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

HISPANICS UNITED OF BUFFALO, INC.

and Case No. 3-CA-27872

CARLOS ORTIZ
An Individual

Aaron B. Sukert. Esq.
for the General Counsel.
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(Lo Tempio & Brown. P.C). Buffalo, New York
for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR 1. AMCHAN, Administrative Law Judge. This case was tried in Buffalo, New York on July 13-15, 2011. Charging Party, Carlos Ortiz, filed the charge on November 18, 2011 and the General Counsel issued the complaint on May 9, 2011 and an amended complaint on May 27.

Respondent, Hispanics United of Buffalo, Inc. (HUB) is a not-for-profit corporation which renders social services to its economically disadvantaged clients in Buffalo, New York. Its services include housing, advocacy for domestic violence victims, translation and interpretation services, a food pantry, senior and youth services and employment assistance.

HUB's Executive Director Lourdes Iglesias terminated the employment of Carlos Ortiz, Mariana Cole-Rivera, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos on October 12, 2010. The General Counsel alleges that the five alleged discriminatees were terminated because they engaged in protected concerted activity and that therefore these terminations violated Section 8(a)(1) of the Act.

On the entire record,[1] 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

Respondent disputes whether the discriminatees' activity was protected and also disputes whether the Board has jurisdiction over it. With regard to jurisdiction, HUB points to the fact that it renders its services only in Buffalo and purchases goods and services only from companies which have facilities in New York State, mostly near Buffalo. Moreover, Respondent uses such goods and services only in the Buffalo, New York area.

The record establishes that in 2010, HUB had grant income of $1,184,197. $115,637 of this income came directly from the U.S. Department of Housing and Urban Development. Another $38,657 came from a Community Development Bloc Grant. Although received directly from the City of Buffalo, this money also emanates from the Federal Government, G.C. Exh. 27, p. 8, Tr. 65-66, G.C. Exh. 4. The relevant figures for 2009 are similar and HUB continues to receive federal grant funds in 2011, G.C. Exh. 4.

Respondent admits that it derives gross revenues in excess of $250,000. I find that the Board has jurisdiction over Respondent solely on the basis of its annual revenue and the amount of federal funds it receives.

Moreover, assuming that its federal funding was insufficient to give the Board jurisdiction, Respondent purchased more than $60,000 annually from entities which are engaged in interstate commerce. This is also sufficient to give the Board jurisdiction over Respondent. For example, HUB purchases services from Otis Elevator, which maintains the elevators at Respondent's facility, Verizon, Allied Waste Services, National Fuel and National Grid. I rely on the following cases in concluding that the Board has jurisdiction over Respondent.

In *St. Aloysius Home*, 224 NLRB 1344 (1976), the Board reversed its prior policy of declining jurisdiction over charitable organizations. This decision was based in part on the 1974 health care amendments to the Act. These amendments deleted the only reference to the exclusion from Board jurisdiction of charitable organizations.

The Board established a jurisdictional standard of $250,000 annual revenue for all social service organizations other than those for which there existed a standard specifically

[1] The General Counsel has submitted a motion to correct errors in the transcript. I have reviewed the motion and the transcript (Vol. 1 as corrected by the reporting service) and am satisfied that the motion accurately captures what was said at the hearing. I therefore grant the motion and incorporate it as part of the record in this matter. I do note, however, the following corrections should be modified as follows: page 52, line 13, should be page 52, line 12; page 143, line 1, should be page 142, line 24; page 171, line 21, should be page 170, line 21; page 180, line 4, should be page 179, line 20. Also the name of the case I mentioned at Tr. 153 and 157 is Parexel.

applicable to the type of activity in which they were engaged, *Hispanic Federation for Social Development*, 284 NLRB 500 (1987). The specific standards range from $50,000 for nonretail nonprofit organizations to $500,000 for apartment houses, and $1,000,000 for art museums, cultural centers, libraries, colleges, and universities, *Latin Business Assn*., 322 NLRB 1026 (1997). HUB does not dispute that the $250,000 standard applies it and I so conclude.

In *Senior Citizens Coordinating Council*, 330 NLRB 1100, 1101 (2000), the Board found that it had jurisdiction over an employer very similar to HUB. That employer provided nutrition and other services to a housing project in the Bronx, and received most of its funding from New York State agencies. The Board asserted jurisdiction solely on the basis that the employer's gross revenues exceeded $250,000.

The Board asserted jurisdiction in *Catholic Social Services*, 225 NLRB 288 (1976) over a charitable social service agency similar to HUB, which had an annual income of $412,000. The Board noted that the employer received $24,000 from the Federal Bureau of Prisons and paid in excess of $13,000 to Pacific Telephone and Telegraph, "an instrumentality of interstate commerce." Similarly, in *Fivecap, Inc.,* 332 NLRB 943, 948 (2000), the Board asserted jurisdiction by virtue of the fact that the Respondent, a local community action agency, had gross revenues of over $1,000,000 and received federal funds in excess of $50,000 from outside of Michigan. [2]

In several cases, the Board has focused on the federal government as a source of the employer's revenue. In *Community Services Planning Council*, 243 NLRB 798, 799 (1979), the Board asserted jurisdiction because the greatest portion of the employer's revenues ultimately came from the federal government (75%).[3] Later in the decision the Board indicated that it would assert jurisdiction over an employer whenever "a substantial portion of its moneys," are received from the federal government. In *Bricklayers & Allied Craftsmen, Local 2*, 254 NLRB 1003 (1981), the Board asserted jurisdiction on the basis of the fact that the employer's $1 million contract with the Los Angeles County Department of Roads was funded through the federal government.

I would also note that in the only Board decision relied upon by Respondent, *Ohio Public Interest Campaign,* 284 NLRB 281 (1987), the Board affirmed the judge's finding at page 286, that "there is no evidence of OPIC receiving grants from any Federal, state, or local governmental unit source." Thus, that decision is materially distinguishable from the facts of the instant case. In sum, I find that Respondent is an employer engaged in commerce within the meaning of the Act.

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[2] For other cases in which the Board has asserted jurisdiction over similar employers, see *East Oakland Community Health Alliance*, 218 NLRB 1270, 1271 (1975); *Saratoga County Economic Council*, 249 NLRB 453, 455 (1980); *Upstate Home for Children*, 309 NLRB 986, 987 (1992); *Hudelson Baptist Home for Children*, 276 NLRB 126 (1985); *Garfield Park Health Center,* 232 NLRB 1046 (1977); *Mon Valley United Health Services,* 227 NLRB 728 (1977).

[3] A similar case is *Electrical Workers Local 48 (Kingston Constructors),* 332 NLRB 1492, 1497-98 (2000).

II. ALLEGED UNFAIR LABOR PRACTICES

The Alleged Protected Concerted Activity

Relevant events prior to October 9, 2010

Respondent hired Lydia Cruz-Moore in May 2010 as a domestic violence (DV) advocate pursuant to a one-year grant from Erie County. Her job was primarily to accompany victims of domestic violence to hearings at the City of Buffalo's Family Justice Center. One day each week Cruz-Moore worked at HUB's offices doing such tasks as finding employment for HUB clients or insuring that their rent was paid. A number of other HUB employees were at the main office every day and generally performed different tasks than Cruz-Moore.

Cruz-Moore and discriminatee Mariana Cole-Rivera communicated very often, normally by sending each other text messages. In these messages Cruz-Moore was often critical about the job performance of other HUB employees, primarily those in Respondent's housing department. Early on the morning of Saturday, October 9, Cruz-Moore told Cole-Rivera that she was going to raise these concerns with Respondent's Executive Director, Lourdes Iglesias.

Several others of the discriminatees also had conversations or text message exchanges with Cruz-Moore, in which Cruz-Moore criticized HUB employees. On August 2, 2010, Cruz-Moore told discriminatee Ludimar Rodriguez that a client had been waiting for Rodriguez for 20 minutes and criticized Rodriguez's job performance.

Discriminatee Damicela Rodriguez had a conversation with Cruz-Moore in late September or early October in which Cruz-Moore complained that HUB staff members were not doing their jobs. Cruz-Moore also complained to Carlos Ortiz about the job performance of employees in Respondent's housing department.

The Facebook postings on which Respondent relies in terminating the five alleged discriminatees

On Saturday, October 9, 2010 at 10:14 a.m., Mariana Cole-Rivera posted the following message on her Facebook page from her home:

> Lydia Cruz, a coworker feels that we don't help our clients enough at HUB I about had it! My fellow coworkers how do u feel? [4]

The following employees responded by posting comments on Cole-Rivera's Facebook page:

[4] Respondent argues at page 32 of its brief that this statement is a lie and suggests therefore, the discriminatees are not entitled to protection of the Act. First of all, Cruz-Moore did not testify at the instant hearing, thus, I cannot credit what Respondent's brief characterizes as her "vehement denial." Moreover, I credit Cole-Rivera's testimony, which is corroborated by other discriminatees, that Cruz-Moore had repeatedly criticized the job performance of HUB employees, and Cole-Rivera's testimony, at Tr. 251, that Cruz-Moore had told her that she was going to go to Iglesias with her complaints.

At 10:19, Damicela Rodriguez (also known as Damicela Pedroza Natal) posted the following response:

What the f. .. Try doing my job I have 5 programs

At 10:26, Ludimar (Ludahy) Rodriguez posted:

What the Hell, we don't have a life as is, What else can we do???

At 11: 11, Yaritza (M Ntal) Campos posted:

Tell her to come do mt [my] fucking job n c if I don't do enough, this is just dum

At 11:41, Carlos Ortiz de Jesus posted:

I think we should give our paychecks to our clients so they can "pay" the rent, also we can take them to their Dr's appts, and served as translators (oh! We do that). Also we can clean their houses, we can go to DSS for them and we can run all their errands and they can spend their day in their house watching tv, and also we can go to do their grocery shop and organized the food in their house pantries ... (insert sarcasm here now)

Mariana Cole-Rivera posted again at 11:45:

Lol. I know! I think it is difficult for someone that its not at HUB 24-7 to really grasp and understand what we do ..I will give her that. Clients will complain especially when they ask for services we don't provide, like washer, dryers stove and refrigerators, I'm proud to work at HUB and you are all my family and I see what you do and yes, some things may fall thru the cracks, but we are all human :) love ya guys

Nannette Dorrios, a member of the Board of Directors at HUB posted at 12:10:

Who is Lydia Cruz?

Yaritza Campos posted a second time at 12:11:

Luv ya too boo

Mariana Cole-Rivera at 12:12 responded to Dorrios by the following post:

She's from the dv program works at the FJC [Family Justice Center] at hub once a week.

Jessica Rivera, the Secretary to HUD Director Iglesias, posted at 1: 10 p.m.

Is it not overwhelming enough over there?

At 2:27 Lydia Cruz-Moore posted:

> Marianna stop with ur lies about me. I'll b at HUB Tuesday..

Cole-Rivera responded at 2:56:

> Lies? Ok. In any case Lydia, Magalie [Lomax, HUB'S Business Manager] is inviting us over to her house today after 6:00 pm and wanted to invite you but does not have your number i'll inbox you her phone number if you wish.

Carlos Ortiz posted at 10:30 p.m.

> Bueno el martes llevo el pop corn [Good, Tuesday, I'll bring the popcorn].

Saturday, October 9, was not a work day for any of HUB's employees. None of the discriminatees used HUB's computers in making these Facebook posts.

Lydia Cruz-Moore complained to HUB Executive Director Lourdes Iglesias about the Facebook posts. Her text messages to Iglesias suggest that she was trying to get Iglesias to terminate or at least discipline the employees who posted the comments on Facebook. She appears to have had a dispute with Mariana Cole-Rivera, which was at least in part work-related. It is not clear why she bore such animosity against the other employees, most of whom did not mention her name in their posts.

Tuesday, October 12, 2010

On October 12, Lourdes Iglesias met individually with five of the employees who had made the Facebook posts on October 9 and fired each one of them.[5] She told them that the posts constituted bullying and harassment and violated HUB's policy on harassment. Iglesias did not terminate the employment of her secretary, Jessica Rivera, who had also entered a post on Cole-Rivera's Facebook page on October 9.

Each of the meetings was very short. Iglesias told each of the employees that Cruz-Moore had suffered a heart attack as a result of their harassment and that Respondent was going to have pay her compensation. For these reasons, Iglesias told each one that she would have to fire them. It is not established in this record that Cruz-Moore had a heart attack, nor whether there was any casual relationship between whatever health problems Cruz-Moore may have been experiencing and the Facebook posts. Furthermore, the record establishes that when Iglesias decided to fire the five discriminatees she had no rational basis for concluding that their Facebook posts had any relationship to Cruz-Moore's health.

[5] I do not credit Mariana Cole-Rivera's testimony that she attempted to speak to Iglesias on October 12, prior to the meeting in which she was terminated. Iglesias denies any such contact with Cole-Rivera and Carlos Ortiz's testimony leads me not to credit Cole-Rivera's testimony on this point. However, since I find that the October 9 Facebook postings were protected, this finding does not materially affect the outcome of this case.

It has also not been established why Respondent or its insurance carrier would have had to compensate Cruz-Moore. Typically, a workers compensation claimant has to show some relationship been their physical ailment and their employment. This is often difficult in cases in which the ailment, particularly something like a heart attack or a stroke, manifested itself when the employee was not at work.[6]

Several employees were handed termination letters at their meeting with Iglesias; others received them in the mail a few days later. Respondent has not replaced the five alleged discriminatees. It has given their work responsibilities to other employees and has operated with five fewer employees (25 as opposed to 30).

Analysis

The Discriminatees engaged in protected concerted activity.
Respondent terminated their employment in violation of Section 8(a)(1) of the Act.

Section 8(a)(1) provides that it is an unfair labor practice to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7. Section 7 provides that, "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection* ... (Emphasis added)"

In *Myers Industries (Myers 1)*, 268 NLRB 493 (1984), and in *Myers Industries (Myers 11)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection is as much concerted activity as is ordinary group activity.

Individual action is concerted so long as it is engaged in with the object of initiating or inducing group action, *Whittaker Corp*., 289 NLRB 933 (1988); *Mushroom Transportation Co.*, 330 F.2d 683,685 (3d Cir. 1964). The object of inducing group action need not be express.

Additionally, the Board held in *Amelio's*, 301 NLRB 182 (1991) that in order to present a prima facie case that an employer has discharged an employee in violation of Section 8(a)(1), the General Counsel must establish that the employer knew of the concerted nature of the activity.

[6] Under New York Workers Compensation Law, there is a rebuttable presumption that an employee's death from a heart attack or stroke is compensable-if it occurs at work. However, even in cases in which an employee dies of a heart attack while at work, the death is not necessarily compensable in New York State. The presumption may be rebutted by medical evidence, particularly where the decedent had a preexisting medical condition, see, e.g., *Schwartz v. Hebrew Academy of Five Towns*, 39 A.D.3d 1134, 834 N.Y.S. 2d 400, N.Y.A.D. 3 Dept., 2007.

Respondent concedes that the sole reason it discharged the five discriminatees is the October 9 Facebook postings. It also concedes that regardless of whether the comments and actions of the five terminated employees took place on Facebook or "around the water cooler" the result would be the same. Thus, the only substantive issue in this case, other than jurisdiction, is whether by their postings on Facebook, the five employees engaged in activity protected by the Act. I conclude that their Facebook communications with each other, in reaction to a co-worker's criticisms of the manner in which HUB employees performed their jobs, are protected.

It is irrelevant to this case that the discriminatees were not trying to change their working conditions and that they did not communicate their concerns to Respondent. A leading case in this regard is *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995) enf. denied on other grounds 81 F. 3d 209 (D.C. Cir. 1996),[7] in which the Board held that employee complaints to each other concerning schedule changes constituted protected activity. By analogy, I find that the discriminatees' discussions about criticisms of their job performance are also protected.

Likewise in *Parexel International, LLC,* 356 NLRB No. 82 (January 28, 2011) at slip opinion page 3 and n. 3, the Board found protected, employees' discussions of possible discrimination in setting the terms or conditions of employment. Moreover, concerted activity for employees' mutual aid and protection that is motivated by a desire to maintain the status quo may be protected by Section 7 to the same extent as such activity seeking changes in wages, hours or working conditions, *Five Star Transportation, Inc.,* 349 NLRB 42, 47 (2007).

Other cases similar to the instant matter are *Jhirmack Enterprises,* 283 NLRB 609, 615 (1987) and *Akal Security, Inc*., 355 NLRB No. 106 (2010). In *Akal Security*, the Board reaffirmed the decision by a 2-member Board at 354 NLRB No. 11 (2009). The Board dismissed the Complaint allegation that Akal had terminated the employment of two court security officers in violation of Section 8(a)(1). However, the Board found that the discriminatees' conversations with a coworker about his job performance constituted concerted activity protected by Section 8(a)(1).

Equally relevant are the Board decisions in *Automatic Screw Products Co*., 306 NLRB 1072 (1992) and *Triana Industries*, 245 NLRB 1072 (1979). In those cases the Board found that the employers violated Section 8(a)(1) by promulgating a rule prohibiting employees from discussing their wages. It stands to reason that if employees have a protected right to discuss wages and other terms and conditions of employment, an employer violates Section 8(a)(1) in disciplining or terminating employees for exercising this right—regardless of whether there is evidence that such discussions are engaged in with the object of initiating or inducing group action.

However, assuming that the decision in *Mushroom Transportation, supra,* is applicable to this case, I conclude that the Facebook postings satisfy the requirements of that decision. The discriminatees herein were taking a first step towards taking group action to defend

[7] The Court of Appeals denied enforcement regarding the termination of Aroostook's employees primarily on the grounds that their complaints were made in patient care areas.

themselves against the accusations they could reasonably believe Cruz-Moore was going to make to management. By discharging the discriminatees on October 12, Respondent prevented them by taking any further group action vis-à-vis Cruz-Moore's criticisms. Moreover, the fact that Respondent lumped the discriminatees together in terminating them, establishes that Respondent viewed the five as a group and that their activity was concerted, *Whittaker Corp., supra.*

In sum, I conclude that the above cases control the disposition of the instant case. Just as the protection of Sections 7 and 8 of the Act does not depend on whether organizing activity was ongoing, it does not depend on whether the employees herein had brought their concerns to management before they were fired, or that there is no express evidence that they intended to take further action, or that they were not attempting to change any of their working conditions.[8]

Employees have a protected right to discuss matters affecting their employment amongst themselves. Explicit or implicit criticism by a co-worker of the manner in which they are performing their jobs is a subject about which employee discussion is protected by Section 7. That is particularly true in this case, where at least some of the discriminatees had an expectation that Lydia Cruz-Moore might take her criticisms to management. By terminating the five discriminatees for discussing Ms. Cruz-Moore's criticisms of HUB employees' work, Respondent violated Section 8(a)(1).

The five discriminatees did not engage in conduct which forfeited the protection of the Act

If an employer asserts that an employee engaged in misconduct during the course of otherwise protected activity, the Board looks to the factors set forth in *Atlantic Steel Co.,* 245 NLRB 814 (1979), to aid in determining whether the employee's conduct became so opprobrious as to lose protection under the Act. The *Atlantic Steel* factors are: (1) the place of the discussion; (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. Applying these factors, there is no basis for denying any of the five discriminatees the protection of the Act.

As to factor 1, the "discussion," the Facebook posts were not made at work and not made during working hours. As to 2) the subject matter, the Facebook posts were related to a coworker's criticisms of employee job performance, a matter the discriminatees had a protected right to discuss. As to factor 3) there were no "outbursts." Indeed, several of the discriminatees did not even mention Cruz-Moore; none criticized HUB. Regarding *Atlantic Steel* factor 4, while the Facebook comments were not provoked by the employer, this factor is irrelevant to the instant case.

Additionally, Respondent has not established that the discriminatees violated any of its policies or rules. It relies on an assertion that it was entitled to discharge the five pursuant to its "zero tolerance" policy regarding harassment. Respondent has a policy against sexual

[8] Respondent argues that the Facebook postings were not protected in part because persons other than HUB employees may have seen them. I find this irrelevant. Cole-Rivera's initial post asked for responses from co-workers about Cruz-Moore's criticism of HUB employees job performance.

harassment which has no relevance to this case. It also has a policy against harassment of other sorts, which states as follows:

> Hispanics United of Buffalo will not tolerate any form of harassment, joking remarks or other abusive conduct (including verbal, nonverbal, or physical conduct) that demeans or shows hostility toward an individual because of his/her race, color, sex, religion, national origin, age, disability, veteran status or other prohibited basis that creates an intimidating, hostile or offensive work environment, unreasonably interferes with an individual's work performance or otherwise adversely affects an individual's employment opportunity.

There is nothing in this record that establishes that any of the discriminatees were harassing Lydia Cruz Moore, and even if there were such evidence, there is no evidence that she was being harassed on the basis of any of the factors listed above. Finally, there is no evidence that the comments would have impacted Cruz-Moore's job performance. She rarely interacted with the discriminatees. In summary, Lourdes Iglesias had no rational basis for concluding that the discriminatees violated Respondent's zero tolerance or discrimination policy. For reasons not disclosed in this record, Respondent was looking for an excuse to reduce its workforce and seized upon the Facebook posts as an excuse for doing so.

The terminations are also not justified by the alleged relationship between the Facebook posts and Ms. Moore's health. There is no probative evidence as to the nature of Ms. Cruz-Moore's health problem following the Facebook posts nor is there any probative evidence as to a causal relationship between Ms. Moore's heart attack (assuming she had one) or other health condition and the Facebook posts.

REMEDY

The Respondent, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No.8 (2010).

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

ORDER

The Respondent, Hispanics United of Buffalo, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall

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

1. Cease and desist from

(a) Discharging its employees due to their engaging in protected concerted activities.

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

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

(a) Within 14 days from the date of the Board's Order, offer Mariana Cole-Rivera, Carlos Ortiz de Jesus, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos full reinstatement to their former jobs or, if any of those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Mariana Cole-Rivera, Carlos Ortiz de Jesus, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them 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 such 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 Buffalo, New York office copies of the attached notice marked "Appendix"[10] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are

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

not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 12, 2010.

(f) 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.

Dated, Washington, D.C., September 2, 2011.

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Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activity, including discussing amongst yourselves your wages, hours and other terms and conditions of your employment, including criticisms by coworkers of your work performance.

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 Mariana Cole-Rivera, Carlos Ortiz de Jesus, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mariana Cole-Rivera, Carlos Ortiz de Jesus, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Mariana Cole-Rivera, Carlos Ortiz de Jesus, Ludimar Rodriguez, Damicela Rodriguez and Yaritza Campos, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

HISPANICS UNITED OF BUFFALO, INC.
(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.

Niagara Center Building., 130 S. Elmwood Avenue, Suite 630, Buffalo, NY 14202-2387
(716) 551-4931, Hours: 8:30 a.m. to 5 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, (716) 551-4946.