitchen and the doors past the kitchen through a vestibule out to the loading dock were locked. When they arrived in the kitchen, there were about 200 other employees present as well as agents from Local 69, including Business Representative David Feeback. Neither he nor the other dishwashers saw a training movie that day. Rosa had entered the kitchen through a door next to the office which is always open.

Rosa explained that after he arrived in the kitchen he heard an argument going on about the union contract which had already been signed. The meeting was being conducted in English and Rosa who testified with the aid of a Spanish interpreter understood very little. Since he didn't want to hear this, he opened the door through which he had entered in order to leave, but Supervisor Fernando Dantas told him he had to stay there because of the meeting. Dantas was also present at the meeting. A second union official Rosa identified as being present at the ratification meeting was Robert Baker, a trustee appointed by the International Union to oversee the affairs of Local 69 which had been placed under an International Trusteeship. Later testimony and the parties' stipulation established this meeting as a meeting of unit employees to ratify the successor labor agreement between Dobbs and Local 69 which was made effective August 1, 1996, for a 3-year term.

During his cross-examination, Rosa explained that the workshift of the 14 dishroom employees, including himself, at the time of the July ratification meeting, finished at 11:30 a.m. It was around 10 a.m. when the group was informed that they would be viewing a training movie and it was around 11 a.m. when they were directed to the meeting in the kitchen. Rosa earlier noted that the ratification meeting lasted about half an hour.

He had seen training movies in the past in a room on the second floor of the Newark facility next to the Company office area. On this occasion he did not remember Company managers and supervisors telling him that the movie had been cancelled.

From 11 to 11:30 a.m. Rosa was waiting with many other employees in the kitchen area while the meeting was being conducted. He stayed for a half hour and listened as best he could. Then, at 11:30 a.m., Rosa sought to exit the meeting, but was stopped by Dantas who was not in the meeting area, but was standing outside in a hallway on the other side of the exit door. After being escorted back into the meeting, Rosa remained there until 12 noon, when Rosa did leave out to the parking lot without being stopped while the meeting was apparently continuing. This summary and clarification of Rosa's testimony while under Respondent Dobbs' cross-examination constitutes a piecing together of responses which, to say the least, were disjointed and lacked clarity. Nonetheless, Rosa's narrative, disjointed as it is, does clarify his earlier testimony on direct, clarifying in particular that the meeting lasted beyond his workshift, and provides credible evidence of his being required by a Dobbs' manager to remain in attendance at the Local 69 contract ratification meeting held on Dobbs' facility beyond his workshift, and his having been initially apparently mislead as to the purpose of his gathering with other dishwashers near the end of his shift, when the real purpose served by Dobbs and Local 69 was to hold him and other workers in order to provide Local 69 with members in sufficient numbers to ratify the agreement.

Another employee, Octavio Valencia, testified that he was employed as a driver by Dobbs, having started in December, 1993. His supervisor were Carlos Munoz and George McBride. In the summer of 1996 he was being paid at the rate of $10.10 an hour for a 40-hour week. He, along with a few other employees, Pedro Mejia and Jose Cardenas, led the organizing drive for District 6. He spoke to many coworkers and solicited many signatures to a petition to persuade District 6 to seek to represent them. He also solicited employees to sign District 6 authorization cards which he distributed to them in the summer of 1996.

On one occasion, after punching out at 2:30 a.m., he had approached a female coworker at the pantry section, and had spoken four or five words to her about making a change in representation, when the pantry supervisor, Kayla Adino, came over to them and told him you can't do that here because this may cost your position, you could lose your job if you solicit and try to change union representation. Valencia defended what he was doing to Adino, told the employee he would speak with her the next day, and then left.

Valencia also described the uniform employees wore to work. It included dark blue slacks, a white shirt with red lines with the Dobbs' logo on the chest, a blue cap with the Dobbs' name, and a blue jacket to wear in winter. When Valencia started working for Dobbs he was issued two slacks, four shirts, a jacket coat for winter and another overcoat and a cap. Although never informed in writing by Dobbs about its uniform policy, he was aware that the uniform worn by the employees was part of the company's regulations. On two occasions Valencia was disciplined over his failure to wear the regulation uniform, and it is the circumstances surrounding the second of

these two instances which comprises the Government's claim of discrimination by Dobbs against him.

In 1994 after working for Dobbs for some 6 months, Valencia reported for work on a particular day wearing the regular uniform but without the hat. Valencia was aware that in the kitchen—working near or with food—an employee could not be without a hat. Later testimony established that kitchen employees were issued and wore hairnets, and drivers and other employees who handled food containers, whether closed or open, were required to wear the uniform cap. His then supervisor, Jose Rosario, asked why he wasn't wearing his hat, and Valencia said he didn't have it because he wasn't given one. After his originally issued hat had deteriorated after repeated washings, he had asked for a replacement but was told the Company didn't have one to give him. After Rosario repeated his question in what Valencia described as a very rude way, and Valencia responded he didn't have one, Rosario told him if you don't wear a hat you might as well go home. Valencia left, and at home he was informed by Rosario by phone that he had been suspended for 5 days.

Then, in late spring or early summer 1996, Valencia arrived at work to punch in at 4 p.m., wearing a different pair of pants not part of the uniform, a pair of light blue jeans. Manore saw him and said you can't come here like this. Valencia explained that the pair of Company pants he had was all torn up. Manore told him not to punch in and sent him home. Valencia stayed off work that day, without pay. His conversation with Supervisor Kayla Adino earlier described had taken place some time before this incident.

Valencia related that on this same day he was sent home, before he left the facility he saw an employee, a fellow driver named Chandler, wearing a pair of black colored jeans not Company issued, just as he had all day on past occasions. He had also seen on other days another employee, Raymond Cruise, who also works in transportation, wearing all day an article of clothing not issued by Dobbs, either very blue or black jeans. On none of these occasions, did he ever see a Dobbs' supervisor or manager send the offending employee home as he was.

During his cross-examination, Valencia explained that the female employee he had approached on the morning Kayla spoke to him, was at her workstation but was leaving it for the cafeteria to take her authorized break from work, and Kayla Adino did not tell him she did not want him bothering her employees while they were working but had questioned him about talking about a change to District 6 for which he could lose his job. Valencia understood that if the female employee had been working when he approached her it would have been wrong to interfere with her work.

On the day following his being sent home for not wearing proper uniform pants, Valencia returned to work, first reporting to the employee in charge of payroll, Lenora, who issued him a pair of uniform pants which were too small in size but which he wore. Following this day, he purchased two pairs of dark blue pants out of his own funds. Valencia explained that since having been issued the original two pairs of pants when he started work early in 1994, he had received another two pairs a year and a half later, and by this time they had deteriorated, and one was torn, as he had described. Valencia also denied that the jeans he had worn the day he was sent home were cut offs. Also, when he had asked before the incident for replacement pants the company did not have any available and it appeared to take a longer period for them to be received at the facility. Recently, he had approached Lenora for another pair, she wrote down his size, and he expects to eventually receive a pair.

Valencia acknowledged receiving workrules, training manual and taking a training test which, inter alia, included material about Dobbs' employees working on the ramp at the airport being required to wear a clean Dobbs' uniform. A page of Dobbs' workrules and correction action, provides a series of progressive disciplines running from a warning through 3- and then 5-days suspension subject to discharge, for improper dress or appearance.

While Valencia denied that Benson Yu helped District 6 as for as he knew, no evidence was submitted through Valencia that he was either aware or unaware of Yu's approaches to employees King and Bradley, Yu's solicitations on behalf of District 6 or Yu's presence at the District 6 meeting in the cafeteria led by a District 6 representative.

During his cross-examination by Local 69 counsel, Valencia explained that when he first saw the female employee he was going to the cafeteria to get some coffee to take home, and she was standing at the corner of her worktable fixing some aluminum paper, but not working. When he approached her she said I'm gong over there now, to the cafeteria, and he said I just have three or four words to speak to you, started to mention the process of their changing unions, and that's when Kayla came over and told him not to speak with anyone.

In a pretrial affidavit which was taken of the witness by a Board agent, with the use of an interpreter, Valencia swears regarding this incident, that ". . . Kayla . . . a supervisor told me that I should not pass out the petition paper stating that the employees wanted District 6 to be their union, because I could lose my job. We were in the belt section of the plant, there were two female employees in the area, but I cannot recall their names. When the supervisor approached me the female employees walked away. The union did not tell me I would be fired because I supported District 6."

While I received the affidavit in evidence, I find that it does not undermine Valencia's credibility and is not inconsistent with his testimony which provides far more detail as to the circumstances of his interchange with the female employee. That Valencia mentions two females in the area, does not conflict with his testimony about approaching only one. Neither does the description of the workarea, the belt section of the plant, conflict with his ready acknowledgment that the female worker was still at her worktable when he approached her.

During later cross-examination by Dobbs' counsel, while being questioned about his knowledge and understanding of the Company uniform rule, Valencia responded that while he was aware of the rule, for the Company to expect the employees to obey those rules they have to give the uniform to the employees on time. This goes to the essential issue involved in Valencia's alleged 1-day discipline, as to whether the discipline was imposed at a time when the employee had attempted to procure replacement pants from Dobbs but could not because none were

then available and thus, the discipline may have been unfairly and unreasonably imposed out of pique or concern for his strong known commitment to replacing the incumbent Union with District 6, as illustrated most forcefully in his testimony attributing anti-District 6 animosity to Supervisor Adino. Furthermore, if Respondent had such a strong concern with enforcing its uniform policy, why wasn't it similarly imposed on Valencia's fellow workers, as he related it was not. I conclude that at the completion of the Government's case on behalf of Valencia, it has made a prima facie showing of violation of Section 8(a)(1) and (3).

Jose Cardenas, one of the three employee leaders of the District 6 organizing effort, was a driver employed by Dobbs from December, 1993 to October, 1997. He had been a Local 69 shop steward for 2 years, 1995 and 1996. Another was Luis Vazquez, whose alleged conduct presents another issue to be discussed infra.

Cardenas, like Valencia, had not received uniform replacements timely when he requested them. On those occasions his requests were not honored, he reported for work lacking hat, shirt, or pants, without incident, other than a reminder by a supervisor to wear his uniform, and a statement that he could be suspended in the future, unlike the instance when Manager Manore sent Valencia home.

Cardenas also wore to work a District 6 pin on the front of his uniform cap as well as a Local 69 pin on the front pocket of his uniform shirt in the summer of 1996. Each pin made of metal with a rear pin clasp, is distinctive in color and design. The District 6 pin is round, roughly the size of a dime and contains two bold eagles set against a royal blue background and has lettering "District 6, IUISTHE" on its face. The Local 69 pin, roughly the size of a nickel but perhaps best described as having a crest design, is predominantly gold with an outline circle of multiple colors of red, green, blue, yellow and white in its circular portion containing the words of the unions international affiliation abbreviation "H.E.R.E." in dark print in the circle's center, and the words "Local 69," also in dark print, in the lower crest portion. The pins, in evidence, cannot be mistaken for each other and make distinctive visual impressions.

George McBride, an admitted Dobbs' supervisor, told Cardenas to remove the District 6 pin on his hat, but did not tell him to remove the Local 69 pin affixed to his shirt front. Cardenas removed the District 6 pin as ordered. McBride did this on two occasions, once in front of the transportation office and the other time as he exited the cafeteria. On another occasion, standing in front of the dishwasher, Assistant Manager Fernando Dantas told him not to wear those pins of District 6. At the time, Cardenas had both pins affixed to his shirt. He removed the District 6 pin but left on the Local 69 pin.

So long as Cardenas continued as Local 69 shop steward through 1996 he continued to wear the Local 69 pin daily, but never again wore the District 6 one.

Cardenas also reported that other employees who reported to work out of uniform and worked a full shift, among them Chandler and a Richard Hampton who worked inside in the kitchen, were not sent home or suspended.

On one occasion during the summer of 1996, while they were going up the stairs to the second floor, Manager Manore told him it was impossible to remove Local 69 from Dobbs because this local had been born there, and he should stop supporting District 6.

During his cross-examination by Dobbs' counsel, Cardenas acknowledged that he had provided four affidavits in connection with this case. The first one, provided to the Union on July 24, 1996, asserts, inter alia, that the affiant, Cardenas, heard Stuart Manore tell groups of employees, including himself, that every person who votes for District 6 would lose their jobs and he brought Local 69 in and he would force people to respect Local 69. It appears that these statements constitute exaggerations which the witness later specifically disavowed in subsequent pre-trial affidavits provided directly to a Board Agent. Thus, in an affidavit of April 17, 1997, in paragraph 5, Cardenas specifically denied hearing Manore tell any other employees they will lose their jobs if they vote for District 6 and in paragraph 6, Cardenas denied hearing Manore tell any employees that he brought Local 4-69[2] in and he would force people to respect Local 4-69. He did relate in paragraph 6 a Manore response to his own statement critical of Local 69, that the union was born over here and you will see "the union here for a long time," and in paragraph 8, Manore, on another occasion, after asking him why he wanted to switch unions, and after Cardenas explained why, informed him that it is going to be difficult to make the change to another union, both statement being consistent with Cardenas' testimony under attack. It is thus apparent, in light of this April 17, 1997, affidavit, that Cardenas' statement in an affidavit taken by the same Board agent earlier on October 22, 1996, asserting that "Stuart Manore, general manager did not make any statements to me about District 6 . . ." must be viewed in the context of the paragraph 3 in which it appears which relates primarily to the restrictions company managers and supervisors had placed on his wearing District 6 insignia, matters which corroborate Cardenas' testimony. I am thus, unwilling to find that Cardenas' testimony has been impeached upon a complete evaluation of his various pretrial affidavits, and I credit his testimony relating both to the restrictions placed on his display of the District 6 pin, while permitting him to wear and display that of Local 69, as well as his corroboration of Valencia's testimony regarding what appears to have been a disparate treatment relating to Valencia's noncompliance with the Dobbs' uniform policy, and Dobbs' own inability to provide timely uniform replacements.

While Cardenas mentioned Octavio Valencia as one of two employees who were sent home by Dobbs to change their uniforms and who were allowed to come back to work, in follow up questioning he was unaware if the other employee, Sergio Compos, sent home for wearing the wrong color pants, and also the wrong belt and shirt after District 6 had already delivered its petition, came back to work the same day. Since Cardenas did not provide an details as to his witnessing Valencia's being sent home, and Cardenas' minimal reply does not indicate that Valencia was allowed to return the same day (see Tr. 292), without more, I am unwilling to consider Cardenas a reliable wit-

[2] A reference to the Local number used in connection with some Local 69 Taft Hartley benefit funds.

ness to Valencia's exchange with Manore, in which Valencia credibly testified to Manore's direction to him to leave the facility without punching in.

Pedro Mejia, another driver employed by Dobbs, and one of the three leading District 6 advocates among employees,[3] had been employed 8 years at the time of his testimony. On July 7, 1996, while seated in the cafeteria, he was called over by Manager Manore who was standing outside the entrance with Assistant Manager Dantas. Manore asked if Mejia wanted to see him. Mejia said yes, with respect to our rights as employees in connection with a pamphlet or flyer from the NLRB. Here, Mejia had reference to an NLRB Form 5492, an official Government notice to employees which the Regional Office provides to employers to post to inform employees of their rights under the Act when a petition for representation election has been filed, as was the petition in Case 22–RC–1125 on June 28, 1996. The single page Notice in this case was printed in both Spanish and English. Mejia had the Spanish copy and showed it to Manore. When Manore asked Mejia to interpret it for him, Dantas, instead, did so. At this point, Manore got very upset. He saw the National Labor Relations Board label at the bottom of the form. He told Mejia that he had no authorization to place and he didn't want any piece of shit paper placed anywhere in this company, and he didn't want to see him passing out papers of District 6, or other things you can wear on your uniform, nothing that would have to do with District 6. If he did, he would be going to find himself in many problems with the company especially with himself, and he will fire Mejia. Mejia responded, well, okay, and he never again passed out District 6 papers during his breaks.

Leading up to this conversation, Mejia had sought to post the Spanish translation of the form Notice, but was advised by Dantas and Supervisor Jose Rosario that he had to take the matter up with Manore.

Later in the summer of 1996, on a particular day, after working through his normal lunch break, Mejia took some limited time, as was the permitted practice, before he was scheduled to drive to the airport for a food delivery to a scheduled flight, to go to his car in the parking lot where he had District 6 hats, T-shirts, and pins stored, to give a coworker a hat and a T-shirt. Manore came out to the parking lot and told Mejia that he had no right during working time to pass out anything that had to do with District 6 to anyone inside the company. Manore appeared to be very upset when he said this. Mejia responded he was not passing out anything inside the company, but outside the company. He also was not using worktime, he only took 10 minutes for a break. Manore said the items could be passed out during Christmas time. Mejia said he would give Manore a District 6 lot he could wear during Christmas. Manore said that was fine, but he was not to use working time. He also didn't want to see anyone using District 6 pins, shirts, or hats inside the Company and articles not part of the uniform and if Mejia distributed these items he would be fired. When Mejia asked why, Manore did not respond.

[3] Mejia signed the UD petition which employees filed on or about July 31, 1996.

Mejia explained that on this occasion he had gone to his car during a short break he had taken because he had to work through his lunch and normal break time, delivering foods by truck to an airline for a particular flight. Mejia elaborated on this during Dobbs' cross-examination of him. Besides the meal break of half an hour to an hour, employees had regular work breaks before and after meal, varying between 5 and 15 minutes. Normally, they informed their supervisors when taking a break. But the times they took breaks and whether they took them at all depended upon the time they finished with the flights. When one has the time and the supervisor is too busy and he's not in the office, one took the break without informing the supervisor about half the time. But in taking breaks he was guided by both his work responsibilities to meet flight delivery deadlines and supervisory guidance that there was no time to take them. As Mejia explained, "there is a time when one can take a break for lunch at the time one is finished with a flight." (Tr. 328.)

On this particular occasion, Mejia was assigned a flight which ran through his normal lunch break between 11:30 and 12:30 p.m. When he returned to the facility it was close to 1 p.m. He then spent time stripping and cleaning a truck and it was getting close to 2 p.m. when his coworker told him they had been assigned an extra flight. Since he had previously promised a District 6 hat and pin to a coworker who was finishing a shift and heading home he took 5 minutes time for himself and went to his car to give them to him. He was already returning to the truck when Manore called to him. He had not informed his supervisor, but believed he was entitled to take a short work break in view of having been assigned a flight at his normal lunch time which he was required to perform at the risk of discipline for a refusal, and now having an extra flight assigned and not having had any prior free time for a work break. There is no evidence that Mejia did not timely complete his extra flight assignment that day.

I find Meja's explanation of the circumstances under which he took a short period of time from work on the occasion of his reprimand by Manore to be reasonable and a warranted and acceptable interpretation of the manner in which driver employees in particular took break time under the pressures and exigencies of meeting flight schedules in the course of performing their daily delivery work assignments.

Mejia also denied that in his discussion with Manore about posting the Board information notice, Manore either told him then or later that he did not believe he was legally required to post it. I credit his denial.

Respondent Dobbs called two witnesses to counter the Governments presentation in Case 2–CA–21477.

Stuart Manore testified that he had been the manager at the Dobbs' Newark facility for roughly 10 years from 1987 to early 1997. He had been a member of the Company negotiating committee and was present at the Local 69 headquarters in Secacus, New Jersey, in early July 1996 when the successor contract was concluded and a tentative agreement was signed subject to ratification by the members of Local 69. At that time the Local 69 negotiators made a request to Dobbs to hold the employees over until the ratification committee could come to the unit so they could hold a ratification vote. The employees

to be held included morning shift people who worked in the dishroom and in food production. The intention ws to hold the meeting at 10 a.m., but the Local 69 representatives did not leave Secacus until 11 to 11:15 a.m. and didn't arrive at the Newark facility until 20 minutes later.

Manore made arrangements to hold over the morning shift employees in the following manner. He contacted Assistant General Manager Fernando Dantas and asked him to help two Dobbs' employees from the Memphis office who were then in Newark doing inspections and related work set up some training in areas in which employees were weak " . . . and we could utilize that time 'till there's a decision made as to when the union verification (sic) committee was to arrive." (Tr. 334.) What Manore is really saying here is that the training was a device to hold employees past their workshift so that when the Local 69 representatives arrived there would be employees present to ratify the contract. Indeed, as Pedro Rosa testified, the training although ordered was never held, because, as Manore explained "Union committee arrived sooner than we could set up the training classes." (Tr. 334.)

Upon the arrival of the Local 69 representatives and employee bargaining committee members at the Newark facility, they went through the kitchen collecting the employees and Manore gathered the management together and told them to go to the dispatch office and stay off the floor as there was going to be a union meeting. It was Manore's understanding that Dobbs' managers and supervisors stayed off the work floor, in this case the large open kitchen workarea, which included gas ranges, food preparation tables and dishwashing areas.

As concerns Octavio Valencia, Manore testified he did not suspend him. Around the time of the Local 69 negotiations, thus, at the time of the District 6 activity, he saw Valencia on the stairs wearing a pair of light colored blue jeans, cut off at the knees, sewn at the knees as shorts. Manore asked him where his uniform pants were and he said they were at home. Manore asked if he could go home and get his uniform and come back to work and Valencia said he was going to go home to get his uniform. When asked by Dobbs' counsel if Valencia gave any explanation about coming back to work, Manore now added that Valencia said it would be difficult to get back to work, to which Manore repeated his order.

Manore described the uniform requirements as a pair of dark blue pants, pin striped shirt, the hat with the Dobbs' logo, and a windbreaker with the Dobbs' logo. There were no shoe requirements. There are exceptions to the uniform requirement. They include new employees until their uniforms can be ordered. Until the completion of probation new employees wear long blue jeans and a white shirt or are issued a lab coat to wear over their street clothes. Another exception involved the permitted use of company issued short pants to the knee with long socks if a driver requested, due to the heat on the ramp, where food deliveries are made to the airplane. Dobbs also took no action to discipline an employee if in fact uniforms were on order for that person and the Company had failed to provide it. This approximates Valencia's own claim, that at the time he was sent home he had sought without success to obtain pants replacement.

The contract in effect until August 1, 1996, called for the employer to furnish employees with uniforms without cost to them, and to review replacement requests and to replace uniforms with new ones where appropriate.[4]

To counter the Government's claim of disparate treatment toward Valencia regarding compliance with the uniform requirement, Dobbs introduced two employee corrective actions in which employees were disciplined for failing to comply with jewelry and uniform requirements. The first, issued April 10, 1994, to T. Hooks describes the employee's improper dress or appearance, having been given a jacket, hat, and pants and doesn't wear them. The employee was issued a written warning and sent home. The second, dated June 25, 1997, was a written warning issued to a Carmen Claudio, a food worker, for failing to cooperate with company policy regarding no jewelry or watches and only removing same after being asked to do so. Neither of these disciplinary documents come to grips with Valencia's claims that he had complied with the contractual requirement to seek a uniform component replacement prior to receiving his discipline, and, furthermore, that other employees who knowingly failed to comply suffered no adverse consequences.

On October 11, 1994, Valencia was given a 5-day suspension for refusing to put his uniform on when told to do so by the transportation manager. The warning further notes excessive tardiness of 20 minutes or more every day. It would appear that this warning relates, at least in part, to the incident in 1994 which Valencia described when he received a 5-day suspension for failing to wear the uniform hat which had deteriorated and which Dobbs had failed to replace. Absent any contrary testimony from Dobbs on this point, and given the similarity in timing and substance of the written discipline, I credit Valencia's testimony that this 5-day suspension was occasioned, at least in part, by Dobbs having failed to provide him with a replacement hat, in accordance with its obligation under the then existing contract. There is no testimony as to why this matter was not pursued as a grievance under the parties' agreement.

In response to Cardenas' claim that he was directed to remove his District 6 pin at work, Dobbs produced, in addition to the warning regarding Claudio's failure to promptly remove jewelry, an excerpt from its quality assurance manual, the provisions of which employees are informed of in their indoctrination on being hired and thereafter on a regular basis, which bans all jewelry from being warn while engaged in food or equipment handling and storage, except for a plain wedding band. As the excerpt explains, jewelry can act as a hiding place for bacteria, can fall into foods, and can pose a safety risk while working around machinery and kitchen equipment. This prohibition applies not only to all kitchen and related personnel but to all drivers who transport foods in containers to and from the airport and airlines. Another excerpt relating to uniforms addresses the necessity of wearing head covering in the form of a

[4] While the contract in evidence (art. XXIV) does not contain any language regarding replacements, Manore testified that it did (Tr. 344). If not in writing, it may have been an agreed practice governing uniform replacements.

disposable surgical hairnet if handling exposed food or clean equipment/utensils. The cap issued to drivers suffices as head covering, on their transport of foods to the airports. While in the kitchen, the drivers wear a hairnet. A uniform policy form itemizing the required uniform, and hair covering, and prohibiting the wearing of jewelry, and the like, was provided to each employee for dating and signing when new or replacement uniforms were issued. Finally, an extract from a 1995 Federal Drug Administration food code which Dobbs was obliged to follow, provides, in Section 2-303.11, "While preparing food, food employees may not wear jewelry on their arms and hands." The section then excludes a plain ring, such as a wedding ban, from its reach. Section 2-303.11 provides the well reasoned safety rationale for this prohibition.

Manore himself did not knowingly allow supervisors to permit employees to wear Local 69 pins, and the jewelry prohibition applied across the board to pins of both unions.

Manore also testified that one time he was in his office when informed by a transportation manager that a stranger from another union was in the parking lot talking to Dobbs' employees at a picnic table. Manore went out, confronted the person and when he identified himself as working for William Perry, the District 6 President, directed him to leave. Another time, in early July 1996 he saw another organizer, also apparently from District 6, pulling shirts and hats from a car in the lot and when asked to leave, he did so.

When employees approached him with union questions, Manore testified he had a uniform response of maintaining neutrality and referring them to bulletin boards where Dobbs had posted a series of questions and answers regarding the union. In it, Dobbs explained, inter alia, that it had entered a new agreement effective to July 31, 1999, with Local 69; employees who refuse to work or walk out in support of District 6 could lose their job; and, in a response apparently made prior to the Board's reversal of the Region's dismissal of District 6's RC petition, informed employees that cards signed for District 6 could not be counted and its petition was dismissed because filed too late.

Manore denied having any conversations with Jose Cardenas regarding District 6, and did not inform him it was impossible to remove Local 69, to stop supporting District 6, or he could be terminated for doing so.

He did talk with Mejia regarding the Board notice form. After asking if Mejia wanted to talk with him, and Mejia replied it was about posting the notices at the facility, he looked at the notice and said I'm sorry, we can't post these up. He was not mad or angry. He agreed Dantas who was with him, translated the Spanish in the Notice. But prior to this conversation he was given its basic contents and he had received a phone call from corporate headquarters advising him not to allow its posting. He did not threaten Mejia with reprisals for organizing for District 6.

Another time, it was reported to him that their were a group of employees around a car with a trunk open in an employee parking lot on Dobbs' property, which is situated below the truck lot which abuts the Newark facility. Manore also learned that a representative of District 6 was present as well. He went to the area, walked up to Mejia, who had handful of T-shirts and hats and asked him, aren't you supposed to be working. Mejia did not reply. Manore asked him what he was going to do with these. Mejia said he was going to pass them out to employees. Manore said, not on worktime, not on Company property. Mejia said what should he do with these and Manore suggested giving them out as Christmas presents. Mejia returned the items to his vehicle. Manore denied threatening to fire Mejia for distributing union items at the Company.

During his cross-examination Manore agreed that the Local 69 ratification meeting didn't start until 11 or 11:30 a.m. when the day shift ended for dishroom employees. While Manore himself remained on the second floor, he was aware that the executive chief, a supervisory employee, was located at the hood area, ensuring food destined for international flights was not being burned while the Local 69 meeting proceeded near him in an open area in the kitchen. This conflicts with his earlier denial that any supervisors remained on the work floor during the ratification meeting. Other supervisors in the transportation department remained nearby in the transportation communication office, which has a glass window looking out on the open kitchen area.

Manore also acknowledged that even though Valencia had told him his uniform pants at home were dirty, and the Company policy required a clean uniform at work he nonetheless sent him home to change. He, Manore, was aware that the following day, Valencia was wearing Dobbs issued pants. Furthermore, although Unit 233, the Newark facility, employs 250 to 300 employees, Dobbs issued only two corrective actions on improper dress in all of 1994, none in 1995, none in 1996, and only one through February 1997, and that involved jewelry, not dress.

During his cross-examination by counsel for General Counsel, Manore repeated his testimony about a report of employees gathered around an open car trunk, conduct he deemed suspicious and which induced him to the lot, but this time he made no mention of sighting a District 6 organizer. Indeed, in his original recital, Manore makes no mention of discovering a District 6 representative in the lot on his arrival. It is clear that Manore was concerned and motivated by District 6 activity on Dobbs' property whether employees were on their own time or not. And that once he learned that Mejia was involved and the paraphernalia was District 6's, Manore was quick to terminate the activity, even if the employee Mejia was doing it on his own time. In this connection, it is curious that Manore fails to describe the number of employees at the car or what any of them were doing. It will be recalled that Mejia spoke of meeting or providing shirt and hats to only one employee.

During a further examination by the undersigned Manore now refers to a few employees standing in the vicinity as well as a representative from District 6, who was leaving the property in another car as he came near Mejia's car with trunk open. Still later Manore was obliged to admit that although he asserted the individual leaving was a District 6 official, he had no evidence to support that conclusion. During this conversation Manore now mentioned that Mejia told him he was getting ready to load his truck, adding to and modifying his earlier testimony in which he reported that Mejia stood mute when asked if he was supposed to be working. In fact, Manore expressed the view that Mejia was in active work, but he also agreed that employees can take 5 minutes if they have an op-

portunity to do so before they're required to go out on the truck, so long as it's noted to the supervisor. Manore did not know who was Mejia's supervisor between two he named and had not checked as to Mejia's taking a break before he confronted him. Neither did Manore know that Mejia had worked through lunch and had been assigned a rush delivery when he approached him. Neither was Manore aware as to whether any of the other employees in the vicinity were on a permitted break at the time he came up to Mejia. When he started to talk to Mejia they walked away and back into the facility.

During Manore's cross-examination by District 6, he advised that after he became aware of the commencement of District 6's organizational drive in late May or early June of 1996, he informed Local 69 business representative, David Feeback, while talking by phone on another issue.

Manore recalled personally asking between 5 and 10 employees to remove Local 69 pins affixed to their clothing but could not provide any names.

During his redirect examination, Manore described his Company's relationship with Local 69 as extremely hostile, and threatening and intimidating to him personally. There also had been an 11 to 15 day strike preceding entry of the 1993 agreement. Yet, as summarized earlier, the circumstances under which Local 69 was permitted in early July 1996, to obtain Dobbs' assistance in arranging an immediate ratification vote in its facility with union representative presiding and retaining with overtime pay the employees whose dayshift was concluding, under somewhat devious and misleading circumstances, even with a senior supervisory employee remaining on duty in their midst, shows a willingness to accommodate Local 69's interest beyond the ordinary and a coziness which belies Manore's claim of hostility in the Dobbs, Local 69 relationship. The reasons for the haste in cooperating in arranging the ratification vote are not difficult to surmise. Even though two and a half weeks remained before the contract's effective date, an immediate ratification vote to which the effectiveness of the agreement was subject, would make much more difficult District 6's attempt to supplant Local 69 as the Dobbs' employees bargaining representative, and, in particular, provide a stronger defense to District 6's petition just filed on June 28, even if, as later proved true, the parties' preexisting contract was found not to bar the petition because it contained an unlawful union security clause. It is clear that Local 69 was the Union Dobbs wished to keep. And the new contract, made effective August 1, 1996, eliminated the unlawful union security language.

During the 1996 negotiations for a successor agreement John Agothos Sr., the Local 69 president, had accused Manore of favoring District 6 by permitting its organizers to come on the facility and hold meetings and of not bargaining in good faith. Following this complaint, Manore reaffirmed with his managers to remain neutral in the two union campaign and refer all employees to the posted question and answer memorandum previously described. As previously described, that document strongly endorsed the company's continued bargaining relationship with Local 69.

Under further examination by Local 69 counsel, Manore confirmed the presence of Dobbs' executive chef at the range, cooking, while the ratification meeting took place in his vicinity. Other managerial or supervisory employees who were manning Dobbs' operations during this ratification meeting were six supervisors who were in the nearly transportation communications office, receiving and relaying messages to and from airline customers and other Dobbs' management personnel as food services to airlines were being implemented and changed as required. No doors were locked during this time. No instructions were provided Dobbs' supervision as to what to do if employees wanted to leave the ratification meeting. All employees who remained beyond their shift were paid for waiting around, but if they punched out and did not remain they were not paid beyond their punch out time.

At a later point in his cross-examination, Manore exhibited hostility and evasive conduct when pressed about how he learned employees in the facility supported one union or the other, going so far at one point to reply ". . . how we got to my personal opinion is my business." (Tr. 517.)

It is also apparent that Manore, who speaks and understands no Spanish (or Portuguese, spoken by other employees), would have a difficult time communicating with and understanding Spanish speaking employees Mejia, Valencia, Cardenas, and Rosa who testified through an interpreter, when he engaged them in one on one conversations, in spite of his claim, which I discount considerably, that on each occasion, he required a listening check, i.e., having each employee state back what Manore told or asked them. I do not credit Manore that he did that on the occasions these employees attributed threatening, and other coercive statements to him. Manore's lack of understanding of his Spanish speaking employees' responses to him and their awkwardness in communicating with him probably contributed in part to Manore's unconvincing testimony, which I do not credit, that Valencia did not inform him about the torn condition of his pants for example, or that Pedro Mejia did not question the improper and unlawful limitation being placed on his right to distribute District 6 materials on his work break in the parking lot and was not the recipient of an earlier unlawful threat by Manore. While communication between Manore and these employees was perhaps primitive I have no doubt that Manore got his points across to each of these employees whose need for an interpreter was clear even though they each could understand and express themselves in an elementary English form.

Returning to the question of the parties' rush to ratification, when closely questioned about Dobbs' response to Local 69's request to hold over employees for an immediate meeting and vote, Manore could not explain why Dobbs agreed to the procedure, evading a direct response to the question posed (Tr. 529, L. 5–11). When the question was repeated again and again, Manore's response was the same. (Tr. 529–532.) The fact remains that Dobbs was obliged to require its employees to attend the ratification meeting on their own time when it relented to Local 69's request that the precondition to their agreement of employee approval be immediately satisfied. Only by requiring sufficient employee attendance could the parties achieve their objective. No Dobbs' representative informed the kitchen staff, the dishwashing group, that they were free to leave when their aborted training film became a union run meeting at their work place. By retaining at least one key

executive on the work floor and others in a room with a view of the work floor, by permitting the union to direct them to the kitchen area, and by restraining employee Pedro Rosa, among others, from leaving, whether or not doors were locked, it is clear that Dobbs coerced employees, through psychological and well as physical means to remain to legitimize the ratification process and thus achieve an effective contract immune from third party attack, thereby providing unlawful assistance in the process.

Assistant General Manager Fernando Dantas confirmed that he was instructed by his superior, Stuart Manore, by phone about 20 minutes prior to their arrival at the facility that the Union was on the way, they wanted to ratify the contract, and to maintain all the employees in the premises and not let them go home. He passed the instruction to his supervisor that the Union was on the way and not to let anybody go home. The union agents arrived between 12 noon and 12:30 p.m. The first shift had already ended at 11:30 a.m. and the next ended at 12:30 p.m. John Agothos Jr. and Sr. were among these Local 69 agents. Dantas heard John Jr. tell the Local 69 contract committee members who arrived with them that he had gotten all the employees. Dantas himself remained about 25 feet from the meeting area overlooking the cooking section while the employees were being gathered together by the union agent and committee members.

Dantas denied conversing with Pedro Ramos, or stopping anyone from leaving or directing anyone back into the meeting. His denial is not credited and Ramos' more detailed and ultimately clarified recital of Dantas' role in restraining him is credited. Ramos' narrative provides a history of the events commencing with directions to view a training film which is consistent with Dobbs' own except for the business about the locks, which was somewhat confusing but which Ramos finally limited to the exit doors to the loading dock.

Apparently, Dantas, in addition to the executive chef, remained in view of the assembled group of employees, clearly an intimidating factor in controlling the movement of any employees who might seek to leave, such as Pedro Rosa. But Dantas was merely enforcing a directive given to him to retain all day employees for the union meeting.

Dantas' reasoned explanation for the planning of a training session—that Dobbs had scored badly on an inspection conducted by Virgin Atlantic Airways—is inconsistent with Manore's own much franker earlier observation that the training session was a holding device.

The foregoing conduct which I have found took place, including the presence of supervisors at the union contract ratification meeting, the action taken by Supervisor Dantas to restrain and prevent employees from leaving the meeting, and paying the Local 69 members overtime for their attendance at the meeting, amply support a conclusion, which I reach that Dobbs rendered assistance and support to Local 69 in violation of Section 8(a)(1) and (2) of the Act. Under the Board's "totality of circumstances" test, see *Electromation v. NLRB*, 35 F.3d 1148 (7th Cir. 1994), Dobbs' conduct clearly warrants this result. See *Caldor, Inc*., 319 NLRB 728 (1995); and *Keeler Brass Co*., 317 NLRB 1110 (1995).

Dantas also testified that with respect to the enforcement of the uniform policy, he has had occasion to remind Valencia periodically about not wearing his cap, or, hairnet if in the kitchen area, and Valencia invariably complies by putting on the appropriate hair covering. Dantas has also issued instructions to his supervision to enforce the uniform policy as earlier described. On one occasion Dantas sent one employee, Thomas Rosa, home, to get his uniform. He was wearing jeans. Rosa was not disciplined, received no warning, was not required to punch out and lost no pay because of the incident.

As for wearing jewelry at work, Dantas confirmed only wedding bands are allowed, except that transportation employees may wear a watch to assist them in meeting flight and loading schedules. Another exception permits the shop steward for maintenance employees, to wear the Local 69 pin. He is not involved in food production and works in a rear maintenance room. Dantas never saw Cardenas wearing a pin, either the Local 69 or District 6 pin, although he was aware that Cardenas had been a Local 69 shop steward. I cannot credit this denial in light of Cardenas' strong testimony and the physical evidence derived from the pins themselves. As a consequence I further credit Cardenas that on the occasion of Dantas' instructions to him, as well the others to which he testified, he was ordered to remove, and to not wear District 6 pins and paraphernalia, but not the Local 69 pin he also openly wore and exhibited. In this connection, Manore's' testimony denying any conversation with Cardenas regarding District 6, the impossibility or difficulty of Local 69's removal as bargaining agent and his threat to Cardenas to stop supporting District 6 or he could be terminated, is not credited. Manore's evasions and hostility on the witness stand have been previously described.

As to Dantas' denial that he ever told any employees that if they supported District 6 or distributed its literature they could be in trouble or lose their job, he is not credited. Certainly, Dantas engaged in conduct which unlawfully assisted Local 69 when he restrained Pedro Rosa from leaving the Local 69 ratification meeting on his own time. Contrary to Dantas' denial, I find he was also present and remained mute when Manore informed Mejia he would be fired for distributing District 6 literature and also denigrating the National Labor Relations Board notice form. Even Manore agreed Dantas translated the National Labor Relations Board notice while Mejia waited to discuss its posting. Finally, Dantas directed Cardenas to remove his District 6 pin only and not the Local 69 pin he was wearing at the same time. Dantas did argue that he informed Octavio Valencia and another employee, Edgar Parafin, to remove their District 6 pins and caps in the summer of 1996 with the comment that this was not authorized, it was not part of the uniform. While that comment might very well suffice to shield Dobbs from liability under the Act with respect to the cap, because Dobbs, having issued Dobbs' caps with its own name, is entitled, on balance, to have its own uniform and identity presented to the flying public, at the expense of the District 6 organizational objective, see generally, *Eastern Omni Constructors,* 324 NLRB 652 (1997*),* so long as the rule prohibiting

union caps was uniformally applied, which it apparently was,[5] orders to remove the District 6 pin does not carry the same authority, particularly where Dantas had ordered Cardenas during the same period to remove only one of two pins and Dantas had already participated, by his presence and conduct, in coercive conduct toward District 6.

Dobbs' liability under the Act for ordering the removal of the District 6 pin is premised here on its disparate treatment only. It cannot permit Local 69 identification insignia/and thus Local 69 proselytizing to go on unchecked while at the same time disarming District 6 adherents from engaging in the same conduct. This is so, even if the wearing of any pins violates FDA regulations and Dobbs' own apparently more stringent ones. Both union pins could cause health and safety concerns if legitimately raised, see, e.g., *Kendall Co*. 267 NLRB 963, 965 (1983), where the Board held that a rule which curtails an employee right to wear union insignia at work is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline or *to ensure safety* (emphasis supplied), but where one pin is allowed at the expense of the other, Dobbs' defense premised on a health and safety rationale is undermined to the vanishing point and one is left only with an act of interference violative of Section 8(a)(1) of the Act.

Dantas also acknowledged during further examination, that, as testified at one point by Rosa, he was present in the kitchen workarea while the ratification meeting and vote took place, and did not closet himself in his office to the rear of meeting area. There is no question that Dantas was standing within view of employees who participated in that meeting and vote. The presence of the assistant general manager adds another intimidating factor to the allegation, which I have concluded is meritorious, that Dobbs, by Fernando Dantas, rendered unlawful assistance to Local 69 by requiring employees to attend a union contract ratification meeting for Local 69, in violation of Section 8(a)(1) and (2) of the Act.

In the absence of any contrary testimony from Supervisor Kayla Adino, who was not called by Dobbs, and on the basis of Valencia's own credited testimony, I conclude that Valencia was threatened unlawfully by Adino on behalf of Dobbs in violation of Section 8(a)(1) of the Act when he approached a female employee about to go on break to support District 6 and was told by Adino that his attempt to change union representation could cost him his job. I further credit Valencia that he was directed to go home by Manore when wearing a pair of blue jeans and docked pay for the day under circumstances which support the conclusion that Manore's action was motivated by Valencia's known strong District 6 advocacy. I do not credit Manore's version of the events and their conversation, in particular that Valencia wore cut offs, or was directed to change and report back to work. I am convinced that Manore, whose hostility toward District 6 has been separately established on this record, in his assistance rendered to Local 69, threats to other employees and denigration of District 6 to Mejia, seized on Valencia's failure to wear the regulation pants on the date in question, to punish him, without regard to the evidence of Dobbs' toleration of other employees' wearing nonuniform attire on occasion, and without regard to Dobbs' own tolerance of employees' noncompliance when substitute or replacement uniform components are not available although requested. Manore did not stop to determine Valencia's efforts in this regard and acted even though Valencia informed him the pair at home was torn. Manore's directions to punch out appear also to conflict with the assistant manager's more tolerant and flexible response to uniform violations, which resulted in no loss of pay even when employees may be directed home to change. I further conclude that under the Board's *Wright Line* standard, *Wright Line*, 251 NLRB 1083 (1980), affd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), even absent Valencia's protected concerted activity, the same employment decision would not have been made.

D. Local 69's Alleged Threats to Employees of Bodily Harm and Loss of Employment, and Promises of Increased Pay and Better Jobs with Dobbs and Local 69, Because They Supported District 6

The counsel for the General Counsel produced four witnesses to support these allegations.

Andelino Gonzalez testified that he has worked for Dobbs for 12 years. In 1996 Gonzalez relieved supervisors in the dishroom in the kitchen. At the time of his testimony, in December, 1997 he relieved in the dishroom, but also worked in the warehouse 2 days a week.

In the summer of 1996 Gonzalez met with District 6 organizers and decided to support its efforts to become their bargaining agent, replacing Local 69.

On June 6 Gonzalez attended a meeting of employees called by District 6 and held at the Ramada Inn near the Newark airport. Gonzalez arrived at 10:30 a.m. At around 12 noon he saw Louis Vasquez, a Local 69 shop steward and cook, enter. Vasquez came up behind his chair and told him "You are a sell out." Gonzalez replied that he was looking for the best for our employees and better benefits. Vasquez walked away and left the meeting shortly afterward.

Later the same afternoon, Gonzalez went to work in the kitchen. As he entered the kitchen area on his way into the cafeteria, Vasquez, holding a kitchen knife by its handle approached Gonzalez, and with the dull side of the blade made a gesture across his stomach, touching Gonzalez, and told him he was a sell out. Gonzalez said "are you crazy" and kept walking to the cafeteria.

Gonzalez described the knife as being 15 to 18 inches long, metal, with a white handle and having a flat blade. When Vazquez saw Gonzalez enter the kitchen he was cutting something at a worktable.

Prior to this incident Gonzalez and Vazquez had a cordial but distant relationship, exchanging greetings. They were not friends and did not socialize outside work or joke around at work. After the incident the two have not spoken with each other. Gonzalez did not report the incident became he did not want Vazquez to be fired or disciplined. It is clear that taking a work implement or tool and using it as a weapon or in a threatening manner is prohibited conduct under Dobbs' rules.

[5] For these reasons, I will recommend dismissal of this allegation in par. 12 of the consolidated amended complaint.

Gonzalez admitted on his cross-examination by Local 69 counsel that he had been paid $50 or $70 by District 6 for his time and expenses in attending the hearing in New York from his residence in New Jersey and a similar amount for attending the hearing in Newark, New Jersey, on an earlier day.

On cross-examination Gonzalez again described the action which Vazquez took in moving the knife with medium pressure across his body. Gonzalez again testified that Vazquez had held the knife by its handle when he touched Gonzalez' body with it, running the dull side of the blade across his body. He also agreed that the handle is also described as the butt end of the knife. When Gonzalez was then asked to demonstrate Vazquez's action by using a knife which was produced for such purpose, in his demonstration he confirmed his earlier testimony.

In this case, although Gonzalez asserted that he told an agent of the National Labor Relations Board of the incident with Vazquez and provided a written statement to that agent, with the use of an interpreter, Gonzalez was mistaken. The only statement he provided was to William Perry, the District 6 president. In the affidavit Gonzalez first describes Vasquez approaching him at the Ramada Inn meeting, saying he was "bought by District 6" and, then, in pertinent part, stating "Later, when I went to work . . . he pulled out a knife and hit me with the butt in my stomach." The affidavit was read to Gonzalez in Spanish by the interpreter before he was sworn.

In explaining this apparent discrepancy, Gonzalez demonstrated Vasquez's physical act again, showing how Vasquez first touched him, actually hitting him, pushing him with the butt end of the knife, before dragging the blade across his stomach.

The complaint in paragraph 18(a) alleges that Vasquez threatened bodily harm by hitting an employee in the stomach with the butt end of a knife, because the employee supported District 6. The pleading was clearly based on the affidavit which the Union had submitted. Gonzalez had never seen the allegation prior to his testimony.

I am satisfied that the affidavit and Gonzalez' trial testimony are not inconsistent. Both describe a physical act which, accompanied by the taunt of being a sell our or shortly preceded by the taunt at the District 6 meeting, describe conduct engaged in by Local 69 shop steward motivated by a hostility toward Gonzalez' District 6 adherence and which is, prima facie, a violation of the Act. See *Cedar Grove Manor Convalescent Center*, 314 NLRB 642, 649 (1994), and cases cited therein.

While Local 69 counsel makes much of the difference in language appearing, on the one hand in the affidavit and, on the other hand, in Gonzalez' initial trial testimony, I am not convinced that those differences reflect an intentional effort to lie or to deceive. To the contrary, when confronted with the differences, Gonzalez was able to reconcile them in a satisfactory manner. As a consequence, I am satisfied that what was initially described as a movement of the knife across his body, actually started as an initial thrust with the butt end and continued with the movement of the dull side of the blade and that Gonzalez' credibility as a witness is not thereby diminished.

An issue remains, however, as to Gonzalez' status as a rank and file employee or supervisor under the Act. If a supervisor, Vasquez's conduct would not be actionable.

Gonzalez' testified his rate of pay was $11.75 an hour under the 1993–1996 contract. He received an increase to $12.05 under the 1996–1999 successor agreement. He would sometimes relieve the dispatch supervisor to check meat. In clarification of his earlier testimony, Gonzalez testified he was then a leadman in the kitchen, and only relieved supervisors on their day off or when they took a personal day, sometimes at 3 a.m.

On his regular job as leadman, Gonzalez had 12 to 13 people in the dishroom who would break the inbound flights down, placing the dirty dishes and silverware on a belt, moving them into washing machines and then removing and picking them up from the machine. Gonzalez put these people in their jobs, and checked them. He puts them wherever he can to get his work out. Gonzalez reported to either George McBride, an admitted supervisor, or Carlos Munoz. Any complaints he has about his workers, he goes to either of these two floor supervisors.

On occasion, Gonzalez had complaints about a worker slowing down, not getting the work out. When he reported this to Munoz, he was informed to bring the worker to the office. When Gonzalez did so, Munoz talked to the worker in his presence and obtained an agreement to work a little faster. In relating this information, Gonzalez took care to note his limited function, that as a leadman he could not make reports or anything. Thus, on other occasions when a worker was disciplined for a violation of a work rule, the supervisor, Munoz or McBride, issued the written disciplinary warning or suspension, which could be either for 3 or 5 days. First, Gonzalez brought the problem to the supervisor's attention. Then, when a supervisory talk with the worker did not result in any immediate improvement, or if the supervisor determined it was appropriate, he would be sent home by the supervisor, and required to speak to the morning overall supervisor, George Sheridan, the following day. On occasion, the first supervisor would tell Gonzalez to send the worker home or tell him to report to Sheridan. In performing this function, it is clear that Gonzalez was exercising no discretion and was not involved in determining the discipline, either directly or by way of a recommendation or a consultation. But sometimes, Gonzalez was asked to keep an eye on a worker who had been talked to by the supervisor, and, if he worker continued to engage in the same inappropriate conduct, to send the worker in the morning to Sheridan for discipline. In this function, Gonzalez explained that keeping an eye on the dishroom workers was just his job.

If workers wanted to leave their shift early, they would tell Gonzalez who would inform the floor supervisor who then made the decision, without input from Gonzalez.

Gonzalez was hourly paid and punched a timeclock. He did not attend periodic supervisory meetings called by Dobbs.

As to his assigning work to employees, Gonzalez follows Dobbs' instructions he has received from his supervisor or the manager, to rotate the 12 to 13 employees on his shift. He creates a work schedule which, on a daily basis, rotates employees from front job of breaking down the dirty plates and silverware, to the next series of jobs of separating, throwing out garbage and stacking the dishwasher to the rear job of removing and

stacking or packing the clean dishes and utensils. Since there are two machines, roughly six to seven employees are assigned these jobs for each machine. The employees thus, normally work at the same jobs, with rotations, day in and day out. Gonzalez also works along with the employees performing the various functions. Also, while Gonzalez is making his assignments Supervisor Munoz is also present in the dishroom 3 or 4 times a day observing the operation and the employees.

Later evidence showed that both Gonzalez and Vasquez were among a small group of employees in the bargaining unit who were paid more than the scheduled wage rates under the contract. In a memorandum dated September 5, 1996, from Dobbs' New Jersey corporate headquarters to Manager Manore, these two were on a list of 17 employees who were to receive the listed monetary difference opposite their names to be added to the collective bargaining wage rates when annual monetary increases (under the contract) were given. For Gonzalez the difference was $1.90 and for Vasquez it was $.75. Others on the list received a differential of $2.50 and $5.50. Most were less than a dollar. It appears that these differentials for a certain, limited number of unit personnel, represent premium pay for performing lead work in their departments and shifts. The $11.75 Gonzalez was being paid in the Summer of 1996 included this $1.90 differential. He also later described his position as driver's helper in the transportation department although obviously he did not work on a truck. Wage rates for senior positions in the bargaining unit in the year of the 1993–1996 contract, were as high as $9.95, $10.40 and $10.65 an hour. In Sanitation, food preparation and silverware the rate was $7.90 and in equipment setup and equipment handler it was $8.40. Obviously, Gonzalez was being paid a substantial differential along with a select group of other employees for the lead work they performed.

Based on the foregoing facts, I find and conclude that Gonzalez in 1996 was an employee and not a supervisor within the meaning of the Act, and that Local 69's affirmative defense first raised at trial, must fail. The evidence adduced fails to support Local 69's contention that Gonzalez either exercised independent judgment in his assignment of work or made effective recommendations regarding personnel decisions. As to his assignment of work, it all appears to have been of a routine nature, made within strictly established guidelines set by Dobbs' management and without the exercise of discretion. See *Juniper Industries,* 311 NLRB 109, 110 (1993), and cases cited therein. As to personnel decisions, Gonzalez had little or no input. He was not asked for his recommendation, and merely reported infractions, and employee requests for leave and the like to his supervisors. Insofar as Gonzalez was asked on occasion to monitor employee compliance and to send employees to the day supervisor for his disciplinary determination, that activity alone fails to rise to the level of a true independent evaluation of employee conduct and cannot in my judgment support a finding that Gonzalez thereby effectively recommended discipline, since Gonzalez made no recommendation at all and merely sent the employee to a supervisor who ultimately made that determination independently.

Gonzalez' extra compensation alone, is not dispositive of supervisory status, Id., at page 110. Particularly where the perpetrator of the conduct for which Local 69 is being held responsible here, Vasquez, received a similar wage differential, as did other lead employees, that extra compensation should not determine Gonzalez' status. Based on the evidence of record I find Gonzalez to be an employee, whose Section 7 rights could be restrained by the alleged threatening conduct of Vasquez. Accordingly, I conclude the General Counsel has presented prima facie proof of such a violation.

Epifanio Rosario testified he has worked for Dobbs for 12 years. He washes pots in the kitchen. He supported District 6's organizing efforts. In summer 1996 in the kitchen, after his vacation, Louis Vasquez asked if he knew of any cards. Rosario answered he didn't know what card he was talking about. Vasquez now said that if Rosario signed the card, he was going to be fired, that he was going find any way to fire him, and all of those who signed the card. Vasquez also called Rosario a son of a bitch and started laughing. Rosario walked away.

Rosario also heard Vasquez tell other employees that if they signed cards for District 6 they would be fired. Rosario works near Vasquez, sometimes even facing him when he handles trays. When Rosario heard these remarks he was 10 to 15 feet form Vasquez and the employees to whom the remarks were directed were passing by on their way to the cafeteria or the stockroom. The diagram in evidence, from which Rosario could not identify his work location or that of Vasquez, because he does not speak or read English, nonetheless shows the "pot washer" location is just across an open area from the "Hood" where Vasquez is stationed as cook and abuts and backs on the cafeteria and is close to an entrance way leading to the cafeteria.

Rosario testified that these comments to employees continued off and on over the course of the summer during the union campaign. Rosario also overheard Vasquez tell employee Jose Cardenas in the cafeteria to stop talking and a lot of shit, that he was going to break his ass. Vasquez appeared very angry and spoke in a very high voice.

Under cross-examination, Rosario acknowledged that in his pretrial affidavit, taken by District 6 on July 24, 1996, and submitted to the Region, he swore that "Cardenas was told by Vasquez that, if Cardenas tried to sign up employees for District 6, or tried to sign up with District 6 himself, Vasquez would break Cardenas' head. He also told Cardenas that he would kill Cardenas." The affidavit was translated for him into Spanish by a Gloria Perez who works in District 6's office, before he swore to it. Rosario denied that he had ever told the person who took his statement at District 6 that Vasquez had threatened to kill Cardenas and he didn't hear that statement read back to him. Rosario was obviously mistaken about July 2 as the date of this incident since he and Cardenas did not work common hours on that date. I believe Rosario. I am prepared to discount the portion of the affidavit which Rosario disclaims as an exaggeration. It is significant that Rosario strongly reaffirmed his testimony attributing to Vasquez a threat of physical harm to Cardenas, but to Cardenas' backside, not his head, because of Cardenas' District 6 activity, and I credit his account as substantially corroborated in his affidavit.

Jose Cardenas testified that when he served as a Local 69 shop steward in 1995 and through July 1996 he worked a shift from 4 p.m. to 12 midnight and was steward for that shift. On one occasion in July 1996, at about 3:45 p.m. after arriving to start his shift he asked Louis Vasquez, the steward on the morning shift, why he hadn't done the grievance[6] for Gloria Gonzales, who had been fired. Because Vasquez was the union representative in the morning he was in charge of that report, i.e. processing the grievance. Vasquez replied he didn't have to make a grievance for anyone. Later on he threw a spoon at Cardenas. They both went to the cafeteria and Cardenas told Vasquez to sit down and calm down. Vasquez responded, "I don't have any reason to calm down. I'm going to break your face and if you keep bothering me, I'm going to kill you." According to Cardenas, Vasquez was angry, furious and serious while he was reacting to Cardenas' query concerning the employee Gonzales.

Although Cardenas and Vasquez previously had a very friendly relationship with no problems, everything changed when Vasquez became aware of Cardenas' open solicitation of designation cards from employees at the Newark facility. Their relationship turned sour. Once, before the incident involving the employee Gonzales, Cardenas had asked Vasquez what was the problem, why didn't he support District 6. Vasquez replied that 4-69 was a good union but you had to work with it and that everyone who supported District 6 was going to lose their jobs. Vasquez also said that the Company, Mr. Manore, was not going to like this idea and they were going to back 4-69, as a Company, and the International wasn't going to let 4-69 leave.

On another occasion, Cardenas was passing to the kitchen and, being 10 to 15 feet away, heard Vasquez tell some workers, two he identified, not to go fill out the application nor support District 6 because they were going to be fired by the Company.

On cross-examination, Cardenas explained he did not know what, if anything, Vasquez did about Gloria Gonzales' discharge. When pressed as to whether he was aware of any firings stemming from employee support of District 6, Cardenas claimed that aside from the persecutions by the bosses against District 6 supporters, he was singled out for discharge in October 1997, pursuant to a plot between Dobbs and Local 69 just 2 months prior to the instant hearing. Counsel for the General Counsel represented that an unfair labor practice charge alleging his discharge as a violation of the Act had been filed and was under investigation.

Cardenas, like Valencia, received $75from District 6 to cover expenses related to his appearance as a witness on the day he testified, including parking for his car in Manhattan, tolls, meals and the like. Cardenas noted he had also received comparable money to distribute flyers for District 6.

Finally, the General Counsel called Pedro Mejia on the CB cases. He testified that in November 1996 he had been contacted by David Feeback and Alfredo, both business representatives for Local 69, to meet privately with Robert Baker, the International Trustee then overseeing the operations of Local 69 pursuant to an International imposed Trusteeship of the Local. Mejia was at work between 12 noon and 2 p.m. when Alfredo saw him and said, "Oh, thank you Mejia. Thank God we found you because you saved our jobs. Our mission was to find you and try to convince you to have a private meeting with Mr. Bobby Baker." Mejia asked who he was. Alfredo said he was the president of the Union. Mejia asked what does he want to talk to me about. Alfredo replied, "Well, you know, the thing is that we know you have a lot of people with you trying to change the Union from Local 4-69 to District 6." Alfredo went on to explain that 2 weeks ago they had been trying to find Mejia. A week ago, after two of Dobbs' functionaries refused to provide Mejia's home address they were able, independently, through Local 69 records, to locate it, but were still unsuccessful in reaching him. They also had been unsuccessful in finding him at work. Alfredo said the meeting could be at a location of Mejia's choosing, including his house or a restaurant, but Mejia told them to have Baker contact him at work. It was ultimately agreed that Mejia, who starts work at 7:30 a.m., would be at the company cafeteria at 6 a.m. the next morning. The District 6 agents also told him the meeting would concern the unpaid medical bills.

Mejia now elaborated that in past discussions with Feeback and Alfredo he had raised his concerns about the Local 69 health plan's failure to reimburse or pay the medical bills he had incurred. Although assured by them that the problems would be cleared up in 5 or 6 months through the use of cards and elimination of deductibles, they had still persisted. One major problem Mejia had was that Mejia had to sue Local 69 to receive payment of costs he had incurred for an in-hospital operation on his appendix. Mejia was also aware that other employees had expressed similar complaints about the functioning of the Local 69 health plan.

On November 6, 1996, the scheduled date, the meeting proceeded at 6 a.m. in the inner lunchroom or eating area portion of the cafeteria. Mejia and Baker met alone, while Feeback and Alfredo remained in the other section where food is dispensed, at the entrance to the cafeteria. No one else was in the lunchroom area. After confirming his identity to the union official, the official said "I'm Mr. Bobby Baker and I'm the new trustee and I have been sent to this unit to join all the workers/employees from here and to try to reorganize this unit. But I've had information about you that you have a lot of people on your side that are trying to change the union from Local 4-69 for District 6. And Local 4-69 our union is a good union. I don't know why you want to change it for other people."

Mejia answered, "Well, there are many reasons. The main problems that we're having here are the medical bills which are not being paid. What do you tell me about that?" As Mejia described it, Baker immediately changed the conversation and told Mejia, "I am a very old person and I need your help. And for that I will offer you a good position in the Company and in the Union. And for that you are also going to receive an amount of money. But he didn't provide Mejia with a determined sum. Mejia responded, for that he had to convince each of one of the employees who have the same problems as I did because I don't accept money from anyone for that." "Because

[6] The transcript's reference to "agreement" rather than "grievance" is hereby ordered corrected at p. 699, L. 21 and thereafter, as noted by the interpreter at p. 700, L. 14.

if I accepted money then I won't be looking at myself in my face, I'll be looking at theirs. What am I doing for them? If I have problems, I fight for mine. And if others have problems that they can't defend themselves, then I give them a little help."

Baker them told Mejia, if he changed his mind, he would leave his business card and Mejia could call him, but these are good conditions, check it out, look it over. At this point, Baker's voice was very low. The meeting lasted close to 30 minutes. Mejia is unaware of any of his coworkers having a similar meeting with Baker.

Although unlike other Spanish speaking witnesses, Mejia read his affidavits in English before being sworn, he had earlier explained and now reaffirmed that he had sought to have a Spanish speaking interpreter while he testified so he could fully understand and respond to the other attorney's questions. Thus, when providing three affidavits to Board agents, an interpreter was called in to assist on certain questions he didn't understand, and that interpreter remained through the entire interview.

Local 69 called two witnesses to respond to the allegations of violation in the CB cases. Louis Vasquez testified that he had gone to the District 6 meeting held at the Ramada Inn near the Newark Airport in the Summer of 1996. He explained he went to see what they had to offer, in the way of benefits to employees. He stayed about 15 minutes and saw Andelino Gonzalez there while he was leaving. He shook Gonzalez' hand and he told him "traitor but I think it was a joke." (Tr. 797, L. 3.) Vasquez repeated that he was smiling when he accused Gonzalez of being a traitor. Gonzalez replied, I'm doing what I have to do. Although Vasquez claimed he thought Gonzalez was joking when he said this, the statement, viewed objectively, is a serious and sober response to the accusation and, I would judge, unlikely to be made by someone who took Vasquez's accusation as a joke.

After leaving the meeting, Vasquez returned to work at about 12 noon. His work hours were 5 a.m. to 1:30 p.m. He had taken his lunchbreak to attend the meeting, if only briefly. The Ramada Inn is a short walk across the parking lot from the Dobbs' facility. Back at work, he didn't see Gonzalez the remainder of that day. Vasquez denied hitting Gonzalez with a knife and running it across his chest or attempting to strike him. He claimed he would have been fired on the spot for such conduct, but there was no evidence that a supervisor saw him and Gonzalez refused to inform supervision. He admitted to having an argument with Joseph Cardenas and swinging at him with his hands across the table.

After the exchange of words with Gonzalez at the Ramada Inn Gonzalez turned away when they passed and they did not talk to each other. Prior to the incident they conversed as friends. When later asked by Local 69 counsel if Gonzalez laughed about his accusation at the time, Vasquez agreed, but he had not given such a reaction by Gonzalez when first questioned about the incident. I do not credit this afterthought. Neither do I credit Vasquez' characterization of his accusation as a "joke." When Gonzalez refused to greet or talk with Vasquez after the incident at the Ramada Inn (and the incident with the knife later that day, as asserted by Gonzalez) it is apparent that Gonzalez, just as any reasonable person, took Vasquez' accusation seriously and sought to avoid any contact with the perpetrator thereafter.

Vasquez agreed that he worked as a cook around 10 to 15 feet from Epifanio Rosario's workstation washing pots. Vasquez denied making any statements in Rosario's presence telling employees not to sign District 6 cards. Vasquez explained he did express to employees his concern that with the expiration of the Local 69 contract only 1 month away, employees would lose out in benefits for the period they might very well be without a union. But he also mentioned to employees that if they could get somebody in with a better medical plan, he would be with them. He did not express an opinion either way that employees should support either Union. He spoke to employees on either worktime or break time, whenever employees asked questions of him. Vasquez, of course, was a Local 69 shop steward.

Now, Vasquez denied saying anything directly to Rosario about signing a card on behalf of District 6, adding that at that time, he, Rosario, was working a different shift. He believed Rosario's shift in the summer of 1996 was between 2:30 or 3 p.m. until 10:30 or 11 p.m. Later, in September Rosario was switched to a shift starting at 7 a.m. As earlier noted, Vasquez testified his shift ended at 1:30 p.m.

As to his run in with Jose Cardenas, Vasquez testified that on one occasion, Cardenas, the Local 69 steward on the afternoon shift, approached him about an employee names Maria Vasquez, yelling and screaming. Cardenas was complaining that Maria Vasquez, a member of management, was apparently performing bargaining unit work, as a coordinator. This was work that at times was performed by management employees and at other times by bargaining unit employees. Vasquez replied to Cardenas that he had raised the issue with management, and as a result, he believed that Vasquez, as an exempt employee had a right to perform that work under the management rights clause of the agreement.

Cardenas kept yelling and screaming that if Vasquez couldn't do the job (of steward) let somebody else do it. Vasquez then took a swing at Cardenas across the table at which they were sitting in the kitchen, but missed him. This happened before the District 6 organizing campaign. After this incident, Cardenas, who had previously asked him questions about the union contract, never came back to him.

As to Gloria Gonzales, Vasquez was familiar as to her dispute with the Company. She had been suspended 5 days after an accident while driving for Dobbs. She worked on a later shift but had come to him with her dispute. He had accompanied her to a meeting with supervisors who offered her a job on the floor in the kitchen, but not driving a truck to the airlines. Gonzales rejected the offer but also didn't want a grievance filed or processed and did not return to work after her suspension. Cardenas had told him about Gonzales' suspension but Vasquez did not describe any dispute between them arising from his failure to file a grievance for her. Interestingly, although Vasquez acknowledged Cardenas coming to him about Gonzalez' suspension, he also had testified that Cardenas never came back to him after he took a swing at him before the District 6 campaign. Cardenas had set the month of the Gonzales conversation with Vasquez as July, during the District 6 cam-

paign. Vasquez did not provide a date of this conversation during his direct examination, so did not dispute Cardenas' time frame, an internal conflict in Vasquez's testimony that was not resolved. While Vasquez denied ever inquiring from Cardenas about his District 6 affiliation or support, he did not deny having knowledge of it in July 1996.

During cross-examination by the District 6 President, Vasquez admitted learning of Cardenas' and other employees' support for District 6 at the District 6 meeting at the Ramada Inn. He also admitted not knowing the meaning of the word traitor. He had addressed Gonzalez in Spanish at the Ramada, calling him a bandido, meaning he had sold out. Vasquez also agreed that when he was cutting something with a knife at work he would have one in his hand.

During the General Counsel's later cross-examination of him, Vasquez clarified that he first learned of Gloria Gonzales' suspension from Cardenas, who had asked him what he was going to do about her. This recital is consistent to a point with Cardenas' but leaves out Vasquez' negative, bellicose, and physically threatening reaction to Cardenas which Cardenas related. It was after Vasquez contacted Gonzales 3 or 4 days after her suspension and she came to see him that they attended the informal meeting with supervision which resulted in the offer which Gonzales rejected.

Vasquez, who described himself as a cook and leadman, recited his lead duties as helping other less experienced kitchen employees perform their jobs with meats, vegetables and other foods, but that he had no authority to recommend hire, fire, suspension for any employees, and had never been told that he had any. His pay of $11.85 in the last year of the old contract exceeds the first cook's pay of $10.40 by $1.45 and appears to represent, just as with Gonzalez and the others listed on the memorandum previously described, a premium to compensate them for the performance of their lead duties.

Vasquez also recalled that Local 69 Trustee Baker had posted a notice to employees that if they had any questions about Local 69, he would be at the facility at 6 a.m. on a certain day to answer their questions. No such notice was produced. Later, on rebuttal Pedro Mejia testified he saw no such notices. I find no such notice was posted.

In later rebuttal testimony, Rosario testified that although his regular hours in July 1996 were from 3 p.m. until 11:30 p.m., he had been switched to mornings for some days in his work week after returning from a week's vacation in July starting around July 4. He had heard Vasquez' threatening comments when he was working mornings on his return.

On cross-examination, when confronted with his pretrial affidavit which states that he heard Vasquez physically threaten Cardenas on July 2, 1996, Rosario insisted he heard the threats, but his testimony about when his work hours would have overlapped or been similar to Vasquez' was confusing. Since the matter of their work hours had become significant in light of Vasquez' assertion that Rosario worked a different shift from his in July 1996, I ordered the production of Dobbs' time records for Vasquez and Rosario for June, July, and August 1996.

These records[7] show that contrary to Vasquez' claim that Rosario worked a different shift, and therefore their paths could not have crossed at the facility in the crucial time period, both employees' work hours significantly overlapped in the kitchen on a number of days in June and July 1996, during the height of the District 6 campaign.

Although Rosario was mistaken as to his recollection of a change in shifts during the summer of 1996—his hours remained consistent from approximately 1 p.m. until 9:30 p.m., on most days in the 3 months—and his vacation was from July 12 or 13 until July 19, not earlier, Vasquez' work hours significantly overlapped those of Rosario from early June through the end of July, 1996. Thus, in the work weeks for Vasquez commencing Monday June 3, Saturday June 8, and Monday June 16, Vasquez consistently accumulated overtime hours of an hour or more beyond his regular 1:30 p.m. end of shift. Indeed, on some days during this period Vasquez worked beyond 3 p.m., more than an hour and a half after Rosario started his workday. During the week of Saturday July 6 to Friday, July 12, Vasquez worked 2 separate time periods on Wednesday, July 10, from 4:09 a.m. to 7:24 a.m. and 1:02 p.m. to 4:54 p.m.; on Thursday, July 11, from 5:02 a.m. to 4 p.m.; and on Friday, July 12 from 4:58 a.m. to 5:13 p.m. Vasquez' overtime hours of 2 or more continued to the end of July.

By placing reliance on the impossibility of his speaking with Rosario because they worked different shifts, Vasquez placed in issue to a significant degree his own credibility. The facts establish that Vasquez had the opportunity on a good number of days in June and July to exchange words with Rosario across the 10 to 15 feet which separated their workstations. I find that Vasquez deliberately misstated his own work hours in an attempt to avoid having to lie about the threats he made to Rosario and to other employees in Rosario's presence. Having now discredited Vasquez on a major conflict in testimony between himself and Rosario, I also find that Vasquez' reliability for truthfulness has been so undermined as to make his denials of his alleged threats and physical conduct with Gonzalez, and his physical threats to Cardenas, unbelievable, apart from the other bases for discrediting his testimony previously discussed.

Finally, Robert Baker testified as to his private meeting with Mejia. Prior to his appointment by the International president as trustee to oversee the operations of Local 69 on October 21, 1996, Baker had been an International organizer, a function be continued while serving as trustee. His job as trustee was to run the Local, determining which employees to retain, and to administer its contracts and to assure continued services were being provided by the Local. As the Local 69 officers had been removed under the trusteeship, Baker administered the Local in

[7] I have ordered the record reopened solely to receive these documents in evidence. ALJ Exh. 1 is Dobbs' counsel's letter to the parties dated December 31, 1997, accompanied by the Vasquez and Rosario June, July, and August 1996 timerecords; ALJ Exh. 2 is a two page letter from Dobbs' counsel to the parties dated January 7, 1998, explaining abbreviations/designations used on the timerecords; and ALJ 3(a) and (b) are District 6 and counsel for General Counsel stipulations to the explanations and meanings of the designations. No stipulation was received from Local 69.

their stead. The trusteeship terminated December 6, 1997, and his role, accordingly, ended at that time.

In early November 1996 Baker met with Pedro Mejia, pursuant to arrangements which had been made by the business agents. One reason he met Mejia was to see what his legitimate gripes were about the health and welfare. Another reason was that Baker knew that Mejia was a strong supporter for District 6, information he had received from his business agents.

He and Mejia met alone in the cafeteria. Baker wanted to convince Mejia that the Local was in good hands now. He began the conversation by explaining why he was there as International trustee and explaining that there were going to be alot of changes of the servicing of the Local and they would try to service the health and welfare better, and that the old 'gang,' i.e., leadership, was no longer there.

Baker went on to say that he had been around this business all his life, that he had serviced Dobbs House (a predecessor entity) down in Philadelphia for years, helped organize that location, and so understood its operation, a very tough one. He was seeking Mejia's confidence that the Local would do a better job for him, the place would be serviced, and he would bring in another agent who spoke Spanish.

He heard out Mejia's complaints about failures to pay medical plan benefits for which he was compelled to sue, failures of the agents to meet the workers, by-passing them to meet with management, and a complaint about a particular shop steward not servicing the people properly.

Baker asked Mejia to contact him personally about future health and welfare or other complaints and gave Mejia his card. He never spoke with Mejia again. He denied promising money if Mejia cooperated with the Local or that he had influence and could effect Mejia's job.

Baker acknowledged that Mejia was the only employee he met privately at the Dobbs' facility. They spoke for 10 to 15 minutes. He met with other employers, in groups, between 15 and 20 in all, later in the day, as they came into the cafeteria on work breaks.

Baker denied that he had any authority to promote Mejia. He further noted Mejia's wages were established by the collective bargaining agreement. But, as earlier established, a number of unit employees had received significant and recognized pay differentials over the years.

During his cross-examination by counsel for the General Counsel, Baker denied that he was aware that Local 69 business agents had previously arranged for Mejia to meet with him at 6 a.m. and he did not ask for the meeting to be set up. As he explained it, Pedro was there that morning and they, the business agents, pointed Pedro out to him and he said he wanted to talk to him, alone. Given Baker's prior understanding of Mejia's strong District 6 adherence and leadership role among employees, and his interest in having Mejia get the word out to his supporters that Local 69 was changing, his explanation as to how the meeting was set up does not ring true. Particularly is this so, in the face of Mejia's testimony of the business agents' multiple attempts to reach him, which have not been denied. Baker believed work breaks commenced at 6:30 a.m., yet he arrived at 6:00 a.m. and met an employee whose work day starts at 7:30 a.m., again circumstances which undercut Baker's explanation of a serendipitous happenstance which allowed him to meet privately with Mejia for 15 minutes at the facility.

During his later meetings with other employees, Local 69 agent Alfredo was present to translate the Spanish being spoken by them. But both agents were instructed to remain at the other, outside portion of the cafeteria when Baker spoke with Mejia . According to Baker, Mejia's understanding of English was quite good.

In further explanation of the origin of the Trusteeship, Baker related that as a result of a law suit filed by the Federal Government against the International Union, the Court had appointed a monitor to oversee the affairs of the International who, in turn, had removed the Local 69 officials and imposed the Trusteeship on the Local. Baker also explained that the Local 69 Health and Welfare Fund was self funded, collecting all contributions, administering and paying out claims. As a consequence of a Federal raid on the Funds office and records related to the suit, its ability to adequately service members and pay claims had been seriously eroded, thus contributing to the problems in processing and paying claims which Mejia described.

Mejia was a responsive, intelligent witness whose detailed and careful recital of the circumstances surrounding, and leading up to, and of the details of, his meeting with Baker are credit worthy and believable. Baker's awkward and obviously insincere attempts to distance himself from any prior plan to meet with the most important dissident employee in the bargaining unit invites incredibility. The full circumstances in which Baker found himself, seeking to turn Local 69's fortunes around, in the face of a strong organizing movement by an outside union, further support the finding I make, that Baker sought to buy Mejia's and his group's support by offers of a good position with the Company and the union, Local 69, and an unspecified amount of money.

Having found that Local, by Louis Vasquez, threatened bodily harm to employee Andelino Gonzalez, and that he did so, because Gonzalez openly supported District 6, and, further, that Vasquez threatened employee Jose Cardenas with physical harm because he inquired about employee Gloria Gonzales' suspension and whether a grievance was being persued on her behalf, under circumstances which established that Vasquez was well aware of Cardenas' support of District 6, I conclude that both incidents constitute violations by Local 69 of Section (b)(1)(A) of the Act. Such threats made to employees under such circumstances have consistently been held to violate the Act. See *Nassau Insurance Co*., 280 NLRB 878, 880 (1986). Such conduct reasonably tends to restrain or coerce employees in the exercise of Section 7 rights, in this case Gonzalez' right to continue to support District 6 and Cardenas' right to discuss and inquire about grievances as an employee and Local 69 shop steward.

Vasquez' multiple threats made to employees that they would be discharged if they supported District 6 presents a slightly different issue. The Board's test applied here to determine liability on the part of Local 69 for Vasquez' conduct is whether the employee recipients of the threats could reasonably be expected to evaluate these remarks as noncoercive. In *Janler Plastic Mold Corp.,* 186 NLRB 540 (1970), the Board

dismissed an exception filed to a Regional Director's report recommending that it overrule the employer's objections and certify the petitioner. The employer argued in the exception that the petitioner union had threatened that employees would lose their jobs if they did not vote for petitioner. The Board concluded that such remarks did not reasonably have a tendency to coerce employees. This was so because the vote was to be by secret ballot under conditions safeguarded by the Board and there was no evidence to show employees had reason to believe petitioner could ascertain their vote, and because there was no evidence to show any employee had reason to believe the employer favored Petitioner and was disposed to honor a request to discharge any employee who voted against Petitioner. *Underwriters Laboratories,* 323 NLRB 1, 3 (1997), followed this line of reasoning, in part, in dismissing a similar objection.

The special facts herein clearly distinguish those two cases. Vasquez' threat was not premised on the outcome of a secret ballot election, but on support for District 6 as manifested by attendance at its meetings, distribution of and acceptance of its literature, signing its authorization cards and the like. Such employee conduct would readily show to Vasquez, and Local 69, an employee's preference between Local 69 and District 6. Even more telling, Dobbs' overt support and assistance which it provided to Local 69 in arranging the July 12 contract ratification meeting, which supervisors attended, and which employees were prevented from leaving and for which employees received overtime pay, demonstrated to employees their employer's disposition to support Local 69 and honor a Local 69 request to discharge them. Other conduct showing this preference, include the posted question and answer notice about the campaign, Manager Manore's own threats to discharge District 6 supporters, and his later one day suspension of employee Valencia.

Thus, employee awareness of Dobbs' assistance to Local 69 and its retaliation against District 6 supporters would surely have led them to reasonably believe that Local 69 could carry out its threat by asserting its influence with Dobbs. See *Commercial Workers Local 56,* 316 NLRB 182 (1995).

Trustee Robert Baker's promise to employee Pedro Mejias of money, a good employment position with Dobbs, and with Local 69 if he supported Local 69 warrants the same analysis and conclusion. While Baker held no position of authority with Dobbs, Local 69's preferred status with Dobbs known to Mejia, and most significantly, Mejia's knowledge of Dobbs' animus and hostility toward District 6 as a recipient of Manager Manore's threats and denigration of District 6, is convincing evidence, that Mejia may have reasonably believed that Baker could influence Dobbs to provide him with the better employment position Baker promised. There is little question that Baker and thus Local 69 could fulfill his promise of money and a good Local 69 position. Each of these promises of benefit were made to induce Mejia and has followers to support Local 69 to the disadvantage of District 6, and thus constitute promises of benefit to coerce and restrain Mejia in the exercise of his rights under Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Dobbs International Services, Inc., Catering Unit No. 233, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union, Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO, and District 6, International Union of Industrial, Service, Transport and Health Employees, are each a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees regarding their union activities and sympathies, soliciting employees to sign a petition against Local 69 and in support of District 6, threatening employees with discharge because they supported District 6, prohibiting employees from wearing pins with District 6 insignia, advising employees that it would be futile to select another union, and by prohibiting employees from distributing literature for District 6 during their breaktime, Dobbs has been interfering, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

4. By allowing District 6 to organize on its premises and to conduct meetings in the lunchroom at its Newark facility, thereby rendering assistance and support to District 6, and by requiring employees to attend a union meeting for Local 69, thereby rendering assistance and support to Local 69, Dobbs has engaged in violations of Section 8(a)(1) and (2) of the Act.

5. By suspending employee Octavio Valencia because he engaged in union activities in support of District 6, Dobbs has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in one labor organization, District 6, and encouraging membership in another labor organization, Local 69, in violation of Section 8(a)(1) and (3) of the Act.

6. By threatening bodily harm by moving a knife across the body of an employee because the employee supported District 6, a rival union, threatening another employee with physical harm because he inquired about a grievance, threatening employees with loss of employment if they supported District 6, and by promising an employee money and a better employment position with Dobbs and a position with Local 69 if he supported Local 69 instead of District 6, Local 69 has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

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

REMEDY

Having found that Dobbs and Local 69 have each engaged in certain unfair labor practices, respectively, in violation of Section 8(a)(1), (2), and (3) and 8(b)(1)(A) of the Act, I shall recommend that they each cease and desist therefrom and take certain affirmative actions which are necessary to effectuate the policies of the Act.

I shall recommended that Dobbs make employee Octavio Valencia whole for loss of earnings and other benefits he may have suffered as a result of the Respondent Employer's unlaw-

ful discrimination against him, consisting of the employer's 1-day suspension of him without pay. Such amount shall be computed in the manner prescribed in *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[8] I shall also recommend that in accordance with the time restraints set forth in *Indian Hills Care Center*, 321 NLRB 144 (1996), Dobbs expunge from its files any references to Valencia's unlawful suspension.

As to Dobbs' unlawful assistance rendered to both District 6 and Local 69, such conduct may be appropriately remedied by undertakings set forth in the Order and Notice Dobbs will be required to post. Neither counsel for the General Counsel nor District 6 has requested that the more stringent remedy of setting aside the Dobbs/Local 69 collective-bargaining agreement be imposed. In the absence of an attack on the agreement itself (apart from the conduct concerning the successor agreement's ratification by unit employees) or a finding that the parties' conduct is of such a character as to affect adversely the union's ability to represent the employees in the daily administration of the contract—surely, not the case here—the Board will not impose such a remedy. See *Ardent Furniture Industries of Pennsylvania,* 164 NLRB 1163 (1967).

With respect to the status of the pending RC petition filed by District 6, I first note that although Benson Yu's unlawful interrogation and solicitations for District 6 have been imputed to Dobbs, there is no evidence that Dobbs' higher management was aware of it. Neither is their knowledge by management of his presence at the meeting held in its cafeteria led by a District 6 representative. As a consequence and because Yu's conduct appears to have been limited to a handful of unit employees, and there is no evidence that his solicitations actually resulted in card signings for District 6, Yu's conduct would appear to be insufficient to have tainted District 6's designation cards for purposes of its representation petition. Furthermore, I recommend to the Board and to the Regional Director, in light of my findings and conclusions herein regarding Dobbs' and Local 69's unlawful conduct, and the apparent disparity between the nature and degree of the assistance it rendered District 6 of a relatively minor nature, on the one hand, and the active assistance it provided and the related coercive conduct in which it engaged, in support of Local 69, on the other hand, that the decision to continue to block the petition be reevaluated. As will be recalled, District 6's application to reverse the Director's decision was pending review by the Board at close of hearing herein. Surely, the Regional Director has the discretion, with the authorization of the Board in this case, to process the representation petition filed by District 6, notwithstanding the pendency of the charge in Case 22–CA–21580, see *Celebrity, Inc.,* 284 NLRB 688 (1987), and in my judgment it would be appropriate to exercise it here.

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

On these findings of fact and conclusions of law and upon the entire record, I issue the following recommend[9]

ORDER

A. The Respondent, Dobbs International Services, Inc., Catering Unit No. 233, Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their union activities and sympathies, soliciting employees to sign a petition against Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO and in support of District 6, International Union of Industrial, Service, Transport and Health Employees, threatening employees with discharge because they supported District 6, prohibiting employees from wearing pins with District 6 insignia, advising employees that it would be futile to select a union other than Local 69, and prohibiting employees from distributing literature and paraphernalia for District 6 during their breaktime.

(b) Allowing District 6 to organize on its premises and to conduct meetings in the lunchroom at its Newark facility, and requiring employees to attend a union meeting for Local 69.

(c) Suspending, or otherwise discriminating against employees because they engaged in concerted, protected activities in support of District 6 or any other labor organization.

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

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

(a) Make employee Octavio Valencia whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to its unlawful 1-day suspension of Octavio Valencia, and notify him in writing that this has been done and that its suspension of him will not be used against him in any way.

(c) Within 14 days from the date of this Order, remove from its files any reference to its unlawful one day suspension without pay of Octavio Valencia, and notify him, in writing that this has been done and that this action will not be used against him in any way.

(d) Preserve, and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Newark, New Jersey facility, copies of the attached notice

[9] 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.

marked "Appendix A."[10] Copies of the notice on forms provided by the Regional Director for Region 22, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer 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 Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 14 days of service by the Region, post at the same places and under the same conditions set forth in (d) above, copies of Respondent Local 69's notice marked "Appendix B."

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

B. The Respondent, Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening bodily harm by making aggressive physical gestures with a knife against the bodies of employees because they supported District 6, International Union of Industrial, Service, Transport and Health Employees, a rival union, threatening employees with physical harm because they inquired about a grievance, threatening employees with loss of employment if they supported District 6, and promising employees money and a better employment position with the Respondent Employer and a position with Local 69 if they supported Local 69 instead of District 6.

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

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

(a) Within 14 days after service by the Region, post at its offices and meeting halls in Secaucus, New Jersey and elsewhere copies of the attached notice marked "Appendix B."[11] Copies of the notice on forms provided by the Regional Director for Region 22, after being signed by Respondent Local 69's representative, shall be posted by Respondent Local 69, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 69 to insure that said notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, post at the same places and under the same conditions as set forth in (a) above, as they are forwarded by the Regional Director, copies of Respondent Employer's notice marked "Appendix A."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Local 69 has taken to comply.

IT IS FURTHER ORDERED in Case 22–CA–21477 that so much of paragraph 12 of the consolidated complaint that alleges that the Respondent Employer committed an unfair labor practice in violation of Section 8(a)(1) of the Act by prohibiting employees from wearing hats with District 6 insignia is hereby dismissed.

Dated, Washington, D.C. June 23, 1998

APPENDIX A

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT interrogate our employees regarding their union activities and sympathies, solicit employees to sign a petition against Local 69, Hotel Employees and Restaurant Employees International Union, AFL–CIO and in support of District 6, International Union of Industrial, Service, Transport and Health Employees, threaten our employees with discharge because they supported District 6, prohibit our employees from wearing pins with District 6 insignia, advise employees that it would be futile to select a union other than Local 69, or prohibit our employees from distributing literature and paraphernalia for District 6 during their break time.

WE WILL NOT allow District 6 to organize on our premises and to conduct meetings in the lunchroom at our Newark facility or require our employees to attend a union meeting for Local 69.

WE WILL NOT suspend, or otherwise discriminate against our employees because they engage in concerted, protected activities in support of District 6 or any other labor organization.

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

WE WILL make our employee Octavio Valencia whole for any loss of earnings and other benefits he may have suffered as a result of our discrimination against him, with interest.

WE WILL remove from our files any reference to our unlawful one day suspension of Octavio Valencia, and notify him in

[10] 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."

[11] 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."

writing that we have done that and that our suspension of him will not be used against him in any way.

DOBBS INTERNATIONAL SERVICES, INC. CATERING UNIT NO. 233

APPENDIX B

NOTICE TO MEMBERS
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 threaten bodily harm by making aggressive physical gestures with a knife against the body of employees because they supported District 6, International Union of Industrial, Service, Transport and Health Employees, a rival union, threaten employees with physical harm because they inquired about a grievance, threaten employees with loss of employment if they supported District 6, or promise employees money and a better employment position with Dobbs International Services, Inc., Catering Unit No. 233 and a position with our Local 69 if they supported Local 69 instead of District 6.

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

LOCAL 69, HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, AFL–CIO