COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
PAUL F. DAUWER,

Complainants

v. DOCKET NO. 11-BEM-02659

COCA- COLA REFRESHMENTS
USA, INC. formerly doing business as
Coca-Cola Bottling Company of New
England, and MARK WOODFORD

Respondents

Appearances: Simone R. Liebman, Esq. Commission Counsel for Complainant
John R. Bode, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On July 21, 2011, Complainant filed a claim with this Commission against Respondents[1] alleging discrimination in employment based on his wife's disabilities. The charges were dismissed by the Investigating Commissioner upon a finding of Lack of Probable Cause, but after an appeal of that finding and a preliminary hearing, the finding was reversed in part to a finding of Probable Cause on Complainant's claim that his termination was discriminatory because it was motived by his association with his severely disabled wife. Her disabilities caused him to be absent from work and resulted in significant health insurance costs to

[1] The Complaint was also filed against Complainant's Union, AFL-CIO Local 513, but the Commission ultimately dismissed the claims against the Union as lacking probable cause.

Respondent.[2] Efforts at conciliation were not successful and the matter was certified for a Hearing. The Hearing was conducted on July 17-19, 2019. The parties submitted post-hearing briefs on September 20, 2019. Having reviewed the record of the proceedings and the parties' post-hearing submissions, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Paul F. Dauwer, was employed as a maintenance mechanic for Respondent, then doing business as Coca-Cola Bottling Co. of New England, at its former Needham Heights, MA facility. Complainant was employed there from September 2009 until April of 2011. (Tr. Vol. I, pp. 42-43) Prior to his employment with Respondent, Complainant had worked as a mechanic for Cambridge Brands for over six years with no disciplinary or attendance problems. (Tr. Vol. I, 35, 38)

2. During his employment with Respondent, Complainant was a member of AFL-CIO Local 513, Beverage and Production Workers Union, and the terms and conditions of his employment were governed by a collective bargaining agreement between Respondent and the Union. (Tr. Vol, I, p. 47, Vol. II, p. 150; Joint Ex. 1) Pursuant to the agreement, Complainant was entitled to leave time of three personal days per year with two weeks prior notice and forty-eight hours (six days) of sick leave per year. He was entitled to one week of vacation after completion of one year of continuous service. (Jt. Ex. 1 Articles 8 & 7)

3. Complainant resides in Brockton MA. He and he and his wife Stacey Dauwer have three daughters who were ages 13, 11, and 8 in 2010. (Tr. Vol. I, pp. 28-29) Complainant's wife has suffered from many serious illnesses during their marriage including, multiple scerlosis

[2] When used in the singular herein, "Respondent" refers to the corporate entity.

(MS), lupus, epilepsy and a heart condition. Stacey Dauwer testified that MS is a very unpredictable disease that is subject to flare-ups. (Tr. Vol. 1, p. 32, Vol. II, p. 14)

4. Complainant was eligible for health insurance through Respondent and paid for a family plan. (Tr. Vol. I, p. 50; Joint Ex. 2) The health plan was administered by Blue Cross Blue Shield and funded by Respondent. While Blue Cross and Blue Shield of Georgia, Inc. administered the plan, Respondent was responsible for the payment of insurance benefits. (Joint Ex. 2, DEF 657)

5. As a Maintenance Mechanic, Complainant worked the third shift from 9:30 p.m. to 6:00 a.m. (Tr. Vol. III, 45-46, 75) Maintenance mechanics reported to Maintenance supervisors who reported to the Maintenance Manager, Mark Woodford. (Tr. Vol. III, p. 122) Complainant reported directly to Maintenance Supervisor, Mark Charbonneau. (Tr. Vol. III, p.13)

6. Within a few months of Complainant's employment with Respondent, his wife's health began to deteriorate and she was diagnosed with epilepsy in December 2009. (Tr. Vol. I , p. 53, Vol. II, p. 21) Complainant spoke to co-workers including his supervisor, Charbonneau about his wife's health issues, including her difficulty walking and having seizures. (Tr. Vol. I, pp. 53-57) Maintenance manager Woodford overheard one of these conversations sometime prior to January of 2010, and commented on the hardship Complainant was going through. (Tr. Vol. I, 58-60)

7. In May of 2010, Complainant injured his back at work, saw his physician and went home to rest. While resting at home he received a call from Woodford who in a hostile manner directed him to see a Coca Cola physician at a hospital in Boston that day. Upon arriving at the hospital after a forty-five minute ride in severe pain, no appointment had been made for Complainant and he had to wait several hours to see a physician. When his wife contacted

Woodford to advise him Complainant had no appointment, he responded with words to the effect of, "That's what happens when you get hurt at work," and he slammed the phone down. (Tr. Vol, I, pp. 77-79: Vol. II, pp. 24-30) Complainant was out of work for two weeks and received worker's compensation. (Tr. Vol. I, p. 81) He sought to return to light duty but Respondent took the position that the facility could not accommodate light duty restrictions and there was no light duty available. (Tr. Vol. I, p. 80; Ex. C-26)

8. Prior to his worker's comp leave, Complainant had never received any written warnings. Within a month of his return, Respondent issued Complainant a Corrective Action for not properly punching out of work on June 8, 2010. (Tr. Vol. I, p. 85) On June 30, 2010, Complainant's supervisor disciplined him again for failing to properly punch out for lunch breaks between 6/20 and 6/24. Complainant testified credibly that he had not previously been instructed to punch out for lunch breaks and that the issuing supervisor told Complainant that he wasn't sure what Complainant had done, but that he had to issue the "write-up." (Tr. Vol. I, pp. 86-89, 91) He showed Complainant an email dated 6/28/2010 from Regina Cacciola to Woodford which stated, "now is the time to discipline...then we can go from there." (Ex. C-2) Complainant described Cacciola as the Human Resources manager on at the facility. (Tr. Vol. I, 132) [3]

9. In 2010, Stacey Dauwer began receiving injections to treat her MS and was diagnosed with Sick Sinus Syndrome. Her health continued to deteriorate in the summer and fall of 2010. In June of 2010 her health care costs were $39, 452. (Tr. Vol. II, p.22, 30, 39: Exs. C-13 & 14) In September of 2010 her, health costs were $43,660.78. By October 2010, they had spiked to $82,256.08. (Tr. Vol. I, 94; Vol. II, pp. 30-32, 39; Exs. C-13 & 14)

[3] Respondent asserted that Cacciola was not a manager, but an administrative clerk in the office and that she had no authority to speak on behalf of management, despite her directive to Woodford in this email. (Tr. 133)

10. In August of 2010, Complainant received a verbal warning for excessive absences and in September of 2010 he received two additional disciplines from his immediate supervisor, Charbonneau, a written warning and a final written warning for excessive absences. (Tr. Vol. I, pp. 273-275; Ex. R-13, 14 & 15) Complainant's absences were related to his wife's serious health issues. In one of the September instances, Complainant reported to Respondent's sick leave call line that his wife had stopped breathing due to a grand mal seizure and needed resuscitation. (Tr. Vol. I, pp. 100-103)

10. On October 6, 2010, Complainant requested and received Family Medical Leave (FMLA) in order to deal with his wife's serious medical conditions. (Ex. C-3) When Complainant was absent on October 6, 2010, his supervisor Charbonneau recommended his termination to Pamela DiStefano, an attorney in Labor Relations. (Ex. C-28) DiStefano reviewed the recommendation and did not approve it since it appeared to be covered by FMLA leave. (Tr. Vol. II, pp. 162-164) Initially, Complainant intended his FMLA leave would be intermittent depending on the severity of his wife's conditions at a given time. Ultimately Complainant had to use the time consecutively because his wife experienced a flare-up of her MS, had increased paralysis, and was hospitalized for treatment. Complainant had no other family support and was the primary caretaker for his three young daughters. (Tr. Vol. I, pp. 94, 107-108, 111-112; Tr. Vol. II, pp. 20, 49)

11. From September 2010 to January 2011, Stacey Dauwer suffered from internal bleeding from the development of a blood condition. She underwent extensive treatment, including the installation of a vascular catheter in her jugular vein for a procedure called plasmapheresis, a process which removes proteins from the blood. In October 2010, her MS caused severe paralysis, but after several weeks of the treatment she was able to walk again. (Tr.

Vol. I, p. 116; Vol. II, pp. 10-11) Complainant came to understand that the plasmapheresis treatments were very expensive and he communicated this to several co-workers, including his immediate supervisor, Charbonneau. (Tr. Vol. I, pp. 117-120) He also kept a photograph of his wife with the vascular catheter in her neck in his toolbox and showed it to various co-workers. (Tr. Vol, I, pp. 167-168)

12. While on leave, Complainant communicated updates about his wife's medical condition to Respondent via its FMLA line, including information that he was caring for his wife due to her MS, that she was suffering from paralysis and that she had been hospitalized and released on November 11, 2010. (Tr. Vol. I, pp. 109-111)

13. At the time Complainant returned from FMLA leave in January of 2011, Respondent's health insurance premium payments for employees had increased from $59.56 per week to $68.95 per week. Around that time, Complainant overheard a conversation between Mark Woodford and another employee whose voice he did not recognize, about the increase in health insurance premiums, wherein Woodford indicated that the increase in premiums was likely due to Complainant's wife's excessive medical costs, which might continue as long as Complainant remained employed at Respondent. (Tr. Vol. I, pp. 122-123, 304-305) While Woodford denied the allegation, Complainant was very specific about the time and place he heard this, and his wife testified that he called her to relay what he had overheard. (Tr. Vol. III, p. 79, Vol. II, p. 57) Complainant also reported this allegation in his complaint to the Commission, stating that it made him feel like his family's personal issues were some kind of a joke. (Tr. Vol. I, p. 125; Complaint) I credit his testimony that he heard Woodford make this comment. Complainant also testified that sometime after he returned from is his leave, his union

representative gave him a "heads up" that Woodford "is out to can your ass," but the union representative did not know why. (Tr. Vol. I, pp. 146-149)

14. As Stacey Dauwer's severe health issues continued, Complainant was absent or had to leave early on some occasions in February and March of 2011. He received disciplinary warnings, one verbal and one written, for two instances of absenteeism in Februrary 2011 and began to be concerned about the security of his job. (Exs. R-16 & 17; Tr. Vol. II, p. 61) He testified that his wife was "in a bad way at the time," and they had several emergency situations. (Tr. Vol. I, p. 126)

15. In March of 2011, Stacy Dauwer suffered a flare-up of her MS, resulting in paralysis and inability to use her legs. During that time she had five placements of the vascular catheter in her jugular vein to receive plasmapheresis treatments. (Tr. Vol. II, p. 11) Since Complainant needed to be available in an emergency and was concerned about the security of his job, he submitted documentation dated March 11, 2011, to Mark Charbonneau. The letter from Stacey Dauwer's neurologist at the Lahey Clinic stated that Mrs. Dauwer had a serious neurological disorder requiring urgent treatment, that she would likely need outpatient treatments daily or every other day for the next two weeks, and that she was dependent upon her husband for transportation. (Ex. C-5)

16. During this time period, Mrs. Dauwer's condition worsened and, instead of outpatient care, she required hospitalization on March 15, 2011. On some occasions the Dauwer children remained overnight at the hospital so that Complainant could go to work. (Tr. Vol. I, p. 131; Vol. II, p. 65) Complainant testified that he felt like he had to put his job ahead of concerns about his wife, since he was not eligible for further FMLA leave at the time. (Tr. Vol. I, p. 131) He provided further documentation to Respondent from Mrs. Dauwer's neurologist

dated March 17, 2011, with his own cover letter, informing Respondent of his wife's hospitalization. The doctor's letter stated that the need to attend to his wife's serious health issues and to care for his children might impact Complainant's ability to keep his regular schedule at work, and requested that accommodations be made until his wife was discharged and recovering. (Ex. C-6; Tr. Vol. I, p. 128) During this time, the Dauwers were in the process of making arrangements for a visiting nurse to come to their home on a regular basis and for a personal care assistant to be in the home at night while Complainant was at work. (Tr. Vol. II, pp. 68-69)

17. At the time, due to concern for his job, Complainant also sought to have discussions with Chris Maros, the Operations Manager at Respondent's Needham Heights facility and Regina Cacciola, whom he viewed as the on-site HR manager. Complainant explained the severity of his wife's condition to Cacciola and sought information about a possible voluntary leave with no pay or any type of arrangement that would allow him to remain employed, conveying that he was desperately seeking any solution at that point. Cacciola advised him to speak with Maros, the Operations manager. (Tr. Vol. I, pp. 133-134)

18. Complainant took Cacciola's advice and contacted Maros. He met with Maros and Woodford and explained that his wife was suffering from paralysis, that he had no available sick leave, and that he was desperate to keep his job and a roof over his family's head. Complainant testified that Maros seemed shocked to hear this news. (Tr. Vol. I, pp. 134-135) During this meeting Complainant raised a number of options including possibly changing shifts. Woodford suggested that he resign from his position so as to not be blacklisted and to able to collect unemployment. (Tr. Vol. I, p. 136) Maros then noted that if Complainant quit his job, he would not be eligible to collect unemployment. Maros stated he would check his resources and get

back to Complainant. (Tr. Vol. I, p. 137) Complainant received no response to his request to transfer to another shift, while during this time, a co-worker with less seniority than Complainant was transferred from the third shift to second shift. (Tr. Vol. I, pp. 142-143)

19. Complainant also spoke with Pamela DiStefano, an attorney in Labor Relations about his desperate situation. DiStefano had been made aware of Complainant's absenteeism in the summer and fall of 2010 by Mark Charbonneau and knew that Complainant had taken FMLA leave beginning in October 2010. (Tr. Vol. II, pp. 162-164) DiStefano testified that she could not recall having ever seen the March 2011 documentation of Mrs. Dauwer's severe health issues, but she had noted their receipt in an email dated March 21, 2011, in which she indicated that Complainant was inquiring about further leave. (Tr. Vol. II, p. 280-286; Ex. R-27) Complainant testified that when he spoke to DiStefano in March of 2011, she was disinclined to hear about his situation and was short-tempered and short with him. She suggested that he resign and Respondent would not contest his claim for unemployment and he would not be blacklisted from the company. (Tr. Vol. I, p. 146)

20. In March of 2011, as Stacey's Dauwer's health continued to decline, her health care costs reached a high of $90,871.63. (Exs. C-13 & -14) Complainant received warnings for leaving work early three times during the month of March. (Exs. R-19, 20, 21) Each of these departures in the middle of the night were related to his wife's health care crises. The first two warnings purported to be for Complainant's 8th and 10th times being tardy. Complainant could not recall receiving notices of being tardy a 9th or 11th time. (Tr. Vol. I, p. 160) [4] On April 3, 2011, Complainant received a final warning for a 12th tardy for leaving work early on March 30, 2011. (Ex. R-21) Absent any indication that Complainant had been tardy an 11th time prior to

[4] The record is devoid of any Bargaining Unit Corrective Action Forms (disciplinary warnings) completed by Respondent indicating 9th or 11th instances of tardiness. In fact Complainant recalled receiving two warnings for the same incident. (Tr. Vol. 1, pp. 157-158; Exs. C-27 and 28)

receiving this notice, a final warning in such instance would be a misapplication of Respondent's policy. (Ex. R-21; Tr. Vol. II, p. 206) On April 5, 2011, Charbonneau gave Complainant a second version of the warning issued on April 3rd claiming that the original warning had been misplaced. The second version was identical to the first except that it stated, "leaving early will result in termination," whereas the first version warned only of "further disciplinary action" if Complainant was tardy again. (Exs. C-7 & 8; Tr. Vol. I, pp. 157-158; Ex. C-25) Complainant testified that Charbonneau represented to him that it was the same document he had signed on April 3rd. Charbonneau testified that he was directed by DiStefano to revise the disciplinary document. (Tr. Vol. III, p. 40)

21. On April 7, 2011, Complainant received a phone call from his eight year old daughter telling him his wife was having a seizure and was non-responsive. He informed the supervisor that he needed to leave because of a family emergency and that he would speak to Mark Charbonneau in the morning. (Tr. Vol. I, pp 151-153; 160-162) Stacey Dauwer suffered two grand mal seizures that day and Complainant had to transport her for medical care. (Tr. Vol. I, p. 163) Complainant spoke with Charbonneau the next morning telling him that home health care had finally been arranged for his wife to begin the following week and Complainant would no longer have to deal with leaving work. Charbonneau informed Complainant that there might have to be a meeting with the union and that he would get back to him about the next part of the process. (Tr. Vol. I, p. 154, 163-164)

22. Later that same day, April 7, 2011, Complainant received a voice mail message from Charbonneau informing him that he would be receiving by mail imminently an official notice terminating his employment. Charbonneau told Complainant to take care of himself and his family, and stated home was where Complainant needed to be. (Tr. Vol. III, p. 33) Complainant

was stunned to receive this message because Charbonneau had led him to believe there would be further discussion with management and his Union prior to any termination, as part of a process referenced by Charbonneau. He could not believe that his employment was terminated given his dire circumstances. Complainant desperately needed his job to provide for his family, and had just secured the assistance they needed to allow him to continue working an uninterrupted schedule. (Tr. Vol. I, 154, 164-168)

23. Charbonneau brought the matter of Complainant leaving work early on April 7, 2011, to DiStefano. DiStefano reviewed the disciplinary documents, approved Complainant's termination and drafted the termination letter. (Tr. Vol. III, pp. 24-25, 92; Vol. II, pp. 165-169) DiStefano had notice since the Fall of 2010 that Complainant's wife suffered from medical issues and understood that "some of" Complainant's attendance problems were because of his wife's illnesses. (Tr. Vol. II, pp. 169-170, 276) Complainant received the termination letter along with a Bargaining Unit Corrective Action form stating that he was terminated for leaving his shift at 1:00 a.m. on April 7, 2011. (Jt. Ex 3) The form was signed by Charbonneau and noted that Complainant had waived his right to have a shop-steward present, which was untrue. (Jt. Ex. 3; Ex. C-9; Tr. Vol. I, pp. 172-173) Complainant had not signed the form nor had he waived his right to union representation. (Tr. Vol. I, p. 173)

24. Woodford testified repeatedly that he did not know Complainant's wife was seriously ill until issuance of the final written warning. However, he testified in a deposition that he recalled Complainant telling him that his wife was sick and in the hospital, and that he needed to babysit. (Tr. Vol. III, 139-140) He also acknowledged that it was likely common knowledge in the facility that Complainant's wife was very ill. (Tr. Vol. III, pp. 140-141) He claimed that he never questioned why Complainant took FMLA leave and did not know it was because of his

wife's illness. (Id.) His testimony regarding his ignorance of this issue was not at all credible. Woodford admitted that with the exception of his attendance, Complainant had no other performance issues. (Tr. Vol. III, pp. 236-237)

24. Upon his termination, Complainant applied for unemployment compensation and was informed by the state agency that Respondent had contested his unemployment asserting that he had abandoned his position and engaged in misconduct. (Tr. Vol. I, p. 174-175) Complainant appealed the denial and was ultimately awarded unemployment compensation some three months later. (Tr. Vol. I, pp. 175-176)

25. After Complainant's employment was terminated, health insurance coverage for his wife ceased immediately, while coverage for Complainant and his three children remained in effect until the end of the month of April 2011. (Tr. Vol. I, pp. 191-201; Exs. C-9 & 10; Tr. Vol. II, pp. 70-73) Mrs. Dauwer learned of this when she went to a medical appointment and was informed that her health insurance coverage was terminated. (Tr. Vol. II, p 70). The relevant Blue Cross, PPO Summary Plan Description states that coverage terminates for all covered parties at the same time, either on the date the individual is terminated or through the end of the month. There is no reference in the Summary Plan, in Respondent's policies, nor in the Collective Bargaining Agreement, regarding cessation of coverage for some family members, but not others. (Jt. Ex. 2 p. 35; Jt. Ex. 1; Tr. Vol. II, pp. 264-266) Respondent had no explanation for this occurrence, claiming that it was unaware of the basis for the discrepancy, and asserting that administration of the insurance plan's benefits was handled by BlueCross Blue Shield (BC/BS) of Georgia. Stacey Dauwer contacted BC/BS and was informed her coverage was terminated April 7, 2011, and that the date of termination was at the discretion of the employer. When she inquired if the practice of terminating one family member and not others

was common, she received no response and was referred to Respondent. (Tr. Vol. II, p. 71) I found Respondent's position with respect to the discrepancy in the termination to be totally disingenuous. Thereafter, Mrs. Dauwer had to revert to Medicare as her primary health care insurer.

26. On or about May 13, 2011, Complainant received a deposit in the amount of $590.92 from Respondent credited to his checking account for five days of vacation pay, time that he would have used during his wife's medical crisis, had he been permitted to do so. (Exs. C-15 & 16, Tr. II, pp. 73-78) Respondent asserted that Complainant was not entitled to use this time because he had designated in January of 2011 the week he intended to take vacation, and because he had not accrued the time as of his termination since he had not yet completed two years of continuous service. (Jt. Ex. 1, Article VII; Tr. Vol. I, 267-269)

27. Respondent repeatedly stressed that it enforced the attendance provisions of the Collective Bargaining Agreement uniformly and consistently. (Tr. Vol. III, p. 58) DiStefano and Woodford testified that its managers had no discretion in applying the attendance policy. (Tr. Vol. II, p. 212; Vol. III, p. 127) DiStefano was responsible for counseling, coaching, and advising supervisors regarding the attendance policy and other contract provisions. (Tr. Vol. II, p. 162) Respondent asserted that its discipline and discharge of Complainant were strictly in accordance with the attendance guidelines outlined in the Collective Bargaining Agreement. (Tr. Vol. II p. 148, 262)

28. Pursuant to the provisions of the Collective Bargaining Agreement and according to DiStefano, "tardy" was defined as being in excess of five minutes past a scheduled start time or leaving work early after completion of half of any scheduled work day. (Jt. Ex. 1, s. 2 p. 43; Tr. II p. 197) The final written warning for tardiness issued to Complainant on April 3, 2011, was

for leaving work early on April 1, 2011. Complainant's shift began at 9:30 p.m. and ended at 6:00 a.m. and he left work at 1:40 a.m. on April 1st. Since Complainant left work prior to completing half of his scheduled work day, he was not tardy under the provisions of the Collective Bargaining Agreement. (Ex. C-7; R-21) The discipline that resulted in Complainant's termination for leaving at 1:00 a.m. on the morning of April 7th was also not properly characterized as a "tardy" as defined by the contract. (Jt. Ex. 3) Pursuant to the Agreement discipline for excessive tardiness following the first three occurrences/ and after six occasions was to be administered as follows:

> 4th Occurrence (7th & 8th occasion) -- Verbal warning
> 5th Occurrence (9th & 10th occasion) -- Written warning
> 6th Occurrence (11th & 12th occasion) -- Final written warning
> 7th Occurrence (13th and 14th occasion) -- Termination
>
> Jt. Ex. 1 Art. XII, pp. 12-13

Respondent asserted that even if Complainant's absence was mischaracterized as "tardy," his leaving on April 7, 2011, before completing one-half of his scheduled work day would have been considered an "absence," that Complainant was on a final written warning for excessive absences prior to April 6, 2011, and that he was subject to termination for exceeding the number of absences allowed under the agreement. (Jt. Ex. 3; Ex. R-18)

29. Complainant's termination was purportedly for being tardy on 13 occasions, according to Respondent's Corrective Action forms. A 13th instance of tardiness does not warrant termination pursuant to the collective bargaining agreement. In order for there to be a 7th Occurrence warranting termination under the contract, as noted above, there must be a 13th and 14th instance of tardiness.[5] (Tr. Vol. II, 199-200) There were also no Corrective Action Forms referencing a 9th or 11th instance of tardiness for Complainant. Woodford testified that he could

[5] Charbonneau testified that it was his understanding that an employee's termination could be triggered on either the 13th or the 14th occasion of tardiness.

not recall any discussions with DiStefano about Complainant's termination, but when pressed stated that DiStefano "absolutely" expressed reservations about it. (Tr. Vol. III, pp. 112-118)

30. Complainant was the only maintenance mechanic involuntarily terminated from Respondent's Needham facility from January 1, 2010 to December 2012. (Tr. Vol. II, pp. 266-267; Vol. III, 57-58) He was also the only employee terminated during Woodford's tenure at Respondent from 2009 to 2013. (Tr. Vol. III, p. 126) More importantly, as discussed below, the evidence demonstrates, and Complainant was aware of, at least three other employees who arrived late on more occasions than he did and were not terminated for attendance violations. (Tr. Vol. I, 178-187) Woodford testified that none of these individuals are disabled or associated with a close family member who is disabled. (Tr. Vol. III, p. 250-251)

31. A Building Maintenance Mechanic who worked on the first shift under a different supervisor who reported to Woodford was tardy thirty (30) times in 2010 and twenty-four (24) times in 2011. (Tr. Vol. I, 178-179; Ex. C-29) Woodford admitted that he was likely aware that the supervisor had written this employee up for excessive tardiness, but the employee was not terminated during Woodford's tenure. (Tr. Vol. III, p. 188)

32. Another Maintenance Mechanic who worked on the same production line as Complainant, was subject to the same attendance policy, and reported to a supervisor who reported to Woodford, told Complainant that he had been tardy over 18 times and told Complainant not to worry. (Tr. Vol. I, pp. 184-186; Vol. III, p. 184) His record of absenteeism showed that in 2011, he called in sick nine times and was a no call/no show for a tenth occasion and was not terminated. (Ex. C-17) DiStefano testified that this employee's discipline was inconsistent with what was required under the contract. (Tr. Vol. II, p. 184) She testified that a no call/no show could be grounds for immediate termination under the contract, and that four

additional instances of sick leave beyond the six days allowed under the contract would result in termination. (Tr. Vol. II, pp. 193, 196; Jt. Ex. 1) In August and September of 2011, that same employee received a second written warning for being tardy seventeen times and a third written warning for an eighteenth occasion of tardiness. (Exs. C-8 & C-9) According to DiStefano, this discipline was an incorrect application of the policy as fourteen instances of tardiness should result in termination. (Tr. Vol. II, p. 216, 223) Woodford was put on notice of the discipline for this employee's eighteen instances of tardiness via an email from the supervisor copied to him. (Ex. C-32; Tr. Vol. III, 210-215) Woodford claimed he would not have seen the email because he did not open emails copied to him, and would not have recommended termination even if he had seen the email. (Tr. Vol. III, pp. 214-220) Records reveal that, all-told in 2011, the employee in question was tardy (arriving late or leaving early) a total of 22 times. In the prior year, 2010, this employee had been tardy approximately 35 times and was issued only two written disciplines. (Ex. C-30; Tr. Vol. III, pp. 196-199, 201-203) Despite claiming he did not read the above-cited email, Woodford acknowledged that it was possible the supervisor had made him aware of the employee's attendance issues. (Tr. Vol. III, p. 257) This same employee also failed to punch into work on a number of occasions which could be a terminable offense, and was caught on video camera on four occasions breaking into an office to misappropriate supplies. (Exs. C-22, C-23, C-24; Tr. Vol. II, p. 263) For this offense, he was issued only a written warning in May of 2013. (Ex. C-24)

33. Another maintenance mechanic received vacation at the commencement of his employment, contrary to Respondent's policy, an option Respondent did not offer to Complainant when he desperately needed more time to care for his wife. This employee also engaged in a fight with a co-worker during his probationary period and remained employed. (Tr.

Vol. I, pp. 189-190) I find that despite his purported ignorance of employees' attendance records, Woodford was generally aware of which employees were subject to disciplinary measures for problematic attendance or other performance issues, and was on notice of the fact that discipline was inconsistently applied and was not always in conformance with the policies in the CBA. (Tr. Vol. III, 127-131) In addition, copies of all corrective action forms which were notice of discipline were forwarded to human resources (HeRe). (Tr. Vol. III, p. 133)

34. Despite the absence of an express provision in the contract for unpaid leaves of absence, certain employees were permitted to take a leave without pay or unpaid vacation time, including the employee cited above for excessive absenteeism and tardiness. (Ex. C-21, Tr. Vol. III, pp. 238-240, 242-243, 246-247) Woodford testified that it's possible to arrange for Respondent to grant such a leave. (Tr. Vol. III, p. 247) Complainant was never offered any of these options despite his assurances to Charbonneau that he would likely not need further emergency leave as his wife was getting a health care assistant imminently.

35. Complainant was "devastated" by the loss of his job. He testified that he was "totally ripped apart" and was a completely different person as a spouse and a father. He stated he was "mess,' a "shell of a person," and unable to hold his family together. (Tr. Vol. I, p. 209-210) Stacey Dauwer testified that throughout the many months of her serious illness, he was the "total strength" of the family, "the rock," who "kept everyone going," and who took care of their daughters and "made sure everyone was happy." (Tr. Vol. II, p. 53) Complainant also referred to himself as "the rock that held my family together," and stated that his wife's health issues were "very, very tough for my children to deal with," and that he helped to distract them with activities. (Tr. Vol. I, pp. 209-210) His termination adversely impacted his relationships with his wife and children. According to Stacey Dauwer, their roles reversed and she had to be strong