JD(ATL)-22-12
Far Rockaway, NY

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

833 CENTRAL OWNERS CORP.

and **Case 29–CA–70910**

LOCAL 621, UNITED WORKERS OF AMERICA

Michael Berger, Esq.,
for the Acting General Counsel.[1]
Ernest R Strolzer, Esq. **and**
Hilary L. Moreira, Esq.,
for the Respondent.[2]
Bryan C. McCarthy, Esq.,
for the Charging Party.[3]

DECISION

Statement of the Case

WILLIAM NELSON CATES, Administrative Law Judge. This case was tried in Brooklyn, New York, on May 7 and 8, 2012.[4] The Union filed a charge initiating this matter on January 15, 2012 (thereafter amended), and the Acting General Counsel issued the complaint on February 21, 2012.[5] The government alleges the Company engaged in various acts of interference with its employees protected rights. The government also alleges the Company issued four written warnings on the same day to its employee Ezra Shikarchy (Shikarchy), later suspended him for 3 days and thereafter discharged him because of his support for the Union.

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1 I shall refer to counsel for the Acting General Counsel as counsel for the government and to the National Labor Relations Board (Board) as the government.

2 I shall refer to counsel for the Respondent as counsel for the Company and I shall refer to the Respondent as the Company or cooperative.

3 I shall refer to counsel for the Charging Party as counsel for the Union and I shall refer to the Charging Party as the Union.

4 All dates are 2011, unless otherwise indicated.

5 The government amended the complaint at the beginning of the trial to add two additional 8(a)(1) allegations.

The Company contends it warned, suspended, and terminated Shikarchy because he was not effectively and efficiently fulfilling his job duties.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified and I rely on those observations in making credibility determinations here. I have studied the whole record,[6] and based on the detailed findings and analysis below, I conclude and find the Company violated the Act as alleged in the complaint.

Findings of Fact

I. Jurisdiction, Supervisory/Agency Status, and Labor Organization Status

The Company is a domestic corporation with an office and place of business at 833 Central Avenue, Far Rockaway, New York, where it has been, and continues to be, engaged in the operation of a cooperative apartment building. During the past year, a representative period, the Company derived gross revenues in excess of $500,000; and, purchased and received at its Far Rockaway location goods, products, and materials valued in excess of $5000 directly from points outside the State of New York. The parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (Act).

It is admitted that, at all times material herein, Mark Hertzberg was the Company Board president and Steven Friedman was a Board member and that both are agents of the Company. It is admitted Jeffrey Herskovitz, an employee of Benedict Realty Group, LLC (BRG), serves as property manager responsible for the day-to-day operations of the Company. It is admitted Herskovitz is an agent of the Company. The parties, in a posttrial document received in evidence, stipulated Walter Berger was Company Board treasurer and an agent of the Company.

The parties admit and I find the Union is a labor organization within the meaning of Section 2(5) of the Act. It is admitted Steven Sombrotto, at times material here, was president of the Union

[6] At the conclusion of evidence on May 8, 2012, I adjourned the trial to allow government counsel to review certain documents pursuant to subpoena. I established a resumption date, if necessary, of June 5, 2012. Government counsel filed a Motion on May 25, 2012, moving I close the record subject to accepting a stipulation of the parties resolving the agency status of Walter Berger and the admission of a 3-page document provided by the Company pursuant to subpoena. In an Order dated May 29, 2012, I received in evidence the parties signed stipulation as GC Exh. 27 and the 3-page document as GC Exh. 26 and closed the hearing.

II. Alleged Unfair Labor Practices

A. Facts

1. Background

The cooperative's apartment building has 56 units. A majority of the tenants are senior citizens many of whom are widows. The cooperative operates through a Board of directors elected by the property shareholders. Membership on the Board is voluntary and unpaid. The Board has final authority with on all matters pertaining to the cooperative. About 7 years ago, the Board hired BRG to manage the day-to-day operations of the cooperative including payroll, financials (making sure the money comes in, and as appropriate, paid out), preparing monthly and annual budgets, monitoring calls/complaints from the property, and enforcing the bylaws and proprietary leases of the cooperative. The cooperative employs seven staff members and provides 24/7 service that includes porters, doormen, handymen, and a superintendent. All employees, including the superintendent, are represented by the Union and have been since 2003. The parties' most recent collective-bargaining agreement expired November 2010. The parties currently are in negotiations for a successor agreement.

Shikarchy was hired as superintendent at the Company on February 1, 2010, by his friend of 20 years Board Member Friedman. Shirkarchy is paid $17.50 per hour and works a 40-hour week (7 a.m. to 3 p.m.), Monday through Friday schedule. He is available on call at all times. Shirkarchy, while employed, was provided an apartment on the property. Shikarchy was supervised by BRG Manager Herskovitz.

2. Governments evidence

Shikarchy testified that about a month and a half after he was hired Board Member Friedman told him union people were very bad and cost the cooperative a lot of money that otherwise needed to be saved. Friedman told Shikarchy the cooperative was going to install security cameras, fire everyone, and not need the Union anymore. According to Shikarchy, Friedman explained he hated unions because his father had lost a business as a result of a union. Shikarchy testified Friedman also told him Company Treasurer Berger did not like union people either because Berger's father had also lost a business because of a union.

Shikarchy testified, that in December 2010, as he was riding with Board President Hertzberg to BRG Manager Herskovitz's home, Hertzberg told him they had to go meet with the Union regarding the Company's discharge of employees Kenny Boykin and Jason Gomez. Hertzberg said the Union was no good and cost the Company a lot of money. Hertzberg explained the Company was going to install security cameras at its facility and get rid of the Union. Hertzberg told Shikarchy the cooperative could not save money, could not do what they wanted and they did not like the Union and wanted to get rid of it. Shikarchy testified he and Hertzberg actually rode with BRG Manager Herskovitz from his home to the meeting with the Union. During the drive Herskovitz showed Shikarchy his cell phone and explained the Company was going to install security cameras allowing them to observe the facility via telephone and they would not need workers or doormen. According to Shikarchy, Herskovitz

told him he did not like Union President Sombrotto and the union people and they were going to get rid of the Union. Shikarchy testified Herskovitz stated that when he had to fire anyone that was very good with him.

The parties did not resolve the status of Boykin and Gomez at the December mediation meeting. Shikarchy testified Board Member Friedman had told him how he could trap employee Boykin into doing something wrong so they could fire him. Shikarchy said Friedman wanted Boykin fired because he was lazy and because of the Union. Shikarchy testified he and Board Member Friedman later pushed to have Friedman's son, Joseph, replace Boykin. Shikarchy said they wanted Joseph hired so he could spy on the Union adding "that's how to get rid of the union." Shikarchy testified that during that time he believed what the cooperative managers were telling him about unions and concluded union people were bad and he hated Union President Sombrotto also. Union President Sombrotto testified he considered Shikarchy to be a "henchman" for the cooperative at that time. He said he always got complaints from employees regarding harassment by Shikarchy.

After some delays an arbitration hearing concerning the discharge of employees Boykin and Gomez was set for June 20. Shikarchy testified that Board Member Friedman's telling him how to trap Boykin into doing wrong so he could be fired bothered him and as of the day of the arbitration he wanted no more of it. Shikarchy testified Board Member Friedman, BRG Manager Herskovitz, and Board President Hertzberg asked him to prepare for and testify at the arbitration. Shikarchy said he tired to prepare for the arbitration with Herskovitz and the cooperative's lawyer shortly before the June 20 arbitration but added "I was not prepared for it." Shikarchy explained he did not prepare because "all this was wrong" "terrible" "[t]hey put me in a bad position against my will." Shikarchy testified Board Member Friedman told him at the arbitration that he was a bad witness because he didn't prepare and they might have to reinstate Boykin. Friedman blamed Shikarchy for not preparing to testify. Shikarchy said his view of the Union changed on arbitration day. Shikarchy said he even tried to signal to Boykin and the Union he was sorry for what he had done and wanted to apologize but they could not believe him. Union President Sombrotto acknowledged Shikarchy basically gave him a "thumbs up" at the arbitration. The parties settled the Boykin/Gomez grievance with each being paid $5000 and Boykin reinstated part time and Gomez waiving reinstatement.

Shikarchy testified Board Member Friedman had not harassed him before the June 20 arbitration but afterward began to do so. Shikarchy said BRG Manager Herskovitz had praised his work prior to the June arbitration hearing saying he was the best superintendent he ever had, invited him to a party and gave him a bonus, but, he said all that changed after the arbitration hearing.

Shikarchy testified that during the last week in June Board Treasurer Berger told him they had a Board meeting and Board President Hertzberg and Member Friedman wanted Shikarchy out because he was switching to the Union and could do a lot of damage. Berger told Shikarchy they had a plan and wanted him out. Shikarchy testified Berger told him they felt his switching to the Union brought about Boykin and Gomez being reinstated and paid backpay. Shikarchy testified Board Treasurer Berger also told him they were going to destroy him because he switched to the Union and "they are going to do everything they can and they can do

everything they want." Berger advised Shikarchy to "leave quickly . . . for [his] own benefit." Shikarchy testified that about this time Board Member Friedman and his son, Joseph Friedman, began to constantly harass him followed him cursed and yelled at him and interfered with his job duties. Shikarchy testified that on July 6 he suffered a stroke as a result of the harassment.

Shikarchy testified he became very active for the Union after June 20. Shikarchy explained he signed up an employee for the Union, joined the Union's negotiating team and distributed union fliers to employees and shareholders at the cooperative. Union President Sombrotto testified Shikarchy began to attend negotiation sessions as the employees only representative in early October. Sombrotto explained Shikarchy was responsible for reporting back to the employees what took place at the negotiating table. Sombrotto said he provided Shikarchy with fliers which Shikarchy distributed starting October 6. Shikarchy testified that at various times Board President Hertzberg, BRG Manager Herskovitz, and Board Treasurer Berger told him to stop distributing the fliers with Hertzberg telling Shikarchy he was "so evil" and that what he was doing was "all [a] lie" and he should stop.

Shikarchy testified the harassment continued and on August 14 in the lobby of the facility Board Member Friedman screamed at him and accused him of "torturing" and "making his son [employee Joseph Friedman] miserable." Shikarchy testified Board Member Friedman told him he was going to Shikarchy's ex-wife's attorney and testify in the Shikarchy child custody matter so Shikarchy would never see his children again. Shikarchy testified Board Treasurer Berger was present and told him to call the Union, which he did. The next day Union President Sombrotto filed a grievance for Shikarchy alleging harassment and a threat to interfere in the Shikarchy custody matter by Friedman. This grievance was still pending as of the trial here.

Shikarchy testified BRG Manager Herskovitz telephoned him "very upset" about the grievance asking how he could do this "terrible" thing. Shikarchy explained Board Member Friedman had said he would destroy him, take away his children, damage his children by testifying against him in his custody proceeding with his ex-wife. Shikarchy told Herskovitz he would, however, telephone Union President Sombrotto and have Herskovitz's name removed from the grievance. Herskovitz told Shikarchy to drop the grievance and if he did not Herskovitz would get him back. Shikarchy said he thereafter asked Sombrotto to do so but was told Herskovitz was part of management and would remain a part of the grievance. Shikarchy telephoned Herskovitz and told him he had tried but was unsuccessful. Herskovitz responded "you better drop it [the grievance]" or "I [will] get you back"] and hung up.

Between mid-August and early December, Shikarchy and Board Treasurer Berger spoke several times about Shikarchy's employment with the Company. Shikarchy testified Berger told him:

> I told you to leave, leave. You're with the Union now. I hate the Union. They going to destroy you. They going to destroy your reputation. If you go to any job, you want to get the job, you will have a bad record. Leave for your own benefit, leave the job. I worry about you. They going to do something to you. You cannot win. They, no way out with them.

Shikarchy testified Berger told him they had made him sick once, and reminded him of his stroke, and asked if he wanted to be sick again.

Shikarchy testified Board Member Friedman spoke with him about the grievance on three or four occasions in August and September in person and on the telephone. According to Shikarchy, Friedman told him he better drop the grievance or something bad was going to happen to him that he would be fired. Shikarchy testified Board President Hertzberg, in August, asked him how he could do this to his friend Freidman. Hertzberg told Shikarchy he was a bad evil person and told him to drop the grievance against Friedman or something bad was going to happen to him "You're going to be fired."

Shikarchy was called on September 7 to a meeting with BRG Manager Herskovitz and BRG Owner Daniel Benedict in Herskovitz's office. Herskovitz told Shikarchy he had to drop the grievance and he did not want to hear anything about it. Shikarchy testified he tried to respond and was told to be quiet, to drop the grievance, and he did not want to hear anything about it. Shikarchy was handed four written disciplinary warnings. Shikarchy said he was shocked and could not believe it. Each of the four warnings was a letter signed by Herskovitz, addressed to Shikarchy dated September 7. Benedict explained to Shikarchy that if he became neutral and remained quiet for 3 months he would tear up the warnings.

The first warning asserted Shikarchy had not maintained correct hours of work for the employees. The second warning asserted Shikarchy had missed a meeting with an architect and an engineer at the facility on June 21, at 3:30 p.m. The third warning asserted Shikarchy was insubordinate because he asked Board members for authorization to order equipment, do work, or utilize outside contractors rather than consulting with BRG Manager Herskovitz. The fourth warning, labeled "Final Warning" asserted Shikarchy had falsely accused employee Joseph Friedman of attacking him in the lobby of the facility on August 24. Shikarchy testified he was not asked his position on the four warnings.

On October 27, Shikarchy was given a letter of suspension. The letter advised Shikarchy he was suspended for 3 days without pay starting October 31, to November 2. In the letter Shikarchy was reminded he had been given four warning letters earlier about his job duties. In part the letter stated "you have not handled your basic duties and responsibilities such as arranging for requested repairs on a timely basis, leaving your post without coverage. In addition, your treatment of a number of residents has been insulting and improper. You have ignored or not complied with many directives from management and the Board of Directors." Shikarchy was told if his performance did not improve there would be additional disciple up to and including discharge.

Shikarchy testified he notified Union President Sombrotto of the October 27 suspension and it was added to his August grievance and the September 7 warnings were also added.

On December 5, Shikarchy telephoned Board Treasurer Berger about his situation with the Company. Shikarchy, without Berger's knowledge, recorded the conversation. The recording, as well as a certified transcript, was received in evidence. In the conversation Berger told Shikarchy that if he would drop his charges with the Union involving Board Member

Friedman and not attend the mediation meeting scheduled for that Wednesday (December 7), the Company would know he was no longer having anything to do with the Union and was on the Company's side and things could be worked out. Berger said those were two conditions Shikarchy needed to meet in order for things to be worked out. Berger told Shikarchy that if he came back with the Company then the Company would have better bargaining power with the Union to get whatever it wanted. Berger, at various points in the conversation, repeatedly told Shikarchy if the conditions were met "we can work it out" and you "won't be harassed . . . anymore" and "you'll have a job." Shikarchy asked Berger several times what would happen to him if he stayed with the Union's side. Berger told Shikarchy they will "probably fire you."

On December 6, BRG Manager Herskovitz emailed Company Treasurer Berger that Shikarchy was going to attend the scheduled mediation the next day. Berger responded Herskovitz would have to do what he had to do.

On December 12, BRG Manager Herskovitz emailed the Board he would be by the cooperative that day to terminate Shikarchy's employment with the Company.

Shikarchy testified he received an email from his ex-wife that since he was no longer going to have a job with the Company he could go to Florida to look for work if he wanted to. Shikarchy immediately telephoned Board Treasurer Berger to find out what was going on. Shikarchy secretly recorded the conversation and the voice, as well as, a transcription thereof was received in evidence. Shikarchy asked Berger how the Company could fire him. Berger was surprised Shikarchy had not already been fired because Berger had received an email from BRG Manager Herskovitz the day before that Herskovitz was going to the cooperative then to personally discharge Shikarchy. Shikarchy asked Berger if what Berger had told him in a previous conversation was correct, that if he did not leave the Union and come over to the Company's side, he would be fired. Berger wanted to know if Shikarchy had attended the December 7 mediation meeting. Shikarchy told Berger he had but that nothing was said about him (Shikarchy) at that meeting. Berger told Shikarchy he was going to write BRG Manager Herskovitz about Herskovitz's termination email concerning Shikarchy to inform him that the building had never looked as clean and nice as it currently did and to inform Herskovitz that if Shikarchy was fired and he sued the Company, he would back up Shikarchy.

Shikarchy testified he received a telephone call from BRG Manager Herskovitz on December 13 requesting a meeting with him in the lobby at the cooperative. When they met Herskovitz handed Shikarchy a termination letter. The letter stated:

> I regret I have been asked to inform you that after 4 written warnings including a suspension, 833 Central Owners Corps is hereby giving you this notice of termination of employment.
>
> Upon hand delivery receipt of this notice, you are demanded to vacate the premises within 3 days since your apartment was contingent upon your employment. You are no longer able to work within the property.

3. Company's evidence

The Company called, as its sole witness, BRG Manager Herskovitz and presented some 32 emails of interactions between Herskovitz and Shikarchy in support of its defense that Shikarchy's discharge resulted from his inability to perform his duties in an effective and efficient manner and that he was unable to effectively oversee and operate the facility. Herskovitz, stated that at one point during Shikarchy's employment he believed he was a wonderful and attentive employee as well as a good mechanic also expressed that opinion to Union President Sombrotto.

In as much as the Company contends it based its actions against Shikarchy, incuding his discharge, on the issues discussed in and the facts surrounding the emails presented in evidence, I have set forth such here. The emails cover July 26, to December 13.

BRG Manager Herskovitz testified that in a July 26 email Shikarchy sought direction on purchasing certain needed materials locally. Herskovitz responded no local purchases were to be made that he had already provided Shikarchy with a list of suppliers from which Shikarchy could make purchases. That same day Herskovitz and Shikarchy exchanged emails regarding whether Shikarchy had received some fire escape plaques to be installed at the facility that were delivered to Company Porter Joseph Friedman. Shirkarchy replied he had not received them from Friedman but had instructed Friedman to install the plaques. In the email Herskovitz directed Shikarchy to install the plaques himself that it was the superintendent's job.

BRG Manager Herskovitz received an email from Shikarchy on August 2 asking for a meeting. The two met the next day and discussed keeping correct records for employees regarding vacation and work scheduling. Herskovitz testified Shikarchy was deciding on his own and reporting who worked what hours. He noted Shikarchy would deduct an hour from an employee's time if the employee was up to 20 minutes late for work. Herskovitz explained to Shikarchy he was not entitled to do that, on his own, that everyone was late to work from time to time. In an August 4 email, Shikarchy told Herskovitz an employee had received 2 days of vacation pay but wanted two other paid days. Herskovitz testified Shikarchy had not provided enough information for him to authorize payment and added "[m]y simple response to him was in effect no big deal" just have a form filled out justifying the 2 extra days. Herskovitz said Shikarchy had "stacks of that form in his office."

Herskovitz testified that while Shikarchy was to work a 40-hour week certain accommodations were allowed in his schedule. Shikarachy could vary his starting and quitting hours and the Company allowed him to travel on Fridays to New Jersey to pick up his children for visitation rights without worktime deductions. Herskovitz and Shikarchy exchanged emails on August 9, wherein Shikarchy wanted to take additional time on a particular day and Herskovitz told him he could but he would not be paid for it. Shikarchy asked for clarification about whether he could take the time off. Herskovitz said he could and that Shikarchy knew the procedure for doing so before he asked and took up valuable time doing so.

Herskovitz testified it was Shikarchy's duty to order supplies for the facility from a list of distributors updated and provided and he did not need permission to, for example, order a wall pack floodlight for the exterior of the facility. Notwithstanding that fact Shikarchy on August 16 emailed Herskovitz that he needed a fluorescent light and had even checked with an employee about one. Herskovitz testified this only adds time to getting the job done, confuses employees, and it was Shikarchy's duty to order and install the lights. Herskovitz testified he had already informed Shikarchy about this procedure.

BRG Manager Herskovitz sent Shikarchy an email on August 22 advising him he had received a complaint from a resident at the facility that Shikarchy had not properly fixed a leaking window in the resident's unit. Herskovitz said Shikarchy had told him he had done all he could but could not repair the window. Herskovitz informed Shikarchy his job was never done until the resident said the job was completed to the resident's satisfaction. Herskovitz then provided Shikarchy the name of a contractor to assist with the repairs. Herskovitz testified it had been Shikarchy's duty all along to arrange for the outside contractor and complete the job.

Herskovitz testified he received telephone calls from property residents and Company Board members about an incident between employee Friedman and Shikarchy in the lobby of the facility on August 26. Shikarchy sent Herskovitz an email indicating he had found himself on the floor of the lobby that Friedman "came after" him as they were discussing the whereabouts of a vacuum cleaner. Herskovitz testified he and the Company board investigated the incident including viewing the lobby security cameras and concluded Shikarchy's version of the incident was totally false. The Company Board directed Herskovitz to include the findings in Shikarchy's personnel file for future reference.

Herskovitz testified he received an email from Shikarchy on September 1 requesting approval to repair a leaking window in one residence and a broken window in another. Herskovitz said he again had to remind Shikarchy he did not need to come to him for approval that the repairs were part of his job duties. Herskovitz said the more a superintendent had to ask him these type questions the more he believed the superintendent did not understand his job-related responsibilities.

BRG Manager Herskovitz testified he received many complaints from employees about their vacation schedules and vacation pay. Herskovitz sent Shikarchy a September 2 email requesting he be provided a log indicating which doormen had requested vacation time and the corresponding request forms otherwise he could not authorize payment for vacation times. Herskovitz testified it was Shikarchy's job to keep him so informed but had not.

Herskovitz testified that on September 7, he and BRG Owner Benedict met with Shikarchy in Herskovitz's office and issued him 4 written warnings. Herskovitz said their discussions centered around Shikarchy's lack of understanding of his position at the property and his misunderstanding of directions given to him by management. Herskovitz testified they told Shikarchy to stop asking Company Board members to order equipment and/or authorize work. Herskovitz acknowledged, on cross-examination, it could at first be confusing for a superintendent to understand what priority to give requests from resident owners some of which are "pushy." Herskovitz even requested Board Member Freidman cease all communications

with Shikarchy and acknowledged many other tenants frequently asked Shikarchy to perform repairs for them. Herskovitz said they also explained to Shikarchy it was Shikarchy's duty to keep up with work hours for the employees at the facility but told Shikarchy management would be assuming that task for a while. Herskovitz testified they discussed the fact he had given Shikarchy permission to have lunch with his children at noon on June 21, but that Shikarchy had not told him he had an appointment to meet with an architect, engineer, and a Board member at 3:30 p.m. that afternoon. Herskovitz testified Shikarchy did not attend the meeting and informed the Board member involved that Herskovitz had excused him from the meeting. Herskovitz testified that was not true. Herskovitz, on cross-examination, stated he had not set up nor did he know about the meeting ahead of time. Herskovitz did not know which Board member had in fact set up the meeting nor how far in advance it was arranged and to his knowledge there was no documentation showing Shikarchy was ever specifically directed to attend the meeting. Herskovitz acknowledged the meeting was set for 3:30 p.m. even though Shikarchy's work day ended at 3 p.m. on that date. Herskovotz said however, that not showing up for a scheduled meeting was a serious offense but acknowledged no report of the incident was made except in the September 7 warning letter. Herskovitz testified they also told Shikarchy they were giving him a final warning because he falsely claimed employee Friedman had knocked him down in the lobby of the facility.

BRG Manager Herskovitz emailed Shikarchy on September 9 directing him to do his job and assign someone to fill in a vacancy that had developed for the porter position. Herskovitz said he had received telephone calls about the situation which required his time on matters Shikarchy should have taken care of.

Herskovitz testified he emailed Shikarchy on September 14 explaining to him that if he had to go for a court appearance in a child custody matter with his ex-wife on September 16, he should go but he would not be paid for that time. Herskovitz testified he and BRG Owner Benedict had previously told Shikarchy he could go but they were having to spend valuable time telling him again.

BRG Manager Herskovitz testified about another incident that contributed to Shikarchy's discharge which involved Shikarchy requesting authorization to fill a pot hole in the parking lot at the facility. Herskovitz emailed Shikarchy on September 15 to fill in the hole. Herskovitz testified he had previously given Shikarchy a contractor to call to repair the hole and Shikarchy did not need further permission and time was lost in his doing so.

Herskovitz emailed Shikarchy on September 16 following up an email from Shikarchy regarding work hours for Company porter Friedman. Herskovitz told Shikarchy he had misunderstood his earlier directions and added, "You have a serious communication problem that has been addressed for months now . . . [s]top making up stories, asking for clarification every day regarding every direction and stop creating controversy where there is none."

Herskovitz sent Shikarchy an email on Wednesday, September 28, asking that he replace a light bulb and said it should have been done on Monday. Shikarchy said he was sick at the time. Heskovitz then responded for Shikarchy to replace the bulb that it should not take 2 days to do so.

On October 4, Shikarchy emailed Herskovitz that he had an appointment on October 6, and would be away from work. Herskovitz replied that he needed more information and informed Shikarchy he would have to arrange for someone to fill in for him. Herskovitz said all these situations were taken into consideration in disciplining Shikarchy.

On October 17, Herskovitz sent Shikarchy 2 emails. The first informed Shikarchy work orders were made up by management not by Shikarchy and that overtime for himself had to be authorized by the Board or management. Herskovitz testified that in this case Shikarchy had made up his own work order and performed work pursuant to it without approval. The second email advised Shikarchy to fix a slamming door on the side of the facility. Herskovitz said he had examined the door himself and it only needed an armature adjustment at the top of the door and that he had asked Shikarchy "weeks before" to fix it. Herskovitz testified he had been contacted by shareholders complaining the slamming door awakened them at night. Herskovitz could not recall, by name, any of those complaining.

BRG Manager Herskovitz testified Shikarchy was given notice by a Board member on October 27 he was suspended from work for 3 days without pay. The suspension was effective from October 31, through November 3. Herskovitz testified Shikarchy was given the suspension, in part, because of "his absences from the property which follows to items not being fixed or upgraded as needed, schedules not being adhered to." Herskovitz said he met with Union President Sombrotto and Shikarchy around November because he was "inundated every day" by shareholders and Board members that repairs at the facility were not getting made. Herskovitz testified he told Shikarchy the property was quite literally going to fall apart.

BRG Manager Herskovitz received an email form Shikarchy on November 3 advising he had checked the air valves in one of the properties and was seeking permission to replace them. Herskovitz said if he did not respond Shikarchy would not do the repairs but added Shikarchy did not need further authorization.

Herskovitz testified he emailed Shikarchy on Monday, November 11, to order alarms for the roof top doors and install them the following Monday. Herskovitz said Shikarchy did not install them and he had to be given a direct order to do so even though it was the type work to be performed by the superintendent.

BRG Manager Herskovitz said there were some broken benches at the back of the property but the Board had not made a decision regarding what to do with them. Herskovitz testified Shikarchy took it upon himself to place yellow tape around the benches that created an eye sore at the property. Herskovitz was asked by Board members why he had told Shikarchy to place tape on the benches. Herskovitz told them he had not done so and emailed Shikarchy on November 16 directing he move the benches to a corner of the property and remove the yellow

tape. On November 22, Herskovitz emailed Shikarchy asking why he had still not taken care of the matter or removed the tape.

Herskovitz testified that over the evening hours on December 1 he received many voice mails from shareholders and/or tenants complaining Shikarchy was taking out garbage at night. Herskovitz emailed Shikarchy asking why he was making noise taking out the garbage at 9 p.m. Herskovitz said Shikarchy explained he was helping employee Friedman whose job it was to take out the garbage.

Herskovitz testified one of the reasons Shikarchy was interviewed and hired was his claim he was very mechanically inclined. Herskovitz said he asked Skhikarchy to fix the leaf blower and lawnmower and to be sure the snow plow, which Shikarchy had assembled when it was purchased, was in working order. Herskovitz testified he received an email from Company porter Friedman on December 2 stating Shikarchy had instructed him, by Horskovitz's authority, to fix the lawnmower and leaf blower. Herskovitz emailed Friedman he had not so instructed Shikarchy and emailed Shikarchy that day instructing him to do the jobs.

Herskovitz testified that in an email dated December 5, he directed Shikarchy to cover for the porter in the porter's absence. Herskovitz testified Shikarchy had, in the past, stated he was capable of doing both his and the porter's job. Herskovitz said Shikarchy, in a reply email the same day, argued that in the past they had always obtained a fill in for the porter. Herskovitz testfied Shikarchy was always arguing with him.

Herskovitz emailed Shikarchy on December 8 advising him not to direct an outside roofing contractor to do interior repairs in an apartment which was well beyond Shikarchy's authority that Shikarchy was to do inside repairs himself or obtain an interior contractor to perform the work. Herskovitz testified that again on December 11, Shikarchy requested authorization to schedule a fill in porter at the facility even though he did not need further authorization because he had already given him full authorization. Herskovitz testified this troubled him because he feared Shikarchy was not properly and timely scheduling positions to be covered.

BRG Manager Herskovitz testified the Board of Directors voted on December 12 to terminate Shikarchy and he was terminated on December 13. Herskovitz testified Shikarchy was terminated because of his absences from work, his inability to follow instructions, and because "at that point in time [the building] was falling apart."

Herskovitz testified he had no discussions with Company Treasurer Berger in December regarding the Company being willing to not terminate Shikarchy if Shikarchy stopped supporting the Union. Herskovitz also denied authorizing Berger to offer such a resolution to Shikarchy.

It is appropriate to address the credibility of Shikarchy even though his testimony related to Company Board President Hertzberg and Board Member Friedman was not challenged as neither testified. Further certain critical statements Shikarchy attributed to BRG Manager Herskovitz and Board Treasurer Berger were not specifically responded to or refuted. I credit Shikarchy's testimony. In arriving at my conclusion on Shikarchy's credibility I was greatly

impacted by impressions I formed as I observed him testify. While Shikarchy frequently answered questions with more, or beyond, what he was asked, a fact I cautioned him about more than once, I nonetheless concluded he attempted to testify truthfully. I am persuaded his extended answers were an attempt to tell what he perceived to be a full account of what had transpired rather than to exaggerate or misspeak facts. It was clear observing Shikarchy testify he has strong feelings as to the correctness of his cause and he sometimes expressed himself loudly and with gesticulations. I did not find such to indicate an attempt to misspeak the truth but rather to convey emphasis. On the other hand, I am persuaded, after observing Company Treasurer Berger testify, he did so with a self-imposed and deliberate failure to recall certain facts and dates. Nonetheless, I rely on certain portions of Berger's overall testimony, namely the recorded conversations between he and Shikarchy. To the extent, if any, there are conflicts, real or perceived, between Shikarchy's testimony and that of Berger or Herskovitz I credit Shikarchy. Furthermore, I am specifically unwilling to credit Herskovitz's denial he had no discussions with Berger in December about any willingness on the part of the Company not to discharge Shikarchy if he disavowed his support for the Union or Herskovitz's denial he ever authorized Berger to convey such an offer to Shikarchy. I have not commented on but I have considered all testimony and exhibits in deciding the facts herein.

III. Discussion, Analysis, and Conclusions

A. The 8(a)(1) Issues

It is alleged that around August or September, Company Board President Hertzberg, at the facility, threatened an employee with discharge and unspecified reprisals if he continued to engage in union activities.

Shikarchy credibly testified, without contradiction [Hertzberg was not called to testify], that after he filed a grievance in August against Board Member Friedman for harassment that Hertzberg asked Shikarchy how he could do this to his friend Freidman, and told Shikarchy he was a bad evil person and directed Shikarchy to drop his grievance against Freidman or something bad was going to happen to him that he was going to be fired. First, I note Shikarchy's filing a grievance constituted concerted protected activity. *NLRB v. Disposal Systems, Inc*. 465 U.S. 822, 836 (1984). Hertzberg's threatening Shikarchy that bad things would happen to him if he did not withdraw his grievance constitutes a threat of unspecified reprisals for engaging in protected conduct and Hertzberg's telling Shikarchy he would be fired if he did not withdraw his grievance constitutes an unlawful threat of discharge and I so find.

It is alleged that about August or September, Company Board Member Friedman, at the facility, threatened an employee with discharge if he continued to engage in union activities.

Shikarchy credibly testified, without contradiction [Freidman was not called to testify], that Friedman on three or four occasions told him either in person or on the telephone he better drop his grievance against Freidman or something bad was going to happen to him he would be fired. It is clear and I find that Freidman, on these occasions, unlawfully threatened Shikarchy with discharge if he did not withdraw his grievance against Freidman.

It is alleged that about August or September BRG Manager Herskovitz in a telephone conversation, and at the offices of BRG, threatened an employee with discharge if he continued to engage in union activities.

Shikarchy credibly testified [Herskovitz did not specifically deny], that Herskovitz telephoned him shortly after he filed the August grievance against Board Member Freidman and asked how he could do such a terrible thing. Shikarchy explained Freidman had said he would destroy Shikarchy, take away his children by testifying against Shikarchy in custody proceedings with his ex-wife. Herskovitz told Shikarchy to drop the grievance and if he did not he would get him back. Shikarchy told Herskovitz he would try to get his name removed from the grievance. Shikarchy telephoned Union President Sombrotto but was unable to get Herskovitz's name removed and telephoned Herskovitz telling him he could not. Herskovitz again told Shikarchy to drop the grievance and if he did not he would get him back and hung up the telephone. On September 7, at a meeting in Herskovitz's office, Herskovitz yet again told Shikarchy he had to drop the grievance and added he did not want to hear anything more about it. While the comments of Herskovitz may not actually constitute threats to discharge Shikarchy for his protected activity I find the comments constitute threats of unspecified reprisals against Shikarchy.

It is alleged that about September or October Company Treasurer Berger, in a telephone conversation, and at the Company facility, threatened an employee with unspecified reprisals because of his support for, and activities on behalf of, the Union.

Shikarchy testified, without contradiction [Berger testified but did not address these matters], that between mid-August and early December, Berger spoke with him several times about his employment with the Company. Berger told Shikarchy to leave his employment that he was now with the Union and he hated the Union. Berger told Shikarchy the Company was going to destroy him and his reputation and if he wanted a job elsewhere he would have a bad record. Berger implored Shikarchy to leave for his own benefit that he worried about him and his health. Berger told Shikarchy they had made him sick once and reminded him of his stroke and asked if Shikarchy wanted to be sick again. Berger told Shikarchy they were going to do something to him that he could not win that there was no way out for him. By telling Shikarchy the Company was going to destroy him and do something to him that he could not win and had no way out Berger clearly threatened Shikarchy with unspecified reprisals in violation of the Act and I so find.

It is alleged that about December 5 Company Treasurer Berger, in a telephone conversation, threatened an employee with discharge and unspecified reprisals because of his support for the Union and impliedly promised the employee benefits to discourage him from supporting the Union

It is undisputed that Shikarchy telephoned Berger and recorded their December 5 conversation. In the exchange Berger told Shikarchy if he would drop his charge with the Union against Board Member Friedman and not attend a mediation on the matter scheduled for December 7, they would know he no longer was having anything to do with the Union but rather was back on the Company's side and things could then be worked out for him. Berger explained

that with Shikarchy back on the side of the Company the Company would have better bargaining power with the Union to get whatever it wanted. Berger told Shikarchy, more than once, that if he did as they asked "we can work it out," he would not "be harassed . . . anymore," and would "have a job." When Shikarchy asked what would happen if he stayed with the Union Berger responded the Company would probably fire him. It is clear Berger threatened Shikarchy with discharge if he did not abandon his support for the Union. Berger also specifically promised employee benefits to Shikarchy if he dropped his support for the Union namely he would no longer be harassed, everything would be worked out, and he would continue to have a job. Berger's promises and threats violate the Act and I so find.

B. The Warnings, Suspension, and Discharge of Shikarchy

In cases alleging violations of Section 8(a)(3) and (1) of the Act where the employer's motive is in issue, as is the case here, the Board applies the analytical framework set forth in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir.1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under *Wright Line*, the Acting General Counsel must first prove, by a preponderance of the evidence, that the employee's protected conduct was a motivating factor in the employer's decision. Once the Acting General Counsel makes that showing by proving the employee's union or protected activity, employer knowledge of the union or protected activity, and employer animus against the employee's protected conduct, the burden of persuasion shifts to the employer to demonstrate it would have taken the same action even in the absence of the protected conduct. See *Donaldson Bros. Ready Mix, Inc*., 341 NLRB 958, 961 (2004). If, however, "the evidence establishes that the reasons given for the employer's action are pretextual—that is, either false or not in fact relied upon—the employer fails, by definition, to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis." *Rood Trucking Co*., 342 NLRB 895, 897–898 (2004) (citations omitted); see also *Austal USA, LLC*, 356 NLRB No. 65, slip op. at 2 (2010) (if proffered reason for discharge is pretextual, employer necessarily fails to establish *Wright Line* defense).

Applying the above, I address each element of the government's burden of proof as to whether Shikarchy's union activities was a motivating factor in the Company's decision to warn, suspend, and discharge him. The evidence establishes Shikarchy supported the Union. Although Shikarchy, early in his employment with the Company, supported the Company's position related to the Union, he later changed to supporting the Union. Shikarchy's first support for the Union, established here, began when Shikarchy did not prepare for his anticipated testimony on behalf of the Company at an arbitration hearing on June 20 involving the discharge of employees Boykin and Gomez. Shikarchy not only did not testify but openly displayed his support for the Union's position by giving a thumb's up to the Union. On August 14, Shikarchy claimed harassment by Board Member Friedman because he supported the Union. A grievance was filed for Shikarchy the next day against Friedman asserting harassment by Friedman including Friedman threatening to interfere in a custody matter involving Shikarchy and his ex-wife. The filing of a grievance constitutes conduct protected by the Act *NLRB v. City Disposal Systems, Inc*., 465 U.S. 822, 836 (1984). After June 20, Shikarchy signed up an employee for the Union,

joined the Union's negotiating team around October, and distributed various union flyers to employees and shareholders of the Company regarding negotiations and employee concerns.

The Company was aware of Shikarchy's union activities. Shikarchy's lack of preparation for the June 20 arbitration indicated to the Company Shikarchy no longer supported the Company's position. Board Member Friedman told Shikarchy, at the arbitration, that his not preparing to testify might result in the Board having to reinstate Boykin. Board Treasurer Berger told Shikarchy during the week of June 20 that at the Board's most recent meeting Board President Hertzberg and Board Member Friedman had stated they wanted Shikarchy out because he was switching his support to the Union and could do a lot of damage to the Company. Berger also told Shikarchy they felt his switching to the Union's side brought about employees Boykin and Gomez being offered reinstatement with backpay. The Company was fully aware Shikarchy distributed flyers for the Union to its employees and shareholders. Company Board President Hertzberg, BRG Manager Herskovitz, and Board Treasurer Berger told Shikarchy to stop distributing the flyers with Hertzberg telling Shikarchy it was evil for him to distribute union flyers. The Company clearly knew Shikarchy was participating at the negotiation sessions on behalf of the Union's committee. The Company was given a copy of the Shikarchy grievance.

The government established the Company harbored animus specifically against Shikarchy's protected activities and against the Union in general. Starting in mid-March 2010, Board Member Friedman told Shikarchy union people were very bad and cost the Company lots of money and the Company was going to install security cameras, fire everyone, and no longer need the Union. Friedman also told Shikarchy he hated unions. In December 2010, Board President Hertzberg told Shikarchy the Union was no good, cost the Company money, prevented them from doing what they wanted, they did not like the Union and wanted to get rid of it. On that same occasion BRG Manager Herskovitz told Shikarchy he did not like Union President Somborro and the union people and they were going to get rid of the Union. Board Treasurer Berger told Shikarchy, between June and September, the Board was going to destroy him because he switched to the Union and told him the Board could do anything they wanted. Berger urged Shikarchy to leave the Company for his own benefit because he was with the Union and told Shikarchy he hated the Union. Berger also told Shikarchy the Board was going to do something to him that there was no way out for him and he could not win. Board Member Friedman repeatedly told Shikarchy in August and September he should drop his grievance against Friedman or something bad would happen to him that he would be fired. Board President Hertzberg told Shikarchy in August he was evil for filing the grievance against Friedman and to drop it or something bad would happen to him he would be fired. When Shikarchy was given four written warnings on September 7, he was told by BRG Manager Herskovitz he had to drop the grievance against Friedman and he did not want to hear anything more about it.

Board Treasurer Berger told Shikarchy on December 5 that if he would drop his grievance against Board Member Friedman and not attend a mediation session on the matter scheduled for 2 days later the Company would know he was no longer with the Union and on the Company's side and things could be worked out. Berger told Shikarchy the Company would have better bargaining power with Shikarchy on their side and the Company could get what ever it wanted in the negotiations and Shikarchy could have a job, but, if he stayed with the Union he

would probably be fired. Shikarchy attended the mediation session and approximately a week later was fired.

Based on all the above, I find the record amply demonstrates government counsel has sustained his initial *Wright Line* burden of showing that Shikarchy's involvement in the union and protected activities was a motivating factor in the Company's decisions to warn, suspend, and discharge him.

I find the Company failed to meet its *Wright Line* burden of showing Shikarchy would have been warned, suspended, and discharged for legitimate business reasons even if he had not engaged in union and/or protected activities. The credited evidence clearly establishes the Company's proffered reasons for warning, suspending, and discharging Shikarchy were pretextual—that is, they were not in fact relied upon. Rather, the evidence shows, as clearly stated by Board Member Berger, the discipline against Shikarchy and his discharge was based on his union and protected activities. Berger told Shikarchy that everything involving him could be worked out, the harassment against him stopped and he could have his job, but, he had to make a choice and drop his support for the Union and be on the Company's side or be unemployed.

Further evidence demonstrates the pretextual nature of the Company's defense. Shikarchy's record was that of an attentive employee without discipline until he engaged in protected activities and shifted his support to the Union. All of the email evidence proffered by the Company to support its defense involved incidents that occurred after Shikarchy's support for the Union was known to the Company. The Company advanced no justifiable explanation for issuing four written warnings to Shikarchy on 1 day, September 7, for events dating back to June 21, 1 day after Shikarchy made his support for the Union known. In early October, Shikarchy took on a greater role for the Union becoming the sole employee member on the Union's negotiating committee and the one responsible for keeping employees informed of the status of negotiations through fliers and other means. On October 27, Shikarchy was suspended for 3 days without pay for not properly handling his job duties and mistreating residents. Again the timing of the Company's action is suspicious and the Company failed to satisfactorily establish sufficient details regarding complaints of residents being improperly treated or how Shikarchy's job performance declined quickly. I find it unnecessary to address, in detail, each of the asserted defenses raised by the Company because the evidence is compelling Shikarchy was warned, suspended, and discharged for his union activities and that the reasons advanced by the Company were pretextual. I find the Company violated Section 8(a)(3) and (1) of the Act by warning, suspending, and discharging its employee Shikarchy.

CONCLUSIONS OF LAW

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the unlawful conduct toward Ezra Shikarchy, the Company must, within 14 days of the Board's Order, offer him reinstatement to his former job, or if his former job no longer exists, to a substantially equivalent job without prejudice to his

seniority or other rights and privileges previously enjoyed, and make him whole for any lost wages and benefits as a result of his October, 27, 2011 suspension, and December 13, 2011 discharge, with interest. Backpay will be computed as outlined in *F. W. Woolworth Co*., 90 NLRB 289 (1950) (backpay computed on quarterly basis). Determining the applicable rate of interest will be as outlined in *New Horizons for the Retarded,* 283 NLRB 1173 (1987) (adopting Internal Revenue Service rate for underpayment of Federal taxes). Interest on all amounts due to the employee shall be compounded on a daily basis as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir 2011). I also recommend the Company, within 14 days of the Board's Order, be ordered to remove from its files any reference to its October 27, 2011 suspension and December 13, 2011 discharge of Ezra Shikarchy and, within 3 days thereafter, notify Ezra Shikarchy in writing it has done so and his suspension and discharge will not be used against him in any manner. I also recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" in order that employees may be apprised of their rights under the Act, and the Company's obligation to remedy its unfair labor practices.

On these findings and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Company, 833 Central Owners Corp., Far Rockaway, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Warning, suspending, discharging, or otherwise discriminating against employees for engaging in union activity protected by the Act.

(b) Threatening employees with discharge or unspecified reprisals because of their support for and activities on behalf of a union.

(c) Impliedly promising employees benefits to discourage them from supporting and/or engaging in activities on behalf of a union.

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

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

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

(a) Within 14 days from the date of the Board's Order, offer Ezra Shikarchy full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Ezra Shikarchy whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful warnings, suspension, and discharge of Ezra Shikarchy, and within 3 days thereafter, notify him in writing that this has been done and that the warnings given him and his suspension and discharge will not be used against him in any way.

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

(e) Within 14 days after service by the Region, post at its Far Rockaway, New York facility, copies of the notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as email, posting on an intranet or an internet site, or other electronic means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company 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 Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since September 2011.

Dated at Washington, D.C. September 14, 2012

William Nelson Cates
Administrative Law Judge

[8] 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 the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you for engaging in union activity protected by the Act.

WE WILL NOT threaten any of you with discharge or unspecified reprisals for engaging in union activity protected by the Act.

WE WILL NOT impliedly or otherwise promise any of you benefits to discourage you from supporting and engaging in union activities protected by the Act.

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, within 14 days from the date of this Order, offer Ezra Shikarchy full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Ezra Shikarchy whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

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

833 CENTRAL OWNERS CORP.
(Employer)

Dated: _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two Metro Tech Center, Suite 5100, 5th FL, Brooklyn, NY 11201–3838
(718) 330-7713, Hours: 9:00 a.m. to 5:30 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (718) 330–2862