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

CAPITAL ROOTS, INC.

and **Cases 03-CA-300872**
03-CA-319059

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 200 UNITED

Alicia Pender Stanley, Esq.,
for the General Counsel.
Paul S, Tagatac, Esq. (Goldberg Segalla, Rocky Hill, Connecticut) and Sanjeeve K. DeSoyza and Hildy M. Curtin, Esqs (Bond Schoeneck & King, Albany, New York)
for the Respondent.
Mairead E. Connor, Esq. (Syracuse, New York)
for the Charging Party.

DECISION

OVERVIEW OF THE CASE[1]

Arthur J. Amchan, Administrative Law Judge. This case was tried in Albany, New York from March 11-15, 2024. SEIU Local 200 filed the initial charges on August 8, 2022, and May 31, 2023, and the General Counsel issued a consolidated complaint on January 25, 2024.

On July 5, 2022,[2] Respondent voluntarily recognized the Union as the exclusive collective bargaining representative of all Respondent's full-time and part-time employees.[3] On May 8, 2023, it withdrew recognition, illegally, according to the General Counsel. The General Counsel also alleges that Respondent committed various unfair labor practices.[4]

[1] Significant transcript errors:
Tr. 213, line 13. That is not this judge addressing counsel by her first name.
Tr. 536, lines 22-23 should read: I'm going to receive it and consider whether I think you are prejudiced by it.

[2] All dates herein are in 2022 unless otherwise specified.

[3] Excluded from the Unit were: Interns, volunteers, student workers, AmeriCorps Vistas, managers, supervisors, and guards as defined by the Act.

[4] I have read and considered the briefs filed by the General Counsel and Respondent. The Charging Party has essentially adopted the General Counsel's brief.

These alleged violations include:

Terminating Greg Campbell-Cohen in violation of Section 8(a) (5), (3) and (1).[5]

`Terminating Cody Bloomfield on August 3, in violation of Section 8(a)(5) and (1) without giving notice to the Union and an opportunity to bargain.[6]

Violating Section 8(a)(3) and (1) by denying Bloomfield a flexible work schedule on about July 25.

Issuing a written warning to Bloomfield on about July 29.

Issuing Melissa Spiegel a negative performance appraisal on August 31.

Denying access to its internal data base to bargaining unit employees on July 5, 2022.

Numerous statements in violation of Section 8(a)(1) by Respondent's Chief Executive Officer, Amy Klein on:

June 16, 2022, immediately upon receiving employees' request for recognition of the Union.

July 22, 2022

August 5, 2022

August 11, 2022

An allegedly coercive interrogation of Greg Campbell-Cohen by Deputy Director Julie Clancy on June 16.

Alleged surveillance of an employee's email account by Community Development Director Sean Wyse on July 29.

Maintenance of a rule limiting use of Respondent's property, including computers for Respondent's business.

Disparate enforcement of this rule against pro-union employees.

[5] Respondent contends that Campbell-Cohen is either a supervisor, manager and/or confidential employee not protected by Section 7 of the Act, Tr. 31, Answer, G.C. Exhibit 1(p); Affirmative Defense 15.

[6] The General Counsel does not allege that Respondent violated Section 8(a)(3) in terminating Bloomfield.

Violating Section 8(a)(5) and (1) by unilaterally:

Altering job classifications.

Eliminating job classifications.

Creating job classifications

Withdrawing recognition of the Union on May 18, 2023.

As set forth below, I dismiss the complaint with respect to its most important allegations: the discharges of Greg Campbell-Cohen and Cody Bloomfield and Respondent's withdrawal of recognition from the Union.

FINDINGS OF FACT

Jurisdiction

Respondent, Capital Roots is a private nonprofit food service company located in Troy, New York. It derives gross revenues for operating expenses in excess of $50,000. It purchases and receives goods valued in excess of $5,000 at its Troy facility from points outside of New York State. Respondent is an employer engaged in commerce within the meaning of the Act. The Union, SEIU Local 200 is a labor organization within the meaning of the Act.

Matters at Issue/Chronology

Respondent's mission is in part to make fresh vegetables accessible and affordable to persons who would not otherwise have access to healthy foods. It also plants trees around the Albany, New York area, manages numerous community gardens and has educational programs designed to introduce low-income persons to healthy eating habits. Respondent maintains Veggie Mobiles, mobile markets that take fresh vegetable to low-income areas.

Amy Klein, Respondent's Chief Executive Officer, has worked for it since before 2000. When she was hired, Respondent had only 2 employees and an annual budget of $60,000. Its planned budget for 2024 is about $4,000,000. Some of its funding comes from state grants and donations. In June 2022, it had well over 30 employees. Klein reports to a Board of Directors.

The Director's Meeting of Thursday, June 16, 2022

Most of Respondent's directors (not the Board members, but higher-ranking individuals), met privately with CEO Amy Klein and Deputy Director Julie Clancy regularly, and did so on Thursday, June 16, 2022. This meeting occurred in a conference room on the second floor of Respondent's office building. Greg Campbell-Cohen, the policy director, regularly attended such meetings, including the June 16 meeting, which were not open to Respondent's employees who were not directors.

At the beginning of the meeting a group of about 10 employees knocked on the door. They entered and presented a letter, Jt. Exhibit 17. addressed to CEO Klein, the directors and the Board of Directors. Employee Niki Russell read part of the letter out loud and then the non-director employees left the room. The letter stated that employees felt unsupported in their work. In it, employees complained about the high rate of staff turnover, unsafe working conditions, an inability to take their half-hour lunch break, and exclusion from information about Respondent's plans and wages.

The letter concluded by asking Respondent to voluntarily recognize SEIU Local 200 as the employees' collective bargaining representative by June 24. The letter was signed by the following employees: Lena Fautsel, Makayla Wahaus, Mary Ann Gonzalez, Nicolena Russell, Isaiah Brown, Rebecca Kavaler, Alabaster Fels, Anna Costa, Cody Bloomfield, Tess Drauschak, Nell Robets, Gregory Creft, Wanda Rivera, Carmen Ribadeneira, Nora Collins, Kevin Ziobrowski, Nathan Liebert and Melissa Spiegel. Of these 18 employees, only 1, Wanda Rivera remained an employee of Respondent on May 18, 2023, when Respondent withdrew recognition of the Union.

Respondent discharged only one of these employees, Cody Bloomfield. There is no evidence that any of them were laid off. The General Counsel has not alleged that any were constructively discharged.

After the non-director employees left, Amy Klein said, "Fuck them all." Klein admits this, Tr. 505. Campbell-Cohen testified that she said this several times and also said "fire them all" and suspend operations. In response to her counsel's leading questions, Klein denied threatening to suspend operations or threatening any individual staff members. Klein was not asked for a narrative as to what she did say. Campbell-Cohen shared his recollection of what Klein said with a number of bargaining unit employees.

While Klein testified that she apologized to Respondent's directors for her remark or remarks, there is no evidence she apologized to any unit employee or said anything to indicate to them that she had changed her attitude towards the representation petition or to its signatories. Tr. 442, 505. At a meeting with the union bargaining committee, Klein said she did not think she needed to address staff about what she said at the June 16 meeting since it was supposed to have been confidential and they were never supposed to have known about it, Tr. 442-43.

Campbell-Cohen also testified that after Jessica Trowbridge suggested that the directors think this over, Klein said, "do you think I'm kidding, seriously? Fire them all and suspend operations.". Later, according to Campbell-Cohen, Klein said to fire Cody Bloomfield, who was a little troublemaker. He also testified that Klein said she would be less flexible about Bloomfield's lunch hour in the future.

Klein, according to Campbell-Cohen, said that she thought Wanda Rivera had been coerced into signing the letter and that Laura Kenny did not sign because she wanted to keep her job.

Chief Operating Officer Jessica Trowbridge asked Campbell-Cohen what he thought. He said that it made sense to voluntarily recognize the Union. Trowbridge responded, "let's see how much they like it when they have to pay dues." Exh. RD-8.

Trowbridge was called as a witness by Respondent. She did not testify about what transpired at the June 16, 2022, directors meeting. I infer that Klein said more than she admitted to when testifying, if not precisely what Campbell-Cohen testified to, and that it displayed animus towards the Union and the employees who signed the petition. Her termination letter to Campbell-Cohen leads me to infer also that Klein was aware that he was telling unit employees what she had said at the June 16 meeting.[7] Makayla Wahaus' uncontradicted testimony, corroborated by Sean Collins, establishes that Klein was aware her remarks made it back to employees soon after Klein made them, Tr. 56, 442-43.

Alleged Interrogation of Greg Campbell-Cohen by Julie Clancy (complaint paragraph 6(e))

According to the uncontradicted testimony of Campbell-Cohen, Respondent's Deputy Director, Julie Clancy, came to his office after the director's meeting and asked him about his relationship with Union Organizer, Sean Collins. Clancy also asked whether any staff members had asked him for advice as to how to unionize, Tr. 202-03.[8]

Further conversation between Campbell-Cohen and Amy Klein on June 16

Campbell-Cohen went to Amy Klein's office late in the afternoon of June 16. He told Klein he disagreed strongly with what she said at the director's meeting and that he thought he should not attend any future director's meetings at which unionization was discussed. Klein apologized to Campbell-Cohen and began to cry. She stated that she was upset that the staff did not understand how much she cared for them.

Campbell-Cohen's June 20 conversation with Trowbridge

Campbel-Cohen went to Trowbridge's office on about Monday, June 20. He told Trowbridge somebody should notify Respondent's Board of Directors about Klein's comments on June 16. Further, he said that Trowbridge should make this report, but if she was unwilling to do so, he was willing to do it. Trowbridge agreed to make the report. Tr. 207-09. It is unclear whether she did so. Amy Klein reported her "F them all" remark to the Board of Directors.

Respondent voluntarily recognizes the Union.

On July 5, Board of Directors President Rachel Hye Youn Rupright informed Respondent's employees that the Board voted to accept the request to form a union with the

[7] Malissa Peck, the Respondent's Food Hub Director, advised Klein on July 18, 2022, that Campbell-Cohen has been reporting to lawyers and documenting "our" activities, R. Exh. RT-TT. This also indicates that Respondent knew that Campbell-Cohen was disseminating information that Respondent regarded as confidential.

[8] Clancy did not testify.

SEIU, Jt. Exh. 3. CEO Klein informed employees of the decision at a staff meeting that day. She cautioned employees not to use Respondent's equipment for any union activity.

Termination of Greg Campbell-Cohen

In November 2021, CEO Amy Klein interviewed Greg Campbell-Cohen and then hired him in December. In the interview, Campbell-Cohen mentioned that he had organized his then current workplace.

Campbell-Cohen began working for Respondent on January 4, 2022, with the title of Policy Director. Campbell-Cohen testified that he was surprised when Klein told him he was part of her director's team. He stated he thought he was being hired as a policy manager. On Respondent's organizational chart, Jt. Exh. 1, a policy council coordinator reported to Campbell-Cohen.[9] That position was never occupied during Campbell-Cohen's employment. He did not supervise anyone. In support of its assertion that Campbell-Cohen was a statutory supervisor, Respondent points to a statement he made in his 3-month review that "Lily[10] got mad at me for jointly supervising Tess, as we had agreed.," Tr. 256.

Campbell-Cohen participated in a discussion in March 2022 that was limited to directors concerning whether to bar a person from Respondent's gardens. He also was present at a director's meeting at which the hiring of a director was discussed and provided input as to whether or not the applicant should be hired, Tr. 313.

Campbell-Cohen shared an office with Michael DellaRocco, then a bargaining unit employee. He had weekly one-on-one meetings with CEO Klein and then Klein and Deputy Director Jill Clancy. He also attended twice weekly directors' meetings through June 16. He attended one more afterwards, a few days after June 16. At that meeting, Klein told the directors that she informed the Capital Roots Board of Directors what had happened at the June 16 meeting. Klein stated the meeting was confidential and that if any director felt they could not maintain confidentiality, they should raise their hand. Campbell-Cohen did so and thereafter left the meeting.

Sometime prior to May 2022, Campbell-Cohen and union organizer Sean Collins became personal friends. SEIU Local 200 began organizing Respondent in May 2022.

On June 21, Cambell-Cohen asked Deputy Director Clancy if he should attend the directors' meeting the next day. Clancy said he should attend. At the meeting, Cambell-Cohen, in response to Klein, said he could not abide by her admonition that discussions about the Union were confidential. He left the meeting voluntarily.

On July 18, Amy Klein advised Campbell-Cohen that she received a complaint about him the prior week from a co-worker and asked him to work from home, Tr. 214, G.C. Exh. - 12.

[9] It is unclear when Jt. Exh. 1 was prepared. It does not include the name of Nathan Liebert, a mobile market assistant, who signed the letter presented to management on June 16, 2022.

[10] Lily Morrighan was Respondent's Healthy Communications Director.

Respondent did not interview Campbell-Klein about the complaint and did not advise him what it specifically entailed.

On July 22, Respondent by Amy Klein terminated Greg Campbell-Cohen. The reasons stated in Klein's letter to Campbell-Cohen are as follows:

> You have not fulfilled my expectations for performance in your position, you have refused reasonable directives relating to information security among other things, you have engaged in behaviors that have caused four members of the staff to make complaints that your actions and physical presence cause them to fear for their physical safety and you seem genuinely unhappy and angry in your role.

Jt. Exh. 5.

Respondent did not give the Union notice or an opportunity to bargain over Campbell-Cohen's termination.

Campbell-Cohen received a favorable performance review from Amy Klein on April 10, 2002, Jt. Exh. - 4. She commented that he produced excellent work product. However, she also wrote that, "I have some concerns about your understanding of what it means to be a member of the Director's team."

Respondent never disciplined Campbell-Cohen and there is no credible evidence of any complaints being made about him prior to June 16.[11]

On July 22, Kline emailed all Respondent's employees that Campbell-Cohen had been terminated and would not be allowed on Respondent's property. Jt. Exh. 6. She directed them not to communicate with Campbell-Cohen regarding Respondent's business (complaint paragraph 6 (g).

Complaint paragraph 8(a)

On July 5, 2022, Respondent deliberately deactivated the access of unit employees to its Neon One database. This was done upon order of an official above director level. Access to this database was essential to the performance of some of these employees' tasks. Access was restored the next day.

Respondent deactivated Neon One in response to a July 1 email from employee MaryAnn Gonzalez to Amy Klein and Board of Directors President Rupright, threatening to inform the public, the press, legislators and others if Respondent did not respond to the employees' demand for recognition of the Union by close of business, Tuesday, July 5, Exh. RT-C, Tr. 554-56. The deactivation as originally executed also discriminated against employees who were known

[11] The complaints Respondent received about Campell-Cohen after June 16 are hearsay and not admissible for the truth of the matters asserted by the declarant. It is unclear whether Klein had any first-hand knowledge of the alleged misconduct by Campbell-Cohen.

supporters of the Union. I infer that the subsequent deactivation of non-union supporters was an attempt to cover up Respondent's discriminatory motive,

Complaint paragraph 8(e)-Melissa Spiegel's performance appraisal

Respondent hired Melissa Spiegel in July 2019 as a community garden organizer. She inspected 500 community gardens, made sure the gardeners had the tools they needed and repaired equipment.

Several of her annual performance evaluations are in the record, G.C. Exhibits 6 and 8. Spiegel had several different supervisors, including Lily Morrighan, who left in July 2022. On about August 31, Spiegel had an annual evaluation with Sharon DiLorenzo, Respondent's Education Director. Operations Manager Jessica Trowbridge was also present. That original review is not in this record, Tr. 711-13.

In a revised review, G.C. Exh. – 9, DiLorenzo or Trowbridge rated Spiegel a 2, Needs Improvement (frequently fails to meet standards), in the following category: General Performance Attitude (The demeanor used in dealings with customers, co-workers and the general public)

> Manager Comments: Melissa deals with gardeners, volunteers and some staff and directors (including me) in a manner that is mostly cooperative, candid and cordial. But others have experienced a much different negative and dismissive attitude that has only exacerbated the current tension and discord.
>
> DiLorenzo gave Spiegel a 3.5 overall rating (halfway between Satisfactory and Outstanding).
>
> Manager Comments: Melissa does a great job dealing with the physical gardens and the constant deluge of issues that the gardeners bring to her and her teammate. However, she would find her daily work much more satisfying if she did not allow the chip on her shoulder to continue to weigh her down and make her suspicious and angry with every interaction she has with some co-workers.

In addition, Trowbridge via email told Spiegel that merit wage increases were on hold due to negotiations with the Union. On October 21, 2022, Spiegel resigned her employment effective November 4, 2022.

A draft performance appraisal of Spiegel, prepared by Lily Morrighan just before she left Respondent was more negative than the revised August 31 review. This was based largely on Morrighan's perception of Spiegel's attitude towards her.

Allegations specific to Cody Bloomfield

The General Counsel alleges that Respondent violated Section 8(a)(3) in denying bargaining unit employe Cody Bloomfield a flexible work schedule on about July 25, 2022, and giving her a written warning on about July 29. The General Counsel also alleges that

Respondent violated Section 8(a)(5) and (1) in not giving the Union notice and an opportunity to bargain over Bloomfield's discharge. It does not allege a Section 8(a)(3) violation with regard to her discharge.

Cody Bloomfield worked for Respondent as a volunteer coordinator from November 2021 to August 3, 2022. She was one of about 10 employees who presented the demand for union recognition to Amy Klein on June 16, 2022.

On June 24, 2022, Operations Director Trowbridge sent Bloomfield an email stating that Bloomfield should not use Respondent's resources (emails, equipment, etc.) and that she engage in union work outside of her work time.[12] Trowbridge stated that she noticed that Bloomfield sent a response to a letter from the President of Respondent's Board of Directors from Bloomfield's work email while Bloomfield was at work, Jt. Exh. 9. This email is alleged to violate the Act in complaint paragraph 7(b)(i). Respondent did not strictly limit use of its email system to its business, Tr. 326, 668., Exhs. GC- 29 and 30.

On July 5, Bloomfield was one of several employees who could not access Respondent's Neon One system, which she used to contact Respondent's volunteers. Bloomfield questioned her supervisor, Sean Wyse, the Community Engagement Director,[13] as to why some people had access to Neon One and others did not. Wyse asked Bloomfield to accompany him outdoors, where she secretly recorded their conversation, G.C. Exh. – 17. Wyse told Bloomfield that he had been told by superiors to deny access to Bloomfield and other employees. Wyse also told Bloomfield that access would be restored on the following day, which it was. He also indicated to Bloomfield that Amy Klein was very stressed out and that she was taking the Union organizing very personally, Tr. 342.

Complaint paragraph 8(c), denial of flextime request; 6(h) surveillance

Bloomfield's uncontradicted testimony is that she asked Sean Wyse, her supervisor, for permission to "flex" and start her shift later than her usual 8:00 a.m. on Mondays on several occasions, Tr. 357. These requests were always granted until late July. On that occasion, Wyse told Bloomfield she had to use either sick leave or personal leave to come in late after a medical appointment. Prior to that date, on July 8, Bloomfield had requested sick/personal time which she told Wyse was for a medical appointment. In fact, she attended a labor union breakfast meeting instead. The record contains insufficient evidence to establish that Wyse refused Bloomfield's request to use flex time because she had attended the labor union breakfast on July 8 or for any other reason related to her union activity.

Surveillance (complaint paragraph 6(h)

Bloomfield also testified without contradiction that Wyse went into her work email account and forwarded emails she had sent to Union Organizer Collins to himself, Tr. 360-61.

[12] This message was reiterated by Amy Klein at a staff meeting on July 5. The General Counsel alleges this as a separate violation of the Act in complaint paragraph 7(b)(iii).

[13] Wyse, who was an agent of Respondent, did not testify in this proceeding.

July 29, 2022, written warning to Bloomfield (complaint paragraphs 7(b)(ii) and 8(d).

On July 29, Amy Klein issued Bloomfield a formal written warning, Jt. Exh. 10. Klein cited Trowbridge's June 24 email and stated that "since then and as recently as July 28, there have been numerous incidents where you have engaged in union activities during hours that you are being paid by Capital Roots including but not limited to :discussions with co-workers, sending emails and sharing Capital Roots' proprietary filed with someone from outside the organization (this includes our DEI files sent to Sean Collins). The latter …is a violation of Capital Roots' privacy.

Failure to give the Union advance notice and an opportunity to bargain over Bloomfield's discharge (complaint paragraph 10(b).

On August 2, 2022, while Bloomfield was engaged in other tasks, her supervisor, Sean Wyse and another director, Collin Parliman told her to go out on Respondent's Veggie Mobile, which takes fresh produce to poor neighborhoods. Bloomfield did not comply.

Amy Klein came to speak to Bloomfield and ultimately told Bloomfield to leave Respondent's premises. Bloomfield asked for a union representative. Klein repeated that Bloomfield must leave. Bloomfield went and sat in a conference room instead. Klein came to the conference room and threatened to call the police if Bloomfield did not leave. Eventually, Bloomfield left. On August 3, Klein sent Bloomfield an email terminating her employment on the grounds of insubordination, Jt. Exh. 12. Respondent did not offer the Union an opportunity to bargain over Bloomfield's discharge or its effects.

Klein statements at the August 5, 2022, staff meeting (Complaint paragraphs 6 (i) and (j).

CEO Klein met with Respondent's staff on August 5. This followed a union rally at Respondent's Troy office. Construction union officials or employees brought an inflatable "fat cat" and rat to the rally. Sean Collins made no attempt to discourage the display of these props, nor did he apparently make any attempt to indicate their message was directed at employers other than Respondent. In preparation for the rally, the Union distributed a flyer, Exh. G.C. -33, which accused Respondent's management, including Amy Klein of engaging in unfair labor practices, including terminating staff without due process. A bullhorn was used at the rally with chants of "Amy Klein has crossed the line," according to Sean Collins.[14]

Makayla Wahaus, a former employee testified that at this meeting Klein told unit employees that if the Union told them they would have a say in working conditions, the Union was lying, Tr. 437. Wahaus also testified that Klein said that prior to unionization, Respondent was like a family, but things had changed and gotten worse since, Tr. 438. Klein testified that she told employees they could not have a seat on Respondent's Board of Directors but would have one at the negotiating table. Klein did not deny telling employees that things had gotten worse since the union petition. I do not find Wahaus' testimony any more credible than that of Klein as to what Klein said on August 5.

[14] Klein testified that one purpose of the rally was to urge her resignation from Respondent.,

Klein's comments at the August 11, 2022, pre-bargaining meeting (complaint paragraph 6(k).

At a pre-bargaining meeting between the Union and Respondent on about August 11, 2022, Amy Klein said that it was hard to move forward and maintain a neutral tone when the employees had gone on the offensive when they had delivered the representation petition on June 16, Tr. 442.[15]

The Union lobbies against the transfer of additional property to Respondent.

On September 22, 2022, the Albany Common Council considered a proposal to transfer additional property to Respondent. Union Organizer Collins attended the meeting and advocated that this transfer not occur. The Council did not approve the transfer and according to Amy Klein, Respondent lost a grant related to this transfer.

Bargaining Sessions

The first formal bargaining session between Respondent and the Union occurred on October 20, 2022. Attorney Robert Schofield was the lead negotiator for Respondent. Sean Collins was the lead negotiator for the Union.[16] Respondent raised changes it wished to make, including consolidating some positions. The Union did not agree to any of these changes but said it would get feedback from unit members. In its brief at page 41, Respondent states "there was a consensus between Capital Roots and the Union that given the financial urgency, Capital Roots would be moving forward with the changes immediately." If Respondent means the Union agreed that Respondent could make these changes unilaterally, the statement is inaccurate, Tr. 585, G.C. Exh. 26..

The next day Respondent made changes to the job description of unit employees Greg Creft, the Farm to School Coordinator, and Rebecca Kavaler, the Institutional Markets Coordinator, G.C. Exh. 3.

On November 16, 2002, Sean Collins sent an email to past and present Presidents of Respondent's Board of Directors encouraging the Board to seek Amy Klein's resignation, Exh. RD-2. The letter is ostensibly from remaining and former bargaining unit employees. When asked which current and former employees participated in drafting this letter, Collins could only state that former employees Cody Bloomfield and Greg (I assume Campbell-Cohen not Greg Creft) "had a role," Tr. 96. The record does not establish that anyone other than Collins had a significant role in drafting this letter. The Board responded with a letter very supportive of Klein, and critical of the Union's conduct, Exh. RD-3.

[15] The Union and Respondent held 2 pre-bargaining meetings in August, Tr. 54-55. The first held on August 11, was attended by Attorney Robert Schofield, Klein and Trowbridge for Respondent. Sean Collins, Lena Foster, Makayla Wahaus and Niki Russell attended for the Union. Wahaus' notes, taken on August 11, G.C. Exh. 22, are not inconsistent with her testimony.

[16] Mr. Schofield did not testify in this proceeding. Thus, the General Counsel's witnesses accounts at what transpired when Schofield represented Respondent is largely, if not entirely, uncontradicted.

The last bargaining session occurred on January 4, 2023. The General Counsel does not allege that Respondent generally refused to bargain with the Union or refused to recognize it prior to the receipt of a May 8, 2023, decertification petition.

Withdrawal of Recognition

On May 8, 2023, 4 employees submitted a letter to Respondent (CEO Klein and Respondent's Board of Directors) asking it to withdraw recognition, Exh. RD-13. The letter was signed by Grant Writer Edward "Eric Winders, Kitchen Lead Wanda Rivera, Michelle Qualls, a driver and Stephen Rittner, also a driver.[17] According to Respondent this letter was signed by 4 of the 5 bargaining unit employees.[18] Based upon this letter, Respondent withdrew recognition of the Union on May 18, 2022.

Unilateral Changes after withdrawal

Unilaterally Altering, Eliminating and Creating Job Classifications

The bookkeeper position.

As of July 5, 2002, when Respondent voluntarily recognized the Union, its organization chart listed an open bookkeeper position. The position was not excluded from the bargaining unit, Jt. Exh. 25. When Respondent proposed a composition of the unit for bargaining on August 2, 2022, it again did not exclude the bookkeeper position, CP Exh. 1.

This position was vacant between May 2022 until August 2023 and possibly longer. The last occupant of the position, Amy Scott, had been promoted from the bookkeeper position to finance manager. Jessica Trowbridge's testimony as to when that occurred is very unclear.

The vacant position and that of Makayla Wahaus, who held the finance assistant position in 2022, were the only 2 positions directly reporting to Jessica Trowbridge, then Respondent's Operations Director. Wahaus, who worked for Respondent from December 2021 to November 2022, maintained accounts payable and receivable, recorded donations to Respondent, allocated funds to Respondent's various programs, and helped maintain Respondent's office and ordered supplies. In performing her job, Wahaus used QuickBooks.

Sean Collins testified that he and Robert Schofield, then representing Respondent, agreed that the bookkeeper position would be a bargaining unit position. At the January 4, 2023, bargaining session, Sanjeeve DeSoyza, then representing Respondent, informed Collins that Respondent wanted to remove the bookkeeper position from the unit. When Respondent posted

[17] An earlier letter signed by Winders, Qualls and Rivera was sent to Respondent in April inquiring as to the status of the Union, Exh. RD-12. The General Counsel does not contend that this request for withdrawal of recognition was tainted.

[18] The General Counsel does not assert that the bargaining unit was larger. There is no evidence that the Union had been in contact with any of these unit employees at any time prior to the presentation of the decertification petition in May 2023. Wanda Rivera was the only unit member who had been employed by Respondent in July 2022.

its non-unit position in January 2023, the duties included many of the same duties performed by Wahaus as a finance assistant, G.C. Exh. 5. Wahaus' position description is also very similar to that of the later bookkeeper posting, G.C. Exh. 4. The record contains job postings for the bookkeeper position dated April 27, 2022, Jt. Exh. 26 and January 4, 2023, Jt. Exh. 27.

Respondent also changed the events coordinator, volunteer coordinator, marketing coordinator and community gardens organizer positions as set forth at pages 33-35 of the General Counsel's brief. It created the position of operations lead with duties very similar to those performed by finance assistant Makala Wahaus before her resignation. Respondent contends the operations lead is not a bargaining unit position.

In about May 2023 Respondent consolidated the mobile market assistant and produce market assistant positions. In July 2023, Respondent created the position of kitchen lead. The kitchen lead supervises individuals who are not employees of Respondent, Tr., 695-98, 716. Jt. Exh. 18. Respondent rehired Laura Kenny, a former bargaining unit employee (events coordinator), as kitchen lead in the summer of 2023.

ANALYSIS

Discharge of Greg Campbell-Cohen

In order to establish a violation of Section 8(a)(3) and (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002).

Typically, this requires that the employee engaged in union activity, that the employer knew of the union activity and bore animus towards the employee or the activity as a result. There is no question that Respondent violated Section 8(a)(3) and (1) in terminating Campbell-Cohen if he was an employee protected by Section 7 of the Act. The record demonstrates Respondent's knowledge of his support for the Union and contains overwhelming evidence of animus towards the Union, Campbell-Cohen and at least some of the employees who signed and/or presented the request for recognition.

To the extent Respondent relies on anything other than Campbell-Cohen's union sympathies for his discharge, I discredit it. There is no credible evidence that Campbell-Cohen was in danger of being terminated until June 16. Any reasons given for the discharge are either related to Campbell-Cohen's support for recognition of the Union, sharing Klein's comments with bargaining unit employees or are pretextual.[19]

[19] In finding pretext, I rely in part on Respondent's failure to give Campbell-Cohen an opportunity to respond to specific complaints,

However, Respondent contends Campbell-Cohen was not protected by Section 7 because he was either a supervisor, manager or confidential employee. Section 2(3) defines employee and excludes supervisors and independent contractors from that definition. Case law has excluded managers from the status of employee,

Managerial employees, who are excluded from the protection of the Act are those who formulate and effectuate high-level employer policies or who have discretion in the performance of their jobs independent of their employer's established policy, *NLRB v. Bell Aerospace Company,* 416 U.S. 267, 284 (1974); *Wolf Creek Nuclear Operating Corp.,* 364 NLRB 1619, 1621 (2016) and cases cited therein. The Supreme Court held that managerial status exists not only in the pyramidal hierarchies of private industry but also in the typical "mature private university, where authority is divided between a central administration and one or more collegial bodies, *NLRB v. Yeshiva University,* 444 U.S. 672, 676 (1980).

The Board has also excluded "confidential employees," from bargaining units including non-confidential employees, *B.F. Goodrich Co.,* 115 NLRB 722 (1956); *West Chemical Products,* 221 NLRB 250 (1975). On the other hand, the Board has stated categorically that confidential employees are protected by the Act, *Peavy* 249 NLRB 853 (1980); *Roofing, Metal & Heating,* 304 NLRB 155, 161 (1991).

The Courts have distinguished between confidential employees such as secretaries and employees involved in formulating, determining and effectuating the employer's labor relations policies. *NLRB v. Hendricks Rural Electric Membership Corp.,* 454 U.S. 170 (1981); *Bell Aerospace Div. of Textron v. NLRB,* 475 F. 2d 485, 494 (2d Cir. 1973) and so has the Board, *Kleinberg, Kaplan, Wolf, Cohen and Burrows,* 253 NLRB 450 (1980). I conclude that Gregory Campbell-Cohen was a confidential employee and a manager, the type of which Congress meant to exclude from the Act's protection.

Campbell-Cohen attended meetings not open to rank-and-file employees at which policy and confidential matters were discussed. This includes the June 16 meeting in which Respondent deliberated as to how to respond to the representation petition. On this basis I conclude he was a confidential employee and a manager not protected by Section 7.

However, there is insufficient evidence to support Respondent's alternate contention that Campbell-Cohen was also a statutory supervisor.[20] He had no authority over other employees *Oakwood Healthcare, Inc.,* 349 NLRB 686 (2006). He did not hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees. The evidence is insufficient for Respondent to meet its burden of proving Campbell-Cohen was a supervisor by virtue of the fact that he thought he supervised Tess Drauschak or had the occasion to assign her tasks. Tr. 275.

[20] Section 2(11) of the Act defines a supervisor as:[A]ny individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proving supervisory status is on the party alleging such status. The fact that an employee may be able to tell another employee to do one task as opposed to another does not make the first employee a statutory supervisor.

Assign: In *Oakwood Healthcare, Inc.*, the Board stated that "assigning" for purposes of Section 2(11) *does not* include "choosing the order in which the employee will perform **discrete tasks**," or giving an "ad hoc instruction that the employee perform a **discrete task**." 348 NLRB at 689. Rather the authority to **assign** "refers to the 'act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks to an employee… In sum to "**assign**" for purposes of Section 2(11) refers to the . . . designation of significant overall duties to an employee.'" *Croft Metals, Inc.*, 348 NLRB at 721, quoting *Oakwood Healthcare*, 348 NLRB at 689.

Respondent did not violate the Act in making any statements to Campbell-Cohen that were not also made to persons who are statutory employees.

Many of the allegations in complaint paragraph 6 relate to statements made by Amy Klein at the June 16, 2022, directors meeting and an alleged interrogation of Campbell-Cohen by Julie Clancy. Since there is no evidence that these statements were made in the presence of anyone who was a statutory employee, I dismiss them.[21] Section 7 protects the rights of employees. Section 8(a)(1) makes it an unfair labor practice to coerce employees in the exercise of their Section 7 rights. If, however, the Board or a court of appeals concludes Campbell-Cohen was a statutory employee, statements made in his presence by Klein and the questioning of him by Clancy were violations of Section 8(a)(1).

Klein's statements to employees on August 5 and August 11 did not rise to the level of statutory violations.

I find that statements Klein made on August 5 and 11 were not threats and were not otherwise coercive. Thus, I dismiss the complaint allegations in paragraphs 6 (i), (j) and (k).

Respondent violated Section 8(a)(3) and (1) in deactivating employee access to Neon One on July 5.

Regardless of its being deactivated for only one day, Respondent's deactivation of Neon One sent a coercive message and was done in retaliation for the Gonzalez email of July 1. Employees have a concerted right to appeal to the public, *Eastex, Inc. v. NLRB,* 437 U.S. 556 (1978). Gonzalez was exercising that right. Thus, the denial of access to Neon One on July 5 violated Section 8(a)(3) and (1) as alleged in complaint paragraph 8(a).

[21] Complaint paragraphs 6(a) (b)(i), c. d and e.

Respondent did not violate Section 8(a)(3) in issuing a written warning to Cody Bloomfield under current Board law.

Respondent's prohibition of using its computers for non-work matters only applied to matters involving the Union. Thus, its written warning to Cody Bloomfield for using its computers to email the Union was discriminatory but does not violate the Act under current Board law, *Caesars Entertainment d/b/a Rio All Suites Hotel and Casino,* 368 NLRB No. 148, slip op. at 8-9 (2019). That decision allows an employer to prohibit employee use of its computers for union activity while not prohibiting it for other non-business purposes.

Respondent violated Section 8(a)(3) in giving Melissa Spiegel a negative performance appraisal.

Without a sufficient alternative explanation, I infer that Respondent's negative evaluation of Melissa Spiegel's attitude and teamwork is connected to her support for the Union. Spiegel signed the demand for recognition and was present on June 16, when the demand letter was presented to Amy Klein, Tr. 142. In 2020 and in 2021, Spiegel's supervisor, Tara Quakenbush, rated her a 5 (excellent) in Teamwork and Attitude, G.C. Exh. 6 and 8. In August 2022, Sharon DeLorenzo, who had supervised Spiegel for 2 months rated Spiegel a 2 (Needs Improvement (frequently fails to meet standards) in Teamwork and Attitude. DeLorenzo cited "some issues dealing with other staff and directors as well as with the former Healthy Communities Director. DeLorenzo's comments about Spiegel's attitude make it quite clear that her negative assessment was related to Spiegel's union activities.

> Melissa deals with gardeners, volunteers and **some** staff and directors (including me) in a manner that is mostly cooperative, candid and cordial. But others have experienced a much different negative and dismissive attitude that has only exacerbated the current tension and discord.

There is no evidence that any manager had a problem with Spiegel's attitude or teamwork prior to June 16, 2022. Thus, I conclude that Respondent's negative evaluation of Spiegel's teamwork and attitude, in the absence of any credible alternative explanation are euphemisms for her pro-union sentiments, *James Julian, Inc. of Delaware,* 325 NLRB 1109 (1998).

Respondent violated the Act in directing unit employees not to communicate with Campbell-Cohen.

Employees have a protected right to appeal concertedly to the public, so long as their communication with such parties relates to an ongoing labor dispute and is not disloyal, reckless, or maliciously false, *Five Star Transportation, Inc.,* 349 NLRB 42, 45 (2007); *Eastex, Inc. v. NLRB, supra.* Klein's directive to employees, "you are not to communicate with Greg regarding Capital Roots business," is sufficiently overbroad to impinge upon that right. Thus, I find that her directive violated Section 8(a)(1).

Changes, Elimination, Creation of Job Classifications prior to May 18, 2023.

I find Respondent violated Section 8(a)(5) and (1) in altering and/or eliminating the job classifications of farm to school coordinator, institutional markets coordinator and purchasing and operations coordinator, volunteer coordinator, finance assistant and bookkeeper without bargaining to impasse with the Union. I conclude it similarly violated the Act in eliminating the positions of farm-to-school coordinator and finance assistant.

Changes, Elimination, Creation of Job Classifications after May 18, 2023.

Respondent created, eliminated and changed a number of job classifications after it withdrew recognition of the Union. That withdrawal, as explained below, did not violate the Act. Thus, I conclude that any changes to job classifications, elimination of job classifications or creation of job classifications occurring after May 18, 2023, were not illegal.[22]

Respondent's failure to bargain with the Union over the discharges of Greg Campbell-Cohen and Cody Bloomfield.

. It is uncontroverted that Respondent did not give the Union notice and an opportunity to bargain over the discharges of Greg Campbell-Cohen and Cody Bloomfield. In ruling on the unfair labor practice allegations in this regard I am bound by current Board law.[23]

In *Care One at New Milford, (800 River Road Operating Company)*, 369 NLRB No. 109 (2020) the Board held that upon commencement of a collective-bargaining relationship employers do not have an obligation under Section 8(d) and 8(a)(5) to bargain prior to disciplining unit employees in accordance with an established disciplinary policy or practice. In *Care One,* the Board overruled *Total Security Management Illinois, LLC,* 364 NLRB No. 1532 (2016) insofar as it required employers to bargain over an established disciplinary policy or practice. Thus, the issue herein is whether Respondent had an established policy or practice for discharging an employee for insubordination (Bloomfield). There is no need to analyze Campbell-Cohen's discharge under Section 8(a)(5). If he was an employee, Respondent clearly violated Section 8(a)(3) in discharging him. If he was not an employee protected by Section 7, Respondent violated neither Section 8(a)(5) or (3).

[22] Assuming a reviewing body were to conclude otherwise, the kitchen lead position created by Respondent after withdrawal, is not, as it asserts a supervisory position. It is also neither a managerial nor confidential position.

"It is well established that an individual must exercise supervisory authority over employees of the employer at issue, and not employees of another employer, in order to qualify as a supervisor under Section 2(11) of the Act." *Crenulated Co.,* 308 NLRB 1216 (1992) Supervision of nonemployees does not make an employee a statutory supervisor, *North General Hospital,* 314 NLRB 14 (1994) (attending physicians supervised interns and residents, whom the Board deemed nonemployees at time of the decision).

[23] For this reason, I do not address any of the General Counsel's remedy requests that go beyond what the Board has already implemented.

Bloomfield's termination appears to be consistent with the disciplinary provisions of Respondent's Employee Handbook, Jt. Exh. 8, pp. 6-7. I therefore dismiss the Section 8(a)(5) allegation with regard to Cody Bloomfield.

Respondent did not violate the Act in withdrawing recognition from the Union.

When an employer has unlawfully failed or refused to recognize or bargain with an incumbent union, employee disaffection from the union that arises during the course of that unlawful conduct will be presumed to be the result of that conduct, *Lee Lumber & Building Material Corp.,* 322 NLRB 175, 177 (1996). However, where a case involves unfair labor practices other than a general refusal to recognize and bargain, a causal connection must be shown between the unfair labor practices and the subsequent employee disaffection with the union in order to find that a decertification petition is tainted. Otherwise, the employer is entitled to withdraw recognition.

> In cases involving unfair labor practices other than a general refusal to bargain, the Board has identified several factors as relevant to determining whether a causal relationship exists between unremedied unfair labor practices and the subsequent expression of employee disaffection with an incumbent union. These factors include: (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Williams Enterprises, 312 NLRB 937, 939 (1993).

I find that the General Counsel has failed to establish a causal relationship between Respondent's unfair labor practices and the employee decertification petition of May 8, 2023, upon which Respondent relied in withdrawing recognition from the Union, *Master Slack Corp.,* 271 NLRB 78, 85 (1984). First of all, only 1 of the 5 employees in the bargaining unit had been employed by Respondent when it recognized the Union. So far as this record shows, only that 1 employee had ever had any contact with the Union prior to May 2023. The General Counsel does not allege that the petition was tainted or that the bargaining unit consisted of more than 5 employees. It does not allege that any of the bargaining unit employees who resigned their employment were constructively discharged.[24] Moreover, the record establishes that high

[24] The General Counsel does not make such an assertion with regard to Melissa Spiegel whose testimony it cites as evidence of a link between Respondent's unfair labor practices and employee disaffection with the Union, G.C. brief at 94, Tr. 166-67. Spiegel's resignation letter of October 21, 2022, the day after the first collective bargaining session, suggests no such link, RT Exh. MM. Finance Assistant Wahaus resigned her employment in November 2022, after less than a year with Respondent, for reasons not stated in the record, Tr. 476-77. The only other unit employee who testified, Cody Bloomfield, was discharged in late August 2022.

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turnover of employees is typical for Respondent. I have found that the only termination alleged to be illegal, was not an unfair labor practice. In conclusion, I find Respondent was entitled to withdraw recognition of the Union based on the May 8, 2023, decertification petition.

CONCLUSIONS OF LAW

Respondent violated the Act in respect to the following complaint allegations and with respect to no others:

Directing employees not to communicate with Greg Campbell-Cohen regarding Respondent's business.

Issuing Melissa Spiegel a negative performance appraisal.

Surveilling employee email.

Denying employees access to its Neon One data base on July 5, 2022.

Altering or eliminating job classifications and/or removing them from the bargaining unit prior to its withdrawal of recognition of the Union.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[25]

ORDER

The Respondent, Capital Roots, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from
   a. Engaging in the surveillance of employees who are engaged in or suspected of engaging in union or other protected activity.
   b. At any time a unit of its employees is represented by a labor organization, or is seeking such representation via a representation petition, making unilateral changes in the terms and conditions of employment of employees or departing from the status quo, including the composition of the bargaining unit.

[25] 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.

c. Denying access to a data base or other means that employees use to perform their work in retaliation for union or other protected activity.
d. Directing employees not to communicate with persons not employed by Respondent concerning the terms and conditions of their employment.
e. Downgrading or giving an employee a negative performance appraisal because that employee engaged in union or other protected activity.
f. 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. Rescind the Teamwork and Attitude portions of Melissa Spiegel's last performance appraisal and replace it with those portions of her last performance appraisal prior to June 16, 2022.
b. Notify Melissa Spiegel that the Teamwork and Attitude portions of her last performance appraisal have been rescinded and will not be used against her in any way, including communicating the views expressed in that performance appraisal to anyone else, including other employers.
c. At any time that Respondent's employees are represented by a labor organization or submit a representation petition, restore the composition of the bargaining unit to what it was on October 21, 2022.
d. Within 14 days after service by the Region, post at its Troy, New York facility copies of the attached notice marked "Appendix."[26] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices,

[26] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

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."

notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 June 16, 2022.

e. Within 21 days after service by the Region, file with the Regional Director for Region 3 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.

f. It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. May 15, 2024

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT engage in surveillance or create the impression that we are engaged in surveillance of your union or other protected concerted activities.

WE WILL NOT tell you not to communicate with any individual who is either employed by us or not employed by us concerning the terms and conditions of your employment (e.g., your wages, hours and working conditions).

WE WILL NOT at any time that you are represented by a labor organization or have submitted a representation petition to us, make any unilateral changes in the terms and conditions of your employment, including eliminating, creating or altering job classifications so as to change to composition of a bargaining unit.

WE WILL NOT deny you access to any data base or other means you use to perform your job in retaliation for union or other protected activity.

WE WILL NOT give you a negative performance appraisal as a result of your union or other protected activity.

WE WILL rescind the teamwork and attitude portions of Melissa Spiegel's last performance appraisal and will replace it with the teamwork and attitude portions of her last performance appraisal predating June 16, 2022.

WE WILL notify Melissa Spiegel in writing that the teamwork and attitude sections of her last performance appraisal will not be used against her in any way and will not be communicated to anyone else, including other employers.

CAPITAL ROOTS, INC
(Employer)

Dated _____ By _____
(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov. Niagara Center Building., 130 S. Elmwood Avenue, Suite 630, Buffalo, NY 14202-2465 (716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CA-300872 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.