DaimlerChrysler Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, (Unit 53), AFL–CIO. Cases 7–CA–41857, 7–CA–42126, and 7–CA–42437

July 29, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On June 30, 2000, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief. The General Counsel also filed cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.

I. OVERVIEW

This case primarily concerns the Respondent's dealings with employee and union steward Keith Valentin. The judge determined that the Respondent violated the Act when it: (1) placed Valentin on notice of possible discipline in connection with his authoring e-mail messages regarding employee use of pool cars; (2) included comments critical of Valentin's union activities in his 1998 performance appraisal; (3) asked Valentin questions about the provenance and circulation of a draft information request; and (4) issued a written warning to Valentin in connection with the contents of that draft information request and Valentin's subsequent encounter with a supervisor. For the reasons set out below, we reverse these findings of violations.[3]

The judge also found that the Respondent committed several violations of Section 8(a)(5) by refusing to provide or delaying in providing information requested by the Union. With a minor exception noted below, we agree with the judge that the failures to provide the requested information violated Section 8(a)(5). We also affirm the judge's finding that the Respondent unreasonably delayed providing certain information requested by the Union on June 22, 1999, regarding Valentin's 1998 performance appraisal. We therefore find it unnecessary to pass on the judge's further findings that the Respondent unreasonably delayed providing other requested information as those findings are cumulative and would not affect the remedy herein.

II. ANALYSIS

1. The pool-care-mails

The parties' local supplemental agreement provides:

> [W]hen requested, pool cars, when available, will be provided for transportation from [the Chrysler Technical Center] to the offsite work location and return. In addition, to better facilitate pool car usage, group use of a pool car should always be considered.
>
> When the demand of Corporation business causes these cars to be unavailable, employees may be asked to use their personal car and be reimbursed for mileage based on Corporate guidelines. Employees will not be required to use a personal car on Corporation business if their wishes are to the contrary.

On November 4 and 5, 1998, Valentin authored three e-mail messages to bargaining unit employees addressing the use of pool cars. Two of the e-mail messages were widely distributed among the unit employees. The first "reminded" the unit of what Valentin described as "the Union's" position on the use of personal cars: "the Union strongly recommends against using your personal vehicle on company business." The second also addressed the use of pool cars, stating

> Don't volunteer to find a rider and make arrangements. Let management tell you who your [sic] riding with. At that time, you have an opportunity to shoot down

[1] Under the Board's decision in *Postal Service*, 302 NLRB 767 (1991), the 8(a)(5) complaint allegations concerning failure to provide requested information are not appropriate for deferral pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971). See also *DaimlerChrysler Corp*., 331 NLRB 1324 fn.3 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002). Chairman Battista and Member Schaumber, if not bound by precedent, would defer. However, in the absence of a three-member Board majority to overrule current Board law, they find that the judge correctly applied the Board's policy of nondeferral in information request cases. *SBC California*, 344 NLRB No. 11 at slip op. 1 fn.3 (2005).

With respect to the remaining complaint allegations, the Respondent has given no indication that it would agree to a deferral of some of the allegations if others are found not to be deferrable. Such "piece-meal" deferral of the complaint allegations is, in any event, not favored by the Board, which prefers to have an entire dispute resolved in a single proceeding. See *Beverly Healthcare*, 335 NLRB 635, 671 (2001).

[2] There were no exceptions to the judge's dismissal of (1) the allegation concerning Valentin's 1-day disciplinary suspension; (2) the allegation concerning threats made by the Respondent's Labor Relations Supervisor Timothy Martin; (3) the allegation concerning the Respondent's alleged failure to respond to the Union's June 15, 1999 information request; and (4) the allegation concerning the Respondent's alleged failure to respond to item 7 of the Union's July 22, 1999 information request.

[3] We do agree with the judge, for the reasons stated in his decision, that the Respondent did not violate Sec. 8(a)(1) when it sent International Union official Vinnie Pagano a letter informing him that Valentin was abusing his union office and failing to perform scheduled work assignments.

> their arrangement by refering [sic] to your 'team' conflicts which are almost certain to arise. Kapesh [sic]?
>
> Remember, don't volunteer to do management's work for them. If management gives you any static over these options, refer them to me.

The third message, to unit employee Stu Fisher, with copies to other employees, was apparently in response to a question Fisher posed. That message read:

> Why not use your normal commute time to pick-up a pool car? Often times BU members will be going out of their way and "back tracking". So what? Who's [sic] time are you saving? Remember, we work for a very large and successful . . . company. The company could easily negotiate with the Union for lease cars and/or more favorable pool car utilization. [Unit chairperson] Doug [Peacock] and I are all ears if the company has a proposal. I sincerely wish we had a management here that would work with us on this. So then . . . when it comes to pool cars, WORK THE RULE! Action speaks louder than words.

On November 6, 1998, Valentin was asked to attend a meeting with two supervisors. At the meeting, the Respondent's senior manager, Robert Page, read the following notice to Valentin regarding his e-mails:

> You are being placed on notice of possible discipline up to and including discharge for potential improprieties that have occurred associated with lotus notes messages you sent on 11/4/98 and 11/5/98. An investigation and review of the situation is being conducted. You will be advised of the decision upon completion of the investigation.

Valentin, however, was not subsequently disciplined.

The judge found that Valentin's authoring of the three e-mail messages was protected conduct because the messages did nothing more than inform the bargaining-unit employees what the parties' local supplemental agreement already provided: "employees will not be required to use a personal car on Corporation business if their wishes are to the contrary." Therefore, the judge found that the Respondent violated Section 8(a)(1) when it placed Valentin on notice of possible discipline for having sent the messages. We disagree.

It is well-settled that employees who engage in deliberate "slowdowns" of work or encourage others to do so are engaged in activities not protected by the Act, and their discipline for such activity does not violate the Act. *Davis Electric Contractors, Inc.*, 216 NLRB 102 (1975) (citing *Elk Lumber Co.*, 91 NLRB 333, 337, 338 (1950); *NLRB v. Blades Mfg. Corp.*, 344 F.2d 998, 1004, 1005 (8th Cir. 1969); *General Electric Co.*, 155 NLRB 208, 220–221 (1965); and *New Fairview Hall Convalescent Home*, 206 NLRB 688 (1973)). We find that, through these e-mails, Valentin was in effect encouraging unit employees to engage in a deliberate slowdown: first, he explicitly encouraged unit employees to "back track" so that they would not save the Respondent's time, in an apparent attempt to obtain "more favorable pool car utilization;" second, contrary to the parties' local supplemental agreement, he encouraged employees to "shoot down" the Respondent's attempts to schedule group use of pool cars.

The judge, in finding a violation here, accepted Valentin's claim that his messages merely clarified the Union's interpretation of the parties' local agreement on the use of personal cars. The judge's finding ignores the plain language of the e-mails advocating a work slowdown with respect to pool car procedures. The actions advocated in the e-mails would confound the Respondent's efforts to provide pool cars consistent with the parties' agreement and would result in lost work time.[4] Advocating such conduct is not protected by the Act.

The judge's reliance on *Cleveland Pneumatic Co.*, 271 NLRB 425 (1984), enfd. 777 F.2d 339 (6th Cir. 1985), is misplaced. In that case, the union's written notification to its members that it "did not authorize [certain] overtime" informed the employees of the union's position that the employer was assigning overtime in a manner inconsistent with the terms of the governing collective-bargaining agreement. Similarly, in *Riverside Cement*, 296 NLRB 840 (1989), cited by the dissent, employees were unlawfully locked out for exercising their contractual right to refuse to use certain personal tools on the job.

Here, there was no claim made or evidence introduced that Valentin sent his e-mails because he believed the Respondent was violating the collective-bargaining agreement either in the manner in which it provided pool cars or by requiring employees to use their own cars. Rather, Valentin's messages were an attempt to frustrate and interfere with the Respondent's operations in order to modify the current contract or to obtain leverage in some future negotiation.

[4] Member Schaumber notes that the premise of the Act is to eliminate the cause of obstructions to commerce by encouraging the practice and procedure of collective bargaining. See Sec. 1. The Supreme Court pointed out in *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. 464, 472 (1953), that the Act "seeks to strengthen, rather than weaken, that cooperation, continuity of service and cordial contractual relation between employer and employee that is born of loyalty to their common enterprise." In Member Schaumber's view, Valentin's urging employees to deliberately frustrate the Respondent's provision of pool cars is inconsistent with these foundational principles.

Our dissenting colleague takes the position that the notice read to Valentin violated Section 8(a)(1) because it was "overbroad." In the dissent's view, the e-mails, in part, defended unit employees' contractual right to decline to use personal cars for work and were, to that extent, protected. Thus, without deciding whether the e-mails also advocated an unprotected slowdown, the dissent finds that the notice of possible discipline was unlawful because it failed to specify which parts of the e-mails were under investigation. Instead, it referred generally to "potential improprieties." As a result, in our colleague's view, the notice "could reasonably be interpreted as a threat of possible punishment simply for. . . attempting to enforce the terms of the parties' contract."[5]

We disagree. First, as previously stated, Valentin was not seeking to enforce the terms of the contract. On the contrary, Valentin was trying to pressure the Respondent so it would negotiate a change in the terms of the contract. Second, the specific conduct urged on employees in the e-mails was a slowdown. This is the clear meaning and intent of passages such as:

> ". . . shoot down [management's] arrangement by referring [sic] to your 'team' conflicts which are almost certain to arise. Kapesh [sic]?"
>
> "Who's [sic] time are you saving? Remember, we work for a very large and successful . . . company."
>
> ". . . when it comes to pool cars, WORK THE RULE! Action speaks louder than words."

Given the parties' mature and established collective-bargaining relationship and Valentin's status as an experienced union steward, he would not reasonably understand that the Respondent's reference to "potential improprieties" encompassed anything other than those portions of his e-mails calling for a slowdown. Therefore, the Respondent did not violate the Act when it notified Valentin that it was going to investigate his conduct in connection with the e-mails, and this allegation of the complaint is dismissed.[6]

2. Valentin's 1998 performance appraisal

As a salaried plant engineer, Valentin is annually provided a performance review and appraisal. The appraisal consists of two sections: "Supervisor's Assessment of Results" and "Behavior Ratings." The supervisor's assessment section classifies the employee based upon "what was accomplished compared to goals, responsibilities and requirements." There are four possible classifications: role model, significant contributor, contributor, and development needed. The behavior ratings address, inter alia, an employee's "innovation/risk taking," "teamwork," "communication/openness/candor," "problem solving," and "leadership."

The appraisal permits separate comments for each of the sections: those in the supervisor's assessment come only from the employee's supervisor, while those in the behavior ratings come from anonymous "multiple input providers," including both supervisors and unit-employee coworkers. Each year, employees are requested to nominate up to six "input providers" who can be used to provide comments for the behavior-rating process. For his 1998 appraisal, which was issued in final form on January 23, 1999,[7] Valentin refused to designate any input providers, thus leaving their selection to his immediate supervisor.

Valentin received a supervisor's assessment of "Contributor," but no rating for any of the 11 behavior ratings in his 1998 appraisal. As to the commentary part of each section of the appraisal, the supervisor's assessment contained factual work-related observations such as "[UAW] business took priority over active involvement" in work projects, and "extensive involvement with [UAW] business precluded any significant contribution" to other work programs. The comments with regard to Valentin's behaviors were, on the other hand, often quite critical of his performance as union steward.[8] The sources of these critical comments are anonymous, though it is clear that some of them were made by co-workers selected as input providers. The other factual comments, which are clearly attributable to Valentin's supervisor, mirror the comments set forth in the supervisor's assessment section, referenced above.[9]

The General Counsel alleged that the Respondent's 1998 appraisal of Valentin discriminated against his union activities in violation of Section 8(a)(3) and (1) of the

[5] The dissent's analysis thus departs from that of the judge, who found the e-mails to be entirely protected conduct and made no finding that the notice of possible discipline was "overbroad."

[6] Member Schaumber points out that the notice was not a disciplinary warning; indeed, no discipline was ever imposed by the Respondent based on the e-mails. Rather, it advised Valentin of a predisciplinary investigation into his unprotected activity.

[7] All subsequent dates are in 1999, unless otherwise stated.

[8] Comments included: "Keith needs to listen to the needs of his union members and not follow or work union business into his own, private agenda;" "he seems to be fond of gamesmanship in the presentation of grievances;" "Keith could effectively represent his constituents as Chief Steward in a much more efficient manner so that there would be ample opportunity to accomplish real Plant Engineering work in support of department objectives;" "at times, Keith does not have a clue about what is going on with his union membership."

[9] For example: "Keith's minimal involvement in assignments related to his job title, 'Plant Engineer—A[,]' during 1998 make rating his 'innovation/risk taking' behavior, as it pertains to Chrysler business, impossible;" "Because nearly 100% of Keith's time has been spent on [UAW] business during 1998, there is no basis for an evaluation of his 'teamwork' behavior, as it relates to Chrysler business."

Act, in part because no critical comments about such activities had ever been placed in the appraisals of other employee union representatives. The judge agreed, also finding that the absence of ratings for the 11 behavior categories could negatively impact Valentin's terms and conditions of employment, specifically, his chances for promotion or efforts to transfer into another unit of the Respondent's workforce. We disagree.

In order to prove discrimination in violation of Section 8(a)(3), the General Counsel has the initial burden of establishing that the employee's union activity or other protected activity was a substantial or motivating factor in an employer's adverse personnel action. See *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *Transportation Management, Inc. v. NLRB*, 462 U.S. 393 (1983). The General Counsel here, however, failed to establish any adverse action.

The Respondent offered testimony that an appraised employee's supervisor's assessment rating, such as Valentin's "Contributor" rating, was entirely independent from, and not informed by, any part of the behavior ratings section of the appraisal. Likewise, in deciding whether to offer a promotion or a transfer, supervisors do not review the comments contained in the behavior rating section of the appraisal. This testimony was unrebutted. Therefore, the absence of ratings and the inclusion of critical union-related comments in the behavior ratings section did not have an adverse impact on Valentin's terms and conditions of employment.[10]

Indiana Hospital, 315 NLB 647 (1994), on which the judge relied to find a violation, is distinguishable. In that case, the evaluation, read in context, was a direction to the employee to stop supporting the Union, which the appraisal euphemistically referred to as "outside influences." Indeed, the Board adopted the judge's finding that the message in the evaluation comment amounted to a warning, which was based in part on the judge's finding that the employer's alternate explanations were incredible. Here, on the other hand, the comments did not direct Valentin to abandon the Union; rather, the comments were directed at Valentin's excessive activities, some of which we have found unprotected herein. Further, the Respondent here presented unrebutted evidence that the comments had no impact on Valentin's terms and conditions of employment. No evidence of this character was presented in *Indiana Hospital*.

[10] Further, read in context, the comments are not significantly different than those contained in the Respondent's letter to the Union complaining about Valentin's abuse of his union position, which letter we, in agreement with the judge, have found lawful herein.

Moreover, we disagree with the judge that the Respondent "exhibited disparate treatment" by including comments regarding Valentin's union activity in his appraisal. The judge based this finding on: (1) Peacock's testimony that, although he spends approximately 50 percent of his time on union activities, he has never had his union activities referred to in his annual appraisal; (2) Peacock's testimony that he was not aware of any other union official at the Respondent who had comments about their union activities inserted in their annual appraisal; and (3) testimony that Karieem Schkoor, who, while a unit employee, is a full-time union official, was not rated and did not receive an evaluation for 1998. The situations involving Peacock and Schkoor, however, are not comparable to that of Valentin. Peacock, unlike Valentin, successfully balanced his work obligations and union duties and was evaluated on the basis of the work he performed. Schkoor, unlike Valentin, was a full-time union official, and exempt from the evaluation process.

For the foregoing reasons, we dismiss this allegation.

3. The draft information request

On March 17, in connection with a grievance investigation concerning the discharge of probationary employee Lloyd Cooley, Valentin prepared a draft information request that sought, among other things, information concerning Supervisor John Lewandowski's medical history. Specifically, item 7 of the draft request asked whether Lewandowski had ever had a substance-abuse problem, and whether he had ever received treatment for, inter alia, "paranoid schizophrenia, hallucinations, repressed homosexuality, pedophilia, bestiality, etc." Valentin testified that he included item 7 in his exuberance, and "in the heat of the moment."

Valentin made a copy of the draft request for Peacock to review. Peacock advised Valentin that he "shouldn't have put [item 7 in] there." Valentin testified that, after consulting with Peacock, he determined that "it was, in fact, improper." He further testified that, "after cooling off for an hour or two," he agreed with Peacock and removed item 7. A version of the information request without item 7 was subsequently presented to the Respondent.

Lewandowski found a copy of the draft version lying on top of the office copier. He testified that two other employees had obtained copies, and that Steve Urbanec, an engineering supervisor, also received a copy. Valentin testified that he could not remember whether he left a copy of the draft version by the copying machine.

On March 24, a meeting took place among Labor Relations Supervisor John Karas, Peacock, and Valentin. Karas informed Valentin that it was an investigatory meeting, making specific reference to the offensive por-

tions of the draft information request. Karas then asked Valentin questions about the document, including whether it had been copied, distributed, or circulated in any way, and whether there were any copies saved on any computer files or disks. Valentin responded "no comment" to all questions.

The judge concluded that the questions posed by Karas violated Section 8(a)(1). The judge's analysis suggests two reasons for this conclusion. First, in the judge's view, "such interrogation was directed at Valentin solely as a result of his Union position and was retaliatory for his vigorous pursuit of other grievances and numerous information requests." In other words, Respondent was motivated to harass and intimidate Valentin because of his general union activism rather than because of any concern about the draft information request. Second, to the extent that Respondent's questions were in response to the draft information request, the judge found that the entire request was protected conduct. He thereby implicitly rejected the Respondent's defense that the remarks in item 7 were unprotected and that Respondent could therefore legitimately question (and subsequently warn) Valentin about this discrete aspect of the request.

We disagree with both of the judge's reasons for finding a violation. As to the first reason, the record does not support a finding that the Respondent's interrogation was motivated by animus against Valentin's other information request and grievance activity. We recognize that the Respondent's officials were clearly at odds with Valentin over the propriety of many such requests and grievances filed by Valentin since he became chief steward in May 1997. In a prior case, the Board affirmed a judge's finding that the Respondent unlawfully threatened Valentin with disciplinary action for engaging in this activity.[11] That case, however, involved an overbroad admonition against "inappropriate, harassing activity," which the judge found could "include virtually any [protected] request for information submitted by Valentin."[12] In this case, Respondent's interrogation of Valentin and its subsequent warning focused quite specifically on his involvement with draft information item 7. The judge nevertheless found that Respondent's professed concern about this specific activity was a pretext for a broader retaliatory motive because it had already received the final version of the information request which omitted item 7 and which invited Respondent to contact Valentin or Peacock if it had any questions about the relevancy of information actually requested. The judge's analysis ignores the fact that the draft information request with item 7 still circulated in Respondent's workplace and particularly upset Supervisor Lewandowski. Thus, contrary to the judge, we find that Respondent's concern about Valentin's role in the preparation and dissemination of draft information item 7 was the real motivating factor for its interrogation.

We likewise disagree with the judge's finding that item 7 of the draft information request was protected. Item 7 of the draft information request had nothing to do with Valentin's investigation into the discharge of Cooley, which was protected activity. Instead, it was a gratuitous effort to harass and embarrass Lewandowski. Valentin himself admitted that including item 7 in an information request would be improper. This item suggested not only that Lewandowski had a history of illicit drug addiction, but that he engaged in aberrant sexual behavior. Valentin's opprobrious personal attack on Lewandowski, which later circulated around the office, was unprotected and unrelated to Cooley's grievance and to the protected edited version of the request that the Union formally submitted to the Respondent

Furthermore, in conducting its interview of Valentin, the Respondent appropriately limited the scope of its questions to these unprotected aspects of Valentin's conduct. Karas made it clear, before asking any questions of Valentin, that he was concerned only about the information requested in item 7. Karas did not interrogate Valentin about the legitimate requests made in furtherance of the grievance investigation. Under these circumstances, we find that the Respondent's investigation was neither motivated by an intent to retaliate against Valentin's protected grievance and information request activity, nor could it reasonably tend to interfere with, coerce, or threaten such activity. Therefore, we dismiss the allegation that the interrogation of Valentin violated Section 8(a)(1) of the Act.

4. The written warning

On March 25, Valentin approached Lewandowski at his desk in the nonmanagerial department area of the Respondent's Auburn Hills Technical Center. This large open area of the facility is filled with employee cubicles. Valentin sought to hold an immediate grievance investigation meeting about Cooley's discharge. Lewandowski suggested that the meeting take place the following week. In response, Valentin, in a loud voice, called Lewandowski an "asshole," and said "bullshit, I want the meeting now."

After this exchange, Valentin began to leave the immediate area, but Lewandowski asked him to come back. Valentin asked, "is that an order?" Lewandowski responded, "no," and said that he was "just trying to cooperate," and that they could hold the meeting the follow-

[11] *DaimlerChrysler Corp.*, 331 NLRB 1324, 1327 (2000).
[12] Id.

ing week. Valentin then approached Lewandowski in a manner that both Lewandowski and Urbanec, who witnessed the encounter, described as "intimidating."[13] Valentin loudly said, "fuck this shit," and that he did not "have to put up with this bullshit." Then he turned and left the area.

During this encounter, there were "quite a few" other employees in the immediate area, sitting at their cubicles. At least three of them, Urbanec, Randy Rudes, and Edward St. Jaques, who were engaged in a discussion in Urbanec's cubicle, adjacent to Lewandowski's, heard Valentin's loud profanities.

On April 6, the Respondent issued Valentin a written reprimand that referenced the March 17 draft information request and the March 25 encounter with Lewandowski. It stated, in pertinent part: "effective April 6, 1999, you are being given this formal written warning for harassing Mr. Lewandowski, inappropriate conduct, intimidating behavior and using abusive language."

The judge found that Valentin's March 25 conduct did not lose the protection the Act, given that "the parties regularly use profanity when meeting with each other to resolve grievances and such language is regularly used on the shop floor." He further found that Respondent issued a written warning to Valentin "based on his vigorous pursuit of union activities," in violation of Section 8(a)(3) and (1) of the Act. Again, we disagree.

As previously stated, Valentin's preparation of draft information request item 7 and the subsequent circulation of that draft, even if unintended, were unprotected. Respondent could lawfully rely on this misconduct to discipline him. However, there remains a question whether Respondent's warning to Valentin was unlawful because it also relied on Valentin's conduct during his discussion with Lewandowski while he was engaged in protected grievance activity.[14] It is well established that "although employees are permitted some leeway for impulsive behavior when engaged in concerted activity, this leeway is balanced against an employer's right to maintain order and respect." *Piper Realty*, 313 NLRB 1289, 1290 (1994). Where an employee engages in indefensible or abusive misconduct during otherwise protected activity, the employee forfeits the Act's protection. Whether the Act's protection is lost depends on a balancing of four factors: (1) the place of the discussion between the employee and the employer; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. See *Atlantic Steel Co.*, 245 NLRB 814 (1979); see also *Trus Joist Macmillan*, 341 NLRB 369, 371 (2004) (applying *Atlantic Steel* factors to find employee use of profanity and lewd gestures removed statutory protection). Applying these factors, we find that Valentin's March 25 conduct cost him the Act's protection.

The first factor, the place of the discussion, weighs against protection of Valentin's conduct. Valentin's March 25 encounter with Lewandowski occurred in and around Lewandowski's cubicle, which was located in a large open area full of cubicles occupied by both supervisory and nonsupervisory personnel. Indeed, Valentin admitted that there were "quite a few" other employees in the immediate area. Further, Valentin's outbursts were overheard by at least three people in an adjacent cubicle. In such a place, Valentin's sustained profanity would reasonably tend to affect workplace discipline by undermining the authority of the supervisor subject to his vituperative attack. See, generally, *Aluminum Co. of America*, 338 NLRB 20, 21 (2004) (outburst in employee breakroom overheard by supervisor and two employees); *Piper Realty Co.*, supra (outburst in supervisor's office with door open overheard by two clerical employees).

The second factor, the subject matter of the discussion, weighs in favor of protection. Although Valentin's profane outburst was a reaction to Lewandowski's suggestion regarding scheduling a meeting, and not about any comment Lewandowski might have made regarding the underlying grievance, the meeting nevertheless took place in the normal course of Valentin's exercise of his grievance-investigation duties, which are protected.

The third factor, the nature of the employee's outburst, weighs against protection. Valentin was insubordinate and profane during his meeting with Lewandowski. While the encounter was fairly brief, the profanity involved more than a single spontaneous outburst. As our dissenting colleague emphasizes, credited testimony shows that the use of profanity was common in the workplace and in grievance discussions. Nevertheless, that testimony does not support a finding that such language was common, much less tolerated, when used repeatedly in a loud ad hominem attack on a supervisor

[13] Although the judge did not mention Lewandowski's testimony to this effect, the testimony was undisputed. Further, Lewandowski's testimony, which was generally credited by the judge, is bolstered by both his and Urbanec's written accounts of the incident, which indicate that Valentin's conduct in this respect was "intimidating."

[14] The judge's analysis suggests that Respondent was motivated to retaliate against Valentin by animus against his entire history of protected union activism. We find that the record fails to show that Respondent warned Valentin for any reason other than those asserted, i.e., his conduct related to the preparation of the draft information request and his subsequent discussion with Lewandowski.

that other workers overheard.[15] Moreover, we note that Respondent disciplined an employee for using profane language *to Valentin*.

Finally, the fourth factor also weighs against protection. There is no finding that Valentin was provoked by any unlawful conduct by Lewandowski or other officials of Respondent.[16]

Thus, only the factor of subject matter favors protection, while the factors of place, nature of conduct, and provocation do not. Accordingly, we find that Valentin lost the protection of the Act by his misconduct during the March 25 encounter with Lewandowski. *Aluminum Co. of America*, supra; *Piper Realty Co.*, supra. Therefore, we find that the Respondent lawfully disciplined Valentin for unprotected misconduct when it issued him the April 6 written warning about the draft information request item and his abusive language towards Lewandowski on March 25. We dismiss the allegation that the warning violated Section 8(a)(1) and (3) of the Act.

5. The information requests

With some modification, we agree with the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide information requested by the Union.

An employer has a duty to provide the union, on request, information relevant in carrying out its statutory responsibilities. *Postal Service*, 276 NLRB 1282, 1285 (1985). The standard for relevance is a "discovery type standard," and generally information that aids the grievance arbitration process is considered relevant. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Using the Board's standard, the judge correctly found that each of the various items sought by the Union in the disputed requests was relevant, with two exceptions.

On July 22, the Union requested information regarding the partial relocation of bargaining unit employees to a new building. The request was submitted in connection with grievances concerning the Respondent's alleged failure to include the Union in the decision-making process for the relocation, new building layout, and seating arrangements of unit employees. Items 2 and 3, "the appropriation request(s) used to fund" the relocation and "the lease agreement for the DaimlerChrysler occupation of the Comerica building," do not apparently concern terms and conditions of unit employees' employment and are therefore not presumptively relevant. Further, the General Counsel failed to prove the relevance of this requested information to the Union's representative role in the decision-making process for the relocation, new building layout, and seating arrangements of unit employees. Thus, the Respondent did not violate Section 8(a)(5) and (1) when it refused to provide that information. *Miami Rivet of Puerto Rico,* 318 NLRB 769, 776 (1995).[17]

AMENDED CONCLUSIONS OF LAW

The Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to furnish and by unreasonable delay in furnishing requested information relevant to the Union's performance of its duties as exclusive collective-bargaining representative.

In all other respects, the Respondent has not committed the unfair labor practices alleged in the complaint.

ORDER

The National Labor Relations Board orders that the Respondent, DaimlerChrysler Corporation, Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to timely respond and provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as the exclusive representative of an appropriate unit of the Respondent's employees.

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

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

(a) Furnish to the Union in a timely manner the information it requested in its letters dated June 22, July 21, July 22 (excluding items 2 and 3), August 2, and September 15, 1999.

(b) Within 14 days after service by the Region, post at its facility in Auburn Hills, Michigan, copies of the at-

[15] For instance, there are no exceptions to the judge's finding that Respondent lawfully disciplined Valentin only a month after the Lewandowski meeting for conduct in confrontation with another supervisor that included "screaming, abusive language, intimidation, finger pointing, and temporarily blocking the [supervisor's] egress."

[16] The outburst did occur the day after Valentin was questioned about the circulation of the draft information request. However, we have found herein that that investigation was proper under the circumstances.

[17] Member Schaumber is of the view that when, as here, information that is requested by a union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate its relevance when requested by the employer. See generally his position in *Artesia Ready Mix Concrete*, 339 NLRB 1224 (2003). The Union failed to fulfill that burden with respect to these two items of information. This is a further basis for dismissal regarding these two items.

tached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous 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 facilities 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 August 24, 1999.

(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 the Respondent has taken to comply.

MEMBER LIEBMAN, dissenting in part.

Keith Valentin's zeal as chief union steward no doubt was a constant irritant to management. And his conduct at times overstepped the Act's protections. Nonetheless, even rude stewards have rights when they are advancing legitimate employee concerns. Accordingly, contrary to the majority's position, I agree with the judge (1) that the Respondent's notice of disciplinary investigation to Valentin for allegedly fomenting a slowdown, was unlawfully coercive under Section 8(a)(1) of the Act; and (2) that Valentin did not lose the Act's protection by using profanities in a grievance-related conversation with a supervisor and that the written warning he was given based in part on that conversation violated Section 8(a)(3) and (1). Otherwise, I join in most of the majority's findings.[1]

1. The Warning for Fomenting a "Slowdown"

A section of the parties' supplemental contract provided that "[a]n adequate number of pool cars will be made available" for unit employees, and that "[i]t is Management's intent to provide each individual at outstate assignments with adequate transportation, either pool car or rental vehicle." This section also provided that "[w]hen the demand of Corporation business causes these cars to be unavailable, employees may be asked to use their personal car and be reimbursed for all mileage," but concluded: "Employees will not be required to use a personal car on corporation business if their wishes are to the contrary."

On November 4 and 5, 1998, Valentin authored three e-mails to bargaining unit employees relating to pool cars. The first recommended that employees refuse to use personal vehicles on company business, citing the contract section and emphasizing that "[w]hen you drive your own vehicle, you assume all the responsibility and liability" and that "[i]f you are involved in an accident, the company can and will abrogate all responsibility."

The second e-mail, sent to only one unit employee, elaborated by explaining that when the employee drove his own vehicle from home to an airport, he would have to subtract his normal commuting expense from his work expenses, and again noted that the employee could be liable for accidents occurring at a greater distance from home than his normal commute. Valentin continued:

> Why not use your normal commute time to pick-up a pool car? Often times BU members will be going out of their way and "back tracking". So what? Who's [sic] time are you saving? . . . The company could easily negotiate with the Union for lease cars and/or more favorable pool car utilization. [The Union is] all ears if the company has a proposal. . . . So then . . . when it comes to pool cars, WORK THE RULE! Action speaks louder than words.

The third e-mail covered several topics, but on the subject of shared pool cars urged as follows:

> [M]ake damn sure that management coordinates the who, what, when, or where. Don't volunteer to find a rider and make arrangements. Let management tell you who your [sic] riding with. At that time, you have an opportunity to shoot down their arrangement by refering [sic] to your 'team' conflicts which are almost certain to arise. Kapesh [sic]?

[18] 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."

[1] I agree with my colleagues that deferral to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971), is inappropriate in this case. For the reasons stated by the majority, I also agree that the Respondent did not violate Sec. 8(a)(1) either by interrogating Valentin in connection with the authorship of a draft information request containing offensive text, or by sending a letter to the Union alleging that Valentin was abusing his time privileges as a steward.

In addition, I agree that Valentin's performance evaluation did not violate Sec. 8(a)(3), but solely on the ground that the adverse comments at issue addressed alleged conduct that exceeded the statutorily protected scope of his responsibility as a steward.

Finally, I join the majority's findings with respect to the Union's information requests, except that I agree with the judge that the Respondent violated Sec. 8(a)(5) by withholding the lease agreement for space in the building to which a number of unit employees were relocated, as the lease was potentially relevant to grievances arising from that relocation.

On November 8, Valentin was summoned to a meeting with supervisors, where he was read a scripted statement informing him of "possible discipline" for "potential improprieties that have occurred associated with lotus notes messages you sent on 11/4/98 and 11/5/98." He was given no other information, except that an investigation was in process and that he would be informed of the result.

The majority finds the notice of possible discipline lawful because Valentin's e-mails fomented an unprotected "slowdown." However, the warning was unlawful even if Valentin did in fact advocate an unprotected slowdown, because it made no distinction between the protected and unprotected content of his communications. Valentin was undisputedly defending unit employees' explicit contractual right to decline to use personal cars for work. To that extent, his activity was fully protected under Section 7. The warning he was given failed to specify which of the comments in his e-mails—or even which of the three messages—purportedly incited a slowdown. Instead, the warning referred only to "potential improprieties . . . associated with" the e-mails. The warning was consequently so unspecific that it could reasonably be interpreted as a threat of possible punishment simply for Valentin's attempting to enforce the terms of the parties' contract.[2] Thus, the Respondent's defense—that it was contractually obligated to give advance warning of a disciplinary investigation that might lead to discipline—necessarily fails; the warning given was overbroad. On this ground at least, the notice violated Section 8(a)(1).[3]

2. The Use of Profanities and the Written Warning

Valentin approached Supervisor John Lewandowski at his work station, within hearing distance of other employees, and requested a grievance meeting to discuss a recent discharge. Lewandowski declined to meet until the following week. As the conversation continued, Valentin raised his voice, called Lewandowski an "asshole," and used at least one other profanity. Valentin was issued a written reprimand based on this incident and on a previous incident involving an offensive draft information request.[4]

Although the Respondent has a written rule prohibiting the use of "abusive" language, the judge found from the credited testimony that profanity is used "on a regular basis" in the shop and "regularly" by both supervisors and union officials in the processing of grievances. He also found that Lewandowski himself had used profanity during grievance meetings. The majority, however, finds that Valentin lost the Act's protection by using bad language.[5] I disagree.

To determine whether an employee loses protection due to verbal insubordination requires the balancing of four factors: (1) place of discussion; (2) subject matter; (3) nature of the employee's outburst; and (4) whether the outburst was provoked by an unfair labor practice. *Felix Industries*, 339 NLRB 195 (2003), enfd. 2004 WL 1498151 (D.C. Cir. 2004); *Atlantic Steel Co.,* 245 NLRB 814 (1979). I agree with the majority that the second factor weighs in favor of finding protection here, and that the first and fourth factors tend to weigh against. However, I give the third factor—Valentin's outburst—far less weight than does the majority. Given the judge's finding that profanity was used "regularly" by both sides in the grievance process, Valentin's warning can only be viewed as disparate enforcement.[6] The regular use of profanity in the Respondent's workplace also diminishes the weight of the first factor (place of discussion). Be-

[2] See, e.g., *Eastern Omni Constructors, Inc. v. NLRB*, 170 F.3d 418, 423 (4th Cir. 1999); *Engelhard Corp.*, 342 NLRB No. 5, slip op. at 16 (2004).

[3] Because Valentin was calling on employees to exercise their contractual right to a specific term of employment, I need not reach the issue of whether his e-mails can also be construed as a call for an unprotected slowdown under Board precedent. See *Riverside Cement*, 296 NLRB 840, 841–842 (1989) (use of personal tools); *Cleveland Pneumatic*, 271 NLRB 425, 426 (1984), enfd. 777 F.2d 339 (6th Cir. 1985) (overtime). See also *New York State Nurses Assn. (Mt. Sinai Hospital)*, 334 NLRB 798, 803–806 (2001) (dissent). However, the majority's attempt to distinguish *Cleveland Pneumatic* and *Riverside Cement* by asserting that here there was "no claim" that the Respondent was violating the contract "in the manner in which it provided pool cars," is inaccurate. Valentin's e-mails clearly indicated that the Respondent was not meeting its contractual obligation to make an "adequate number of pool cars" available and to "provide each individual . . . with adequate transportation, either pool car or rental vehicle." Moreover, there is no basis for the majority's suggestion that, simply because the parties had a "mature and established collective-bargaining relationship," the Respondent's unspecific warning would not reasonably be understood to threaten retaliation for protected activity. Unfair labor practices can, and sometimes are, committed in the context of such relationships.

[4] We have found that the interrogation of Valentin relating to the draft information incident was lawful. See fn.1.

[5] According to the majority, Valentin also approached Lewandowski in an "intimidating" manner. However, the judge made no fact or credibility finding to this effect.

[6] See, e.g., *Majestic Metal Specialties, Inc*., 92 NLRB 1854, 1864 (1951) ("Although Bissonnette may have used language which was not polite according to parlor-room standards, it was typical of the conversation used in industrial plants. . . . "). Cf. *Stanford Hotel*, 344 NLRB No. 69 (2005) (record did not show that employees regularly used foul language at the hotel). *Aluminum Co. of America*, 338 NLRB 20 (2004), and *Piper Realty Co.*, 313 NLRB 1289 (1994), cited by the majority, are distinguishable. In *Aluminum Co.*, the employee was on probationary status and directed profanities at two different supervisors on two different days, and the profanities were apparently calculated. In *Piper Realty*, the profanities were used in a more extended conversation and the employee was actively resisting a new work procedure.

cause Valentin was engaged in clearly protected activity, I would find that his profanity on this one occasion did not cause him to lose protection. The written warning he received was therefore based in part on his protected activity and consequently violated Section 8(a)(3) and (1).[7]

APPENDIX

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

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

WE WILL NOT refuse to provide the Union with requested information relevant to the Union's performance of its collective-bargaining duties as your exclusive bargaining representative.

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

WE WILL furnish to the Union in a timely manner the information it requested in its letters dated June 22, July 21, July 22 (excluding items 2 and 3), August 2, and September 15, 1999.

DAIMLERCHRYSLER CORPORATION

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on April 3, 4, and 5, 2000, in Detroit, Michigan, pursuant to a second consolidated amended complaint and notice of hearing (the complaint), issued by the Regional Director for Region 7 of the National Labor Relations Board (the Board) on January 20, 2000. The complaint, based upon original and amended charges filed on various dates in 1999[1] and 2000 by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, (Unit 53), AFL–CIO (the Charging Party or Union), alleges that DaimlerChrysler Corporation (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent coercively interrogated and threatened employees in violation of Section 8(a)(1) of the Act, issued an unfavorable performance evaluation, a written reprimand and a one day disciplinary suspension to employee Keith Valentin in violation of Section 8(a)(1) and (3) of the Act, and refused to furnish or delayed in providing requested information to the Union in violation of Section 8(a)(1) and (5) of the Act.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the manufacture, nonretail sale and distribution of automobiles and other automotive products, with an office and place of business located in Auburn Hills, Michigan. Respondent, in conducting its business operations, derived gross revenues in excess of $500,000, and manufactured, sold, and distributed from facilities located within the state of Michigan, products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped to points located outside the State of Michigan. The 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On May 21, Administrative Law Judge Arthur J. Amchan issued a decision (GC Exh. 10), involving the same parties that are in the subject complaint. He found that the Respondent violated Section 8(a)(1) of the Act by threatening Union Steward Keith Valentin with discipline for filing information requests and attempting to define and limit the rights of Valentin as a steward. Additionally, Judge Amchan found that the Respondent, by refusing to provide the Union requested information relevant to the performance of its collective-bargaining duties, violated Section 8(a)(1) and (5) of the Act. That decision is presently pending Board review.

At all material times Valentin has held the position of chief steward while Douglas Peacock serves as chairperson of the Union. Respondent representatives involved in the subject case include Supervisors Mark Fleszar, Teri Kowalski, John Lewandowski, and Craig Miller, Senior Manager Robert Page,

[7] The Respondent has not even contended, let alone shown, that it would have issued the warning to Valentin based solely on the other cited incident in which his conduct was not protected (the offensive draft information request).

[1] All dates in 1999 unless otherwise indicated JD–84–00.

[2] At the commencement of the hearing, Respondent reaffirmed its affirmative defense raised in the answer to the complaint, that the Board's allegations should be deferred to the parties' grievance-arbitration procedure. I denied the motion, and held that the Board does not normally defer statutory violations or issues concerning a refusal to supply information to the grievance-arbitration process and cited *Postal Service,* 302 NLRB 918 (1991), and *Postal Service*, 280 NLRB 685 fn. 2 (1986).

Labor Relations Supervisors Timothy Martin and John Karas, and Corporate Union Relations official Morris Simms.

B. The 8(a)(1) Violations

1. Allegations concerning Timothy Martin

The General Counsel alleges in paragraph 10(a) of the complaint that in late February or early March 1999, Martin told employees that they should not encourage or direct other employees to decline to participate in Respondent's appraisal process.

On October 20, 1998, Peacock sent a memorandum to labor relations seeking information on the qualifications of bargaining unit employees to participate in the appraisal process (GC Exh. 15). In that memorandum, Peacock stated that "until I receive this information, I will inform all B/U employees to postpone their participation in the appraisal process until they have had the chance to review the qualifications of the individuals slated to review their behaviors and performance." According to Peacock, in a meeting with Martin in early March 1999, Martin stated that certain individuals had concerns with the last paragraph of the memorandum that you were directing the workforce to not perform work.

Martin testified that he did not commence his job as labor relations supervisor in Unit 53 until late March 1999, and therefore, could not have met with Peacock in early March 1999 at the Auburn Hills, facility. Likewise, he denied making the statement.

The general test applied to determine whether employer statements violate Section 8(a)(1) of the Act is "whether the employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of rights under the Act." NLRB v. Aimet, Inc., 987 F.2d 445 (7th Cir. 1993); Reeves Bros., 320 NLRB 1082 (1996).

Although I agree that the subject memorandum is protected activity under the Act, I am not persuaded that Martin's statement, even if made, rises to the level of an unfair labor practice. In this regard, a statement that certain individuals have concerns that you were directing the bargaining unit not to perform work is not a threat or interrogation. It is merely an observation or an opinion, based on the contents of the memorandum. No investigation or any discipline was ever visited upon Peacock based on the statements contained in the memorandum.

Under these circumstances, I recommend that paragraph 10(a) of the complaint be dismissed.

2. Allegations concerning Robert Page and Mark Fleszar

The General Counsel alleges in paragraph 10(b) of the complaint that on November 6, 1998, Page and Fleszar threatened an employee with discipline in retaliation for his activities on behalf of the Union.

On November 4 and 5, 1998, Valentin authored three e-mails to bargaining unit employees concerning employee's starting time and the use of pool cars[3] (GC Exh. 14).

On November 6, 1998, Valentin was directed by Page and Fleszar to attend a meeting. Peacock was asked to attend the meeting because discipline could be taken against Valentin. At the commencement of the meeting, Page read a script that said, "You are being placed on notice of possible discipline up to and including discharge for potential improprieties that have occurred associated with lotus notes messages you sent on 11/4/98 and 11/5/98. An investigation and review of the situation is being conducted. You will be advised of the decision upon completion of the investigation" (GC Exh. 13).

Valentin testified that he sent the e-mails to bargaining unit employees to clarify the Union's interpretation of the parties' local agreement on the use of pool cars. Indeed, he reminded employees that the Union strongly recommends against using personal vehicles on company business because of liability questions.

Respondent defends its conduct on the basis that the e-mails suggest that employees should minimize the use of their personal vehicles when conducting company business. It asserts that such conduct is in effect directing the workforce to slow down and not to do their job. Likewise, it violates the no-strike clause in the parties' collective-bargaining agreement. Since the Respondent has only 44 pool cars and there are approximately 140 employees that might need them, if personal vehicles are not utilized once the allotment of pool cars has been exhausted, work scheduling and production could suffer.

I reject the Respondent's defense and find that the investigation conducted by Page and Fleszar was threatening and coercive. First, I conclude that the e-mails are protected conduct since they discuss a subject that is contained in the parties' local supplemental agreement. Second, Valentin was merely informing bargaining unit employees what the agreement already provided; "employees will not be required to use a personal car on Corporation business if their wishes are to the contrary." An investigation and threat of being placed on notice of possible discipline up to and including discharge for sending e-mail messages to bargaining unit employees on the interpretation of issues contained in the parties' agreement is coercive and violative of employee rights guaranteed in Section 7 of the Act. Cleveland Pneumatic Co., 271 NLRB 425 (1984).

Under these circumstances, I find that Respondent, by conducting the investigation and threatening Valentin with discipline up to and including discharge, violated Section 8(a)(1) of the Act.

[3] The parties' local supplemental agreement addresses the subject of pool cars at pp. 39 and 47 (GC Exh. 7). It states in pertinent part that "An adequate number of pool cars will be made available at all plants PTO services for Advanced Engineering use. Management will discuss required pool car numbers with the Union before launches occur and will assign no more than four employees per each plant pool vehicle from launch locations. It is Management's intent to provide each individual at outstate assignments with adequate transportation, either pool car or rental vehicle." "Both parties agreed that when requested, pool cars, when available, will be provided for transportation from CTC to the offsite work location and return. When the demand of Corporation business causes these cars to be unavailable, employees may be asked to use their personal car and be reimbursed for all mileage based on corporate guidelines. Employees will not be required to use a personal car on corporation business if their wishes are to the contrary."

3. Allegations concerning Morris Simms

The General Counsel alleges in paragraph 10 (c) of the complaint that on June 8, Simms threatened Valentin with discipline in retaliation for his activities on behalf and in support of the Union.

By letter dated June 8, Simms informed International Union official, Vinnie Pagano, that Valentin was abusing his union office and has failed to perform scheduled work assignments.[4]

In advance of writing the letter to Pagano, Simms was provided memoranda from a number of supervisors detailing Valentin's alleged abuses of the parties' agreement. Simms was informed that on May 15, Valentin never requested permission of the manager on duty to be released from work to engage in union activities. Likewise, the manager on duty for May 16 informed labor relations that Valentin did not report to his overtime assignment on that date, and did not inform the manager of his change in work status. Lastly, Labor Relations was apprised that on May 30, Valentin left his overtime assignment to investigate a grievance but refused to fully respond to the manager on duty as to the nature of the grievance and when it occurred (R. Exh. 12).

The parties' national agreement at Section 16(d) states in pertinent part that "The privilege of Stewards to leave their work during working hours without loss of time or pay is subject to the understanding that the time will be devoted to the prompt handling of grievances and will not be abused, and that the stewards will perform the work to which they are assigned at all times except when necessary to leave their work to handle grievances as provided herein." Section 16(e) states that "When making arrangements to leave their jobs to investigate or present grievances, Stewards shall advise their supervisor of the number and nature of those grievances" and Section 16(f) states that "Stewards during overtime periods or weekend work may request permission to leave their assigned work only to investigate a grievance which occurs during that premium time period."

On December 3, Valentin filed a grievance challenging the threat of discipline contained in the June 8 letter, and sought to rescind the letter and have all copies expunged from Respondent's files.

In determining whether the June 8 letter violates the Act, I find that the parties have a differing and arguable interpretation of Section 16 of their agreement. In this regard, Respondent opines that Valentin used an abundance of premium time to conduct his grievance investigations and refused to tell his supervisors the nature of the grievances or obtain permission to leave the work site before initiating the grievance investigations. As noted above, Valentin filed a grievance contesting the June 8 letter. I further note, however, that the abuses Respondent cites in the June 8 letter are addressed in Section 16 of the agreement and Valentin's actions appear to contravene some of those provisions.

Under these circumstances, I find that the June 8 letter does not violate Section 8(a)(1) of the Act. Rather, the letter merely points out that Respondent believes the parties' agreement has been violated and if Valentin continues to abuse those provisions, discipline could be forthcoming. Although Valentin filed a grievance over the letter, it was not timely as it was filed on December 3, a period of approximately 6 months after the letter was written. Moreover, the record is silent as to what action the International Union took in response to the Simms' letter but the record confirms that no discipline was visited upon Valentin and nothing was placed in his personnel file regarding the issues raised in the June 8 letter.

Accordingly, I conclude that the letter and the reference in the last paragraph to potential discipline if Valentin continues to abuse the parties' agreement, does not violate Section 8(a)(1) of the Act, and I recommend that paragraph 10(c) of the complaint be dismissed.

4. Allegations concerning John Karas and John Lewandowski

The General Counsel alleges in paragraph 10(d) of the complaint that on March 24, Karas and Lewandowski coercively interrogated its employees regarding their union activities.

On March 17, Valentin prepared a draft request for information in connection with the grievance investigation surrounding the termination of probationary employee Lloyd Cooley (GC Exh. 26). Item 7 on the draft inquired whether Lewandowski is taking drugs or is being treated by a mental health professional and sought copies of his personnel, medical, and mental health files. The Union, in the draft, apprised the Respondent that if an explanation was required as to the relevancy

[4] The letter states in pertinent part:

> Since taking office in Unit 53, Local 412, Keith Valentin has maintained that his full-time position is as Steward, and as such, he has not performed any of his regular work assignments during normal non-premium working hours. He has also found it "necessary" to perform a great deal of union business on overtime. In the interest of the relationship, and in keeping with the intent of Section (16) of the National Engineering Agreement, management has in good faith allowed Mr. Valentin a great deal of latitude in this regard. Recent incidents of time off the job during premium periods, however, are considered by the Corporation to be blatant abuses of the privilege. Mr. Valentin was scheduled to work the weekends of May 15, and May 29, 1999, including Memorial Day, eight (8) hours each day. During the forty hours of premium pay time listed above, Mr. Valentin failed to perform any of his assigned work. He had accepted the scheduled overtime to perform specific and necessary assignments, yet in each case, with little or no explanation, he claimed the time was used to investigate grievances. Claiming to be "investigating grievances" is not considered justification for his complete failure to perform schedule assignments and constitutes an abuse in violation of Section (16) of the Agreement.
>
> The Corporation therefore requests the International to take appropriate action to correct the non-compliance with the intents of Section (16) of the National Engineering Agreement. It is the hope of the Corporation that the Union's attention to this matter will result in a reasonable resolution. However, in the event that Mr. Valentin continues to abuse the privilege of time off the job for grievance investigation without loss of pay, the corporation will find it necessary to take appropriate corrective action. Such action may include discipline up to and including discharge, and/or denial of future use of the privilege to take time off the job for grievance investigation without loss of pay.

of the information to contact Valentin or Peacock. Valentin, after xeroxing the draft, forwarded it to Peacock who decided the information requested in item 7 should not be sought. Accordingly, a finalized version of the information request was served on March 18, to designated Respondent officials (GC Exh. 27). Apparently, copies of the draft information request were inadvertently left at the Xerox machine and a number of supervisors including Lewandowski ultimately obtained a copy of the draft. Lewandowski was upset and immediately telephoned Karas to inform him about the content of the draft with specific emphasis placed on item 7. Karas received a copy of the draft on March 18, from Supervisor Steve Urbanec.

On March 23, Karas attempted to arrange an investigatory meeting with Valentin and Peacock to discuss the draft information request. Peacock informed Karas that Valentin was not available to meet on that date due to the press of union business. Ultimately a meeting was arranged and did take place on March 24, with Peacock and Valentin in attendance. Karas informed Valentin that this was an investigatory meeting and commenced the meeting by asking Valentin a number of questions.[5] To each of the questions,[5] Valentin responded, "no comment."

The Respondent defends its conduct and argues that the information sought in item 7 went over the line and constituted harassment and intimidation of a supervisor. I reject this defense for a number of reasons. First, the request was made in order to obtain information to determine whether to file a grievance over Lewandowski's termination of probationary employee Lloyd Cooley. Second, the objectionable information sought in item 7 was contained in a draft document, that ultimately was issued in final form without seeking the personnel, medical, or mental health records for Lewandowski. The draft also informed the Respondent that if they had any questions concerning the relevancy of the information to contact Valentin or Peacock. Third, by the time the investigatory meeting occurred on March 24, the Respondent was in possession of the final version of the information request that did not contain the objectionable material. Accordingly, there was no reason to conduct an investigatory meeting or to question Valentin about the content of the draft. I find that such interrogation was directed at Valentin solely as a result of his union position and was retaliatory for his vigorous pursuit of other grievances and numerous information requests.

Under these circumstances, I find that the draft information request was protected conduct, and Respondent's coercive interrogation of Valentin regarding its contents, is violative of Section 8(a)(1) of the Act.

C. The 8(a)(1) and (3) Violations

1. The unfavorable performance evaluation

The General Counsel alleges in paragraph 11(a) of the complaint that on January 23, Craig Miller, issued an unfavorable performance evaluation.

In *Wright Line,* 251 NLRB 1083 (1980), enfd, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399–403 (1993). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

As a salaried plant engineer, Valentin is provided a performance review and appraisal on a yearly basis. In order to give greater credibility to the structure of the performance appraisal process, anonymous multiple input-provider comments are utilized. Each year employees are requested to provide up to six input providers that can be used to provide comments for the appraisal process. Likewise, the first-line supervisor may also utilize up to six input providers to provide comments for insertion in the performance appraisal. Since Valentin refused to provide any input providers, Miller sought two other providers beside himself and prepared the yearly appraisal. Valentin first reviewed a preliminary draft of his 1998 appraisal in early January 1999 and was issued the final version on January 23 (GC Exh. 16). On that date, Miller held a lengthy meeting with Valentin and Peacock to discuss the performance evaluation. Valentin apprised Miller that he strenuously objected to the numerous references to his union activities in the narrative portions of the appraisal and sought specifically which of the union related comments were related to which input provider. Miller, although he should not have revealed the names of the input providers, told Valentin who they were but with the exception of his comments, could not match up the name of the input providers with their individual comments in each section of the appraisal. Valentin expressed his opinion that due to his numerous union responsibilities, he should not be given a yearly performance appraisal and in any event, the comments about his union activities should not be included in the appraisal. Miller testified that the comments about Valentin's union activities were inserted in the appraisal because he could not evaluate certain aspects of his performance due to his union responsibilities. In response, Valentin apprised Miller that on weekends and when performing overtime assignments other supervisors observed his performance and they should have been consulted for input into the evaluation.

Peacock credibly testified that he spends approximately 50 percent of his time on union activities. Peacock has never had his union activities referred to in his yearly performance evaluation. Moreover, Peacock indicated that he was not aware

[5] Some of the questions included, "Who wrote the draft," "Is it on a hard disc," "Did you reproduce the document," "Did you show the document to anyone" and "Did you distribute the document."

of any other union official at the Respondent that had comments about their union activities inserted in their performance evaluation. Lastly, Martin admitted that full time union official, Karieem Schkoor, who is also in Unit 53, was not rated and did not receive a 1998-performance evaluation. Martin also agreed that Schkoor similarly to Valentin enjoys the benefits and protections of the parties' collective-bargaining agreement.

Although the final overall rating assessed to Valentin was that of a contributor, the section in the appraisal titled behavior ratings was not evaluated. Indeed, Miller did not assign any rating for the 11 behavior categories listed in the appraisal. The absence of ratings for this evaluation factor can negatively impact an employee's chances for promotion or efforts to transfer into another unit of the Respondent's workforce. Under these circumstances, I am in agreement with the General Counsel that the appraisal comments involving Valentin's union activities should not have appeared in the evaluation and violate the guarantees found in Section 7 of the Act. Likewise, I find that the Respondent exhibited disparate treatment when either not including union activities in the evaluation of Peacock or not rating and issuing a 1998 performance evaluation for full-time union official Schkoor, in comparison to Valentin.

For all of the above reasons, I find that by referencing the union activities of Valentin in his 1998 performance evaluation, Respondent restrained and coerced him in the exercise of the rights guaranteed in Section 7 of the Act. Therefore, the Respondent violated Section 8(a)(1) and (3) of the Act. *Indiana Hospital,* 315 NLRB 647, 649 (1994).

2. The written warning

The General Counsel alleges in paragraph 11(b) of the complaint that on April 6, Page issued a written reprimand to Valentin (GC Exh. 28).[6]

The facts and my finding concerning the March 17 information request (GC Exh. 26) are set forth in Section B (4) above.

In regard to the March 25 incident, the record reflects that Valentin approached Lewandowski at his worksite on that date in an effort to schedule a grievance investigation meeting concerning discharged probationary employee Cooley. Valentin sought to schedule the meeting immediately while Lewandowski suggested that it take place the following week.[7] Valentin admits that he raised his voice and called Lewandowski an "asshole" but denies using the term "bullshit" and "fuck this shit." Two employees, who were sitting one cubicle away and overheard Valentin and Lewandowski, submitted written statements concerning the incident. Both statements confirm that Valentin used the word "bullshit" during his conversation with Lewandowski (R. Exh. 11).

Peacock credibly testified that profanity is often used in the shop and he has heard such language on a regular basis. Likewise, profanity is regularly used by both Respondent supervisors and union officials in the resolution of grievances between the parties. Indeed, Peacock testified that Lewandowski has used profanity during grievance meetings in which he was present.

Respondent defends its action in issuing the written warning regarding the March 25 incident between Valentin and Lewandowski on its standards of conduct rule #14 that states in pertinent part " . . . . using abusive language to others" (R. Exh. 9). Likewise, Respondent asserts that it was consistent when it issued a written warning to bargaining unit employee Tammy Miller on November 29, for using words such as "asshole and bullshit" in a discussion with Valentin.

I conclude that a good deal of leeway is permitted when Respondent and union officials are engaged in robust debate over grievances and other contract issues. An employee's right to engage in concerted activity may permit some leeway for impulsive behavior that must be balanced against the employer's right to maintain order and respect. I do not find that the word's "asshole," "bullshit" or "fuck this shit" is so flagrant or egregious to take it out of the protection of Section 7 of the Act. See *Indian Hills Care Center,* 321 NLRB 144, 151 (1996), and *Felix Industries* 331 NLRB 144 (2000). Moreover, I note that the parties regularly use profanity when meeting with each other to resolve grievances and such language is common practice on the shop floor. Under these circumstances, I find that when Valentin used such language in his discussion with Lewandowski on March 25 to schedule a grievance investigation, it did not lose the protection of the Act.

Under these circumstances, and particularly noting my findings regarding the March 17 information draft in B (4) above, I conclude that the written warning issued to Valentin on April 6 was given to him based on his vigorous pursuit of union activities. Indeed, under the Wright Line guidelines, I find that the Respondent would not have issued the written warning if Valentin had not engaged in protected conduct. Therefore, Respondent violated Section 8(a)(1) and (3) of the Act.

3. The disciplinary suspension

The General Counsel alleges in paragraph 11 (c) of the complaint that Page issued a 1-day disciplinary suspension to Valentin.

[6] The April 6 written warning is titled "Written Warning for harassment, Inappropriate Conduct, Intimidating Behavior and Using Abusive Language and states in pertinent part:

> On March 18, 1999, you circulated a memorandum regarding a "Request for Information Pursuant to a Grievance Investigation." In the memo, you requested personal and confidential information relating to AME-PT Supervisor John Lewandowski in an inappropriate and unprofessional manner.
>
> Moreover, on March 25, 1999, while attempting to schedule a grievance investigation with Mr. Lewandowski, you used abusive language. The Company views your language and behavior towards Mr. Lewandowski as being harassing, intimidating and unacceptable.
>
> Therefore, effective April 6, 1999, you are being given this formal written warning for harassing Mr. Lewandowski, inappropriate conduct, intimidating behavior and using abusive language.

[7] On March 26, Lewandowski sent Valentin a memorandum indicating his availability for the grievance investigation meeting on March 29, 30, and 31 (GC Exh. 60). Valentin filed Grievance 99-53-013 on March 24 concerning the incident (GC Exh. 59). The Respondent answered the grievance on March 30, and thereafter by Labor Relations on April 29 (GC Exh. 61).

On the morning of April 23, Valentin approached Teri Kowalski and asked if he could have a discussion with her. Kowalski responded that she needed to take care of something first but then she could meet with Valentin. Since the person that Kowalski was looking for was not available, Kowalski agreed to meet with Valentin and they proceeded to a small conference room. Valentin, after closing the door to the conference room, apprised Kowalski that he was conducting a grievance investigation and under no circumstances should she talk with any bargaining unit auditors about the manufacturing quality assurance system (MQAS) until they held a meeting the following week. While Valentin denies informing Kowalski that if she met with the auditors before he could schedule a meeting, he would have her "ass" up to labor relations so fast and pointed his finger in her face, I am of the opinion that such a statement was made by Valentin. In this regard, Kowalski impressed me as a sincere and forthright witness who was very precise in her testimony. Additionally, immediately after the meeting on April 23, her direct supervisor instructed Kowalski to memorialize what took place during the meeting (R. Exh. 4). That statement fully comports with her testimony. Kowalski further testified that Valentin's voice continued to escalate during the meeting and he repeated that Kowalski had no right to make auditing a mandatory subject for bargaining unit employees. After Valentin said this, Kowalski informed Valentin that the conversation was over and she got up from the table and proceeded towards the door. Valentin began to scream and point his finger in Kowalski's face and told her she better listen to him. Valentin then leaned his arm on the door and attempted to block Kowalski's exit from the conference room. Kowalski was able to grab the door-handle and open the door but as she was leaving the room, Valentin warned her not to approach any bargaining unit auditors and stated he meant it.

Valentin admitted that the April 23 meeting became contentious and he did use the word "bullshit" during the meeting. He denies, however, that he screamed at Kowalski, was abusive or attempted to block her egress from the conference room.

The record reflects that this was the first grievance meeting that Kowalski had with Valentin but she credibly testified that since that meeting, no other union official has ever treated her like this. I note that Kowalski is a petite woman who is considerably smaller in frame and height than Valentin. Thus, it was not unreasonable for Kowalski to be intimidated by Valentin's conduct and concerned when her egress from the conference room was temporarily blocked. I conclude that the conduct engaged in by Valentin during the April 23 meeting went beyond the pale of robust debate, and the leeway that is normally permitted in discussions between labor and management. Indeed, the totality of the events including the screaming, abusive language, intimidation, finger pointing, and temporarily blocking the egress of Kowalski from the conference room were flagrant and egregious. Thus, it leads me to believe that it exceeded the bounds of protected conduct.

On May 10, Page and Martin held a meeting with Valentin and Peacock to discuss the events that took place on April 23. Valentin viewed the meeting as interrogation and refused to answer the majority of questions that were asked. At the conclusion of the meeting, Peacock asked Martin whether discipline would result as a result of the April 23 incident. Martin, according to Peacock, said "he did not anticipate any discipline due to the he said, she said nature of the meeting." Martin denies that he made such a statement and testified that he told Valentin and Peacock that it is out of his control and we will see what happens. The record is clear, however, that Martin did not have the independent authority to visit any discipline upon Valentin. Rather, Corporate Union Relations must approve any discipline that is given to a union official. Indeed, Simms credibly testified that he reviewed the Valentin-Kowalski incident and approved the discipline.

For all of the above reasons, I find that the Respondent would have issued the 1-day disciplinary suspension to Valentin even in the absence of his protected activities. Therefore, I recommend that paragraph 11(c) of the complaint be dismissed.

D. The 8(a)(1) and (5) Violations

The General Counsel in paragraphs 13 (a) through (e), (i) and (j) and paragraphs 17 (a) through (e), (i) and (j) alleges that certain information was requested on the dates indicated therein and that the Respondent refused to furnish or delayed in providing the requested information.[8]

The obligation under Section 8(a)(1) and (5) of the Act on the part of an employer to supply the statutory bargaining agent with relevant information concerning the processing of grievances and contract negotiations is well and long established. *NLRB v. Truitt Mfg. Co.* 351 U.S. 149 (1956); *Shoppers Food Warehouse,* 315 NLRB 258 (1994). Unreasonable delay in furnishing such information is as much a violation of the Act as a refusal to furnish any information at all. *Bundy Corp.* 292 NLRB 671 (1989) (violation of the Act to ignore or delay supplying the Union with necessary information for 2-1/2 months).

As a generic defense to the information allegations in the complaint, the Respondent asserts that Martin did not commence his job as the labor relations point of contact for Unit 53 until late March 1999. In addition to the 150 employees in that bargaining unit, Martin is also responsible as labor relations contact for the approximately 500 bargaining unit employees in the Local 212 unit and another group of 125 employees. Additionally, at the end of July 1999, Martin commenced collective bargaining negotiations for employees in Unit 53 and Local 212 that consumed all of his full time. Preparation time for these negotiations began just after his arrival in late March 1999 and continued on a regular basis until the end of July 1999.

1. Complaint paragraphs 13(a) and 17 (a): June 15, information requests for Valentin's 1998 performance appraisal

On June 11 and 14, Valentin filed two grievances (99–53–027 and 028) concerning his 1998 performance evaluation (GC Exh. 17). On June 15, Valentin filed a lengthy request for information pursuant to the grievance investigation of the two above noted grievances. It consists of 31 questions regarding substantive comments and aspects of the performance evaluation (GC Exh. 18). By memorandum dated July 20, Martin

[8] At the commencement of the hearing, the General Counsel moved to delete pars. 13(f), (g), (h) and corresponding pars. 17(f), (g) and (h) from the complaint. The Motion was granted without opposition.

comprehensively responded individually to the 31 questions raised by Valentin (GC Exh. 19).

Under these circumstances, I find that Respondent fully and completely responded to the requests for information raised by Valentin and therefore, recommend that paragraphs 13 (a) and 17 (a) of the complaint be dismissed.

2. Complaint paragraphs 13(b) and 17(b): June 22, information requests in connection with Valentin's 1998 performance appraisal

On June 22, Valentin requested six items of information in connection with his 1998 performance evaluation for use in processing the two grievances noted above (GC Exh. 20). By memorandum dated August 4, Valentin inquired of Martin the status of his June 22 request for information (GC Exh. 21). By memorandum dated August 4, Martin apprised Valentin that the information requested on June 22, is in the process of being accumulated (GC Exh. 22). By memorandum dated August 24, Martin responded to Valentin's June 22 request for information. In items 1, 2, and 5, Respondent provided the requested information. For items 3, 4, and 6, the Respondent stated, "The reason for the request is not apparent, please explain the relevance of the information."

I conclude that the 1998 Chrysler appraisal process guide, the appraisal behavior training guide and the information sought for performance appraisals in calendar years 1996 and 1997 (items 3, 4, and 6), were relevant and necessary. Thus, such information should have been provided to the Union to support the grievances filed over Valentin's 1998 appraisal evaluation. Additionally, I find a 3-month delay to tell the Union to explain the relevance of the information and to finally provide the information in items 1, 2, and 5 are dilatory. I also note that it was necessary for Valentin to inquire on August 4, about the status of his June 22 request for information. At this point, Respondent had delayed for over 1-1/2 months to even communicate with the Union concerning the initial request for information.

Under these circumstances, I find that when the Respondent refused to furnish the information or delayed in providing the information noted above, it violated Section 8(a)(1) and (5) of the Act.

3. Complaint paragraphs 13 (c) and 17(c): July 21, information in connection with AME-PT bargaining unit seating arrangements

On July 21, Valentin filed a request for information in connection with a grievance investigation (99–53–034) concerning the relocation and layout of the AME-PT department bargaining unit and the employees' seating arrangements (GC Exh. 32). The request involved nine items of information. By memorandum dated August 30, Respondent provided an answer to the Union's request for information (GC Exh. 34). In that response, the Respondent denied the information requested in items 1 through 7, promised to discuss the reason why certain unit 53 members were assigned to private as opposed to shared cubicle's, and refused to discuss item 9 as it is argumentative and irrelevant.

I conclude that the requests for information such as agendas, meetings, and the names of Unit 53 members that individually contacted Respondent regarding the seating arrangements are pertinent to the grievance investigation. In this regard, these items of information were sought in connection with the grievance that alleged "Management failed to involve the Union in the AME-PT Department Rearrangement and layout of the workplace." Thus, the information is necessary and relevant to the Union to move forward with the grievance. Likewise, I credit Valentin's testimony that despite the promise of the Respondent to discuss the issues surrounding private and shared cubicles, no such meeting or discussion took place. In regard to item 9, I believe such an explanation is relevant and is not argumentative.

Under these circumstances, I find that when the Respondent refused to provide the information alleged in paragraphs 13(c) and 17(c) of the complaint, it violated Section 8(a)(1) and (5) of the Act.

4. Complaint paragraphs 13(d) and 17(d): July 22, information requests in connection with the partial relocation to the Comerica building

On July 22, Valentin requested seven items of information to support three grievances (99–53–034, 035 and 036) in connection with the partial relocation of AME-PT employees to the Comerica building. On July 21, in response to grievance 99–53–036, Respondent indicated that information concerning the timing, cubicle assignments, and any details of the move were posted outside one of the supervisor's office in May 1999 (GC Exh. 38). On August 30, the Respondent responded to the Union's July 22 information request, and questioned the relevance of the information being sought. Additionally, in regard to items 4 and 5 of the information request, the Respondent asserted that collecting the information would be extremely burdensome and urged the Union to explain the relevance of the request and narrow its scope (GC Exh. 39). On January 19, 2000, Respondent communicated with the Union regarding the July 22 information request (GC Exh. 42). The Respondent, in response to item 1, apprised the Union that the business plan developed for the partial relocation of AME-PT employees from DCTC to the Comerica building was posted outside AME-PT Manager Don Lucas' office prior to May 30, and remained posted through the end of July 1999. However, the information was disposed of in late 1999. In regard to items 2 and 3, the appropriation request and the lease, Respondent refused to produce the information. With respect to items 4, 5, and 6, the Respondent provided answers to the Union. Concerning item 7, in which the Union sought a listing and detailed description of various options that were considered before deciding on the partial relocation to the Comerica building, the Respondent determined that such information was irrelevant and refused to provide it.

Based on the forgoing, I conclude that items 1, 2, and 3 of the July 22 information request were necessary and relevant for the Union to investigate and process the three grievances. With respect to items 4, 5, and 6, the Respondent ultimately provided the information but not in a timely manner. In regard to item 7, I agree with the Respondent's position that alternative options

considered are not relevant to grieve or negotiate over the ultimate relocation to the Comerica building. Accordingly, I find that Respondent violated Section 8(a)(1) and (5) of the Act by either refusing to provide necessary and relevant information or refusing to provide information in a timely manner.

5. Complaint paragraphs 13(e) and 17(e): August 2, information request in connection with unscheduled overtime

On August 2, the Union sought information pursuant to a grievance investigation on the method of scheduling unscheduled overtime (GC Exh. 43). On August 30, Respondent communicated with the Union and refused to provide time cards, asserted that overtime equalization lists should already be in the Union's possession and declined to give further explanations as to the method of scheduling unscheduled overtime (GC Exh. 44). On September 7, the Union wrote to the Respondent in an effort to further explain and clarify its need for the information (GC Exh. 48). On December 13, the Union again communicated with the Respondent and confirmed that it was not requesting a copy of the time cards. Rather, the Union apprised the Respondent that it was requesting an explanation for each instance of unscheduled overtime during the pay period from July 19 to August 1. The Union further explained to the Respondent that it has received a number of complaints from Unit 53 members that unscheduled overtime is being awarded on a discriminatory basis (GC Exh. 49). On January 19, 2000, the Respondent answered the Union and stated, "In reviewing the time card for the requested period, I discovered approximately 30 individuals had worked unscheduled overtime. As discussed, most of the abuse is related to the tremendous travel requirements of the Transmission group. However, in accordance with the Collective Bargaining Agreement, Management has endeavored to equalize overtime within a reasonable spread. In addition, the Director of AME-Transmission (Larry Mitchell) has distributed a letter to all AME Transmission Supervisors addressing the problem. Further investigation into the issue reveals that there are no grievances on file relative to overtime at the Second Step of the grievance procedure."

Based on the forgoing, and noting that a practice has developed for Respondent to respond to the Union on questions regarding unscheduled overtime, I conclude that the August 2 request for information was necessary and relevant to pursue a grievance investigation on that subject. Although not timely, the Respondent ultimately provided the information to the Union on January 19, 2000. Because the Respondent took in excess of 5 months to provide the Union with the information it requested on August 2, I find that it violated Section 8(a)(1) and (5) of the Act.

6. Complaint paragraphs 13(i) and 17(i): September 15, information requests in connection with the employee survey

On September 15, Valentin requested four items of information pursuant to a grievance investigation in connection with the two most recent survey results conducted for AME-PT (GC Exh. 50). On October 18, Respondent answered the Union's September 15 request and stated, "Periodically, the Corporation has and will continue to conduct surveys. However, the company fails to understand how the survey could possibly be the subject of a grievance. In addition, all information gleaned from the surveys is compiled by an outside company. The responses to the surveys are neither in the possession of the Corporation, nor available for copy. Further, the results of the last survey were presented at a Power Train Town Hall meeting on September 29, 1999." Based on the October 18 response, the Union did not receive any of the requested information. By memorandum dated December 13, the Union further amplified its September 15 information request, and apprised the Respondent that it needed the survey results as a bargaining aid in the 1999 Local negotiations and to support selected grievances (GC Exh. 51). On January 19, 2000, the Respondent provided a copy of the 1998 culture survey results to the Union.

Based on the forgoing, I find that the Respondent ultimately provided a copy of the 1998 culture survey results to the Union, however, it was not done in a timely manner. I note that the initial information request sought the two most recent survey results and the Respondent only provided the 1998 survey. Additionally, the Respondent did not provide the Union the additional information that it sought in items 2, 3, and 4 of the request. Therefore, I conclude that by not providing necessary and relevant information to the Union and providing some information in an untimely manner, the Respondent violated Section 8(a)(1) and (5) of the Act.

7. Complaint paragraphs 13(j) and 17(j): September 15, information requests in connection with the tool change plans for the 3.7L Mack II Plant

On September 15, Valentin filed an information request for five items in connection with a grievance investigation for the tool change plans or strategy developed for the 3.7L Mack I I plant (GC Exh. 52). On October 18, the Respondent answered the Union's information request (GC Exh. 36). Concerning items 1 and 2, the Respondent sought the Union to provide additional relevance or amplification of potential contract violations. In item 3, Respondent opined that accumulating the information would be extremely burdensome and requested the Union to limit the scope of its information request. For item 4, the Respondent asserted that corrective action plans and potential tool strategy are currently under consideration by the appropriate managerial personnel. With respect to item 5, the Respondent indicated the issue was settled at the first step of the grievance procedure and no additional information is necessary. On December 13, Valentin further clarified and provided support for the September 15, information request (GC Exh. 53). In regard to item 5, Valentin acknowledged that a portion of the grievance has been resolved, however, bargaining unit job content relating to tool (classification 211) and plant (classification 218) engineers is still under investigation. On January 19, 2000, the Respondent again addressed the Union's September 15 request for information. The Union acknowledges that the Respondent's responses to items 1, 2, and 4 are satisfactory. With respect to items 3 and 5, the Union never received all of the information.

Based on the forgoing, I find that safety reports requested in item 3 are necessary and relevant to the Union's grievance

investigation and obtaining the reports for 2 years, if they exist, is not burdensome. With respect to item 5, I conclude that while the Union obtained one aspect of their request, they did not receive the two other items of information sought by the Union. I find that the information related to tool (classification 211) and plant (classification 218) engineers is presumptively relevant and should be provided to the Union.

Under these circumstances, I find that by refusing to provide information to the Union concerning items 3 and 5, and not responding to items 1, 2, and 4, in a meaningful and comprehensive manner for approximately 4 months, the Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

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

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

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by threatening an employee with discipline on November 6, 1998, and coercively interrogating an employee on March 24, 1999.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by issuing an unfavorable performance appraisal on January 23, 1999, to Keith Valentin and by issuing a written warning to Keith Valentin on April 6, 1999.

5. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to furnish and delaying in providing requested information relevant to the Union's performance of its duties as exclusive collective-bargaining representative.

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

REMEDY

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

[Recommended Order omitted from publication.]