

Alco Venetian Blind Co., Inc. and Local Union No. 1922, International Brotherhood of Electrical Workers, AFL-CIO. Case 29-CA-7145

January 9, 1981

DECISION AND ORDER

On April 15, 1980, Administrative Law Judge Raymond P. Green issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Alco Venetian Blind Co., Inc., Lindenhurst, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

CHAIRMAN FANNING and MEMBER JENKINS, dissenting in part:

We agree with our colleagues with respect to their adoption of the Administrative Law Judge's Decision finding certain 8(a)(1) violations. However, contrary to our colleagues, we would find that

¹ Counsel for the General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In affirming the Administrative Law Judge's findings, we do not rely on his suggestion that various inferences could be drawn from the fact that the majority of picketing employees abandoned the strike within the workweek, or his statement that there was no evidence that the unlawful remark about closing the plant which was made by Al Agresta to Union Representative Al Faicco in the presence of several employees was transmitted to other employees.

² The General Counsel contends that the Administrative Law Judge incorrectly computed the amount of the wage increase granted by Respondent in July 1979 by his use of salary rates obtained from Respondent's payroll records rather than its wage cards. We find that regardless of which method of calculation is used, the General Counsel has not established that the range of wage increases granted varied unlawfully from that given in previous years. We note, furthermore, that the wage increase was given in July, the month that Respondent regularly granted such increases; that the increases were given several months after the strike and all other union activity had ceased; and that there has been no showing of any unlawful actions by Respondent during this post-strike period. In thus affirming the Administrative Law Judge's finding that Respondent's wage increase did not violate the Act, we do not rely on his use of Bureau of Labor Statistics figures as to the inflation rate, since the General Counsel did not have an opportunity to respond to the use of these figures at the hearing, or to the Administrative Law Judge's use of the 1979 wage increase of nonbargaining unit employees.

Respondent's interrogation of employees in the absence of the safeguards provided in *Struksnes Construction Co., Inc.*, 165 NLRB 1062 (1967), violated Section 8(a)(1) of the Act. The Administrative Law Judge dismissed this allegation on the ground that, although Respondent's poll was not conducted in accordance with the standards established in *Struksnes*, the circumstances would not justify the conclusion that Respondent interfered with its employees' Section 7 rights. In reaching this result, the Administrative Law Judge relied on *Bushnell's Kitchens, Inc.*, 222 NLRB 110 (1976). However, for the reasons set forth in Member Jenkins' dissent in *Bushnell's*, we would not follow that decision here. Under circumstances in which one of Respondent's owners asked a group of employees and several union representatives if this was the union they wanted and if they were aware that there was another union which could do better for them, we would find that the requirements for lawful polling of employees under *Struksnes* clearly were not met, and that Respondent therefore violated Section 8(a)(1) of the Act. Because the safeguards established in *Struksnes* continue to be the best means of allaying in employees any fear of discrimination which might otherwise arise from polling, we see no reason to carve out an exception to the *Struksnes* rule in this case, and therefore dissent.³

³ See also our dissent in *Jerome J. Jacomet d/b/a Red's Novelty Co. and R-N Amusement Corporation*, 222 NLRB 899 (1976).

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge: This case was heard before me in Brooklyn, New York, on December 10, 11, and 12, 1979.¹ The complaint was issued on June 12, based on a charge filed on April 20 by Local Union No. 1922, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union.² The basic issues raised by the complaint, which alleges that Alco Venetian Blind Co., Inc., herein called Respondent, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, are as follows; (1) Whether the Union represented a majority of Respondent's employees in an appropriate unit; (2) whether that majority status was demonstrated to Respondent on April 9, when, pursuant to a poll, the employees allegedly told Respondent that they wished to be represented by the Union; (3) whether there was established, pursuant to the poll, a bargaining obligation; (4) whether a strike which ensued on April 9, and which ended on

¹ Unless otherwise indicated all dates are in 1979.

² On April 11, the Union filed a petition for an election in Case 29-RC-4542, which was withdrawn on June 14. On April 13, Respondent filed a petition for an election in Case 29-RM-597, which was dismissed on June 18 because of the issuance of the instant complaint.

April 16, was an unfair labor practice strike; (5) whether Respondent coercively interrogated employees in April; (6) whether Respondent, in April, threatened employees with plant closure if they joined or assisted the Union; (7) whether Respondent, in April and July, promised or granted to its employees wage increases and other improvements in their terms and conditions of employment to induce them to refrain from joining or supporting the Union; and (8) whether the unfair labor practices alleged above were of such a nature so as to prevent the holding of a fair and free election, thereby warranting the issuance of a bargaining order.

Upon the entire record, including my observation of the demeanor of the witnesses and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a New York corporation located at 190 East Hoffman Avenue, Lindenhurst, New York, where it is engaged in the manufacture and sale of venetian blinds. Annually, Respondent purchases goods and materials valued in excess of \$50,000 which are delivered directly to it from points located outside the State of New York. Respondent also, on an annual basis, sells and ships products valued in excess of \$50,000 to points located outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.³

III. THE APPROPRIATE UNIT

At the outset of the hearing the parties agreed, and I find, that all production and maintenance employees, drivers, and installers employed by Respondent at its Lindenhurst shop, exclusive of salesmen, office clerical employees, guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The parties further stipulated that certain named employees totaling 19 in number who were employed as of April 9 constitute the employees comprising the appropriate unit.

IV. THE UNION'S AUTHORIZATION CARDS

The evidence establishes, and I find, that between April 2 and April 9 a majority of the employees in the appropriate unit signed authorization cards for the Union. These cards unambiguously authorize and designate the Union as the employees' collective-bargaining representative, and there was no evidence of fraud, misrepresentation, or any other improper inducement which

³ At the hearing, Respondent amended its answer to admit the allegation concerning labor organization status.

would serve to invalidate the cards. I therefore find that as of April 9 the Union had obtained valid authorization cards from a majority of Respondent's employees in the unit found to be appropriate.

V. THE ALLEGED UNFAIR LABOR PRACTICES

On April 6, employees of Respondent, at a meeting,⁴ elected to go to the plant on Monday, April 9, with the Union's representatives. It was agreed that they would demand recognition at that time, and, if recognition was denied, engage in an immediate strike in support of the recognition claim.

On April 9, employees along with Union Representatives Joseph Faicco, Alfred Faicco, and Nick Lupo met outside the plant where they waited for Respondent's owners to arrive. At or about 8 a.m., Ronald and Al Agresta arrived at the premises, and the union representatives introduced themselves to Ronald Agresta by the factory door. (Al Agresta proceeded into the plant.) When told that the Union claimed to represent his employees, Ronald Agresta invited everyone into the plant where they congregated at the lunch table on the production floor. Although it is agreed that at this point a demand for recognition was made and that the authorization cards were tendered to Ronald Agresta,⁵ there is substantial disagreement regarding what else occurred at this meeting.

According to Union Representatives Joseph and Alfred Faicco, when the cards were handed to Ronald Agresta, he carefully examined each and every card, after which he asked the employees, "[I]s this the union you want." The union representatives testified that in response to that question all the employees present answered in the affirmative. They further testified that Al Agresta then appeared, was given the cards, and also asked if this was the union the employees wanted. They stated that once again a chorus of voices answered affirmatively and that all the employees stated vocally that they wished to be represented by the Union. They also testified that Al Agresta asked the employees if they were aware that there was a venetian blind union which could do better for them.⁶ The Faiccocos testified that at the conclusion of this transaction Ronald and Al Agresta went to the office and that when Ronald Agresta returned he stated that he would not recognize the Union and told everyone to leave or go home. It is undisputed that at this point most of the employees left the factory and after a period of time commenced picketing.

⁴ The meeting was held at the home of Patrick Shine. Shine rents an apartment in his father-in-law's house. His father-in-law is a shop steward for the Union and was the person who introduced Shine to the Union. It also is noted that at the conclusion of the strike on April 16 Shine quit the employ of Respondent and thereafter went to work for the same company where his father-in-law is employed.

⁵ According to Joseph Faicco, Ronald Agresta asked to see the cards. However, Alfred Faicco and other witnesses called by the General Counsel testified that Joseph Faicco gave the cards to Ronald Agresta, who did not ask to see them. I therefore do not credit Joseph Faicco on this point.

⁶ According to the testimony of Richard Krueger, Respondent's foreman, a carpenters union once represented the employees of Respondent about 15 to 20 years ago before Respondent moved to its present location.

Although both Joseph and Alfred Faicco testified that all the employees stated that they wished to be represented by the Union when asked if this was the union they wanted, they could not identify any specific employees who so indicated. The next witness presented by the General Counsel, Patrick Shirte, testified that a majority of the employees vocally indicated their support for the Union. He stated, however, that in addition to himself the employees who so indicated were Chris Curcio, Gloria Ney, Tom Daniels, Roy Bachman, Bob Allar, Paul Krueger, Joe Lossasso, and Glen Schweitzer.

Robert Allar, who was the next witness called by the General Counsel, had great difficulty remembering the meeting at the lunch table and had to be led before testifying that Ronald Agresta even asked whether the employees wished to be represented by the Union. He finally did testify that when the question was asked he said yes, but did not know which of the other employees answered affirmatively. The succeeding witnesses called by the General Counsel, Roy Bachman and Thomas Daniels, each testified that Ronald Agresta asked the employees if this was the Union they wanted. Bachman testified that maybe half of the employees answered affirmatively, and Daniels testified that only a couple of the employees said yes.

With respect to the above incident, Respondent's witnesses, Ronald Agresta and Richard Krueger, testified that the Union demanded recognition, and that cards were given to Ronald and Al Agresta, who looked at some but not all of them. They further testified that Ronald Agresta asked the employees if this was the union they wanted and if they were aware that there was a venetian blind union which could do better for them. They testified that, except for one employee who nodded her head in an affirmative manner, no other employees verbally responded. They stated that, when the question was asked, the employees remained silent and that it was Joseph Faicco who said to the employees that they should not listen and that the Union could get as good a contract as any other union. They further testified that, when the union representatives were told that recognition would not be accorded, Joseph Faicco stated that Respondent was locking out the employees. They stated that Ronald Agresta said in response that Respondent was not locking out any employees and that they were free to stay. At this point they agreed that the employees left the factory with the union representatives and shortly thereafter commenced picketing.⁷

The evidence is not in serious conflict concerning an incident which occurred on Thursday, April 12. At or about 4:30 p.m. of that day Ronald Agresta, Al Agresta, and Richard Krueger left the plant to go home. As they

⁷ At the hearing the parties stipulated that, on April 9, 14 of the 19 unit employees went on strike. It further was stipulated that two employees returned to work on Tuesday, April 10; that one employee returned to work on Wednesday, April 11; that four employees went back to work on Thursday, April 12; and that the strike terminated on Monday, April 16. It is noted that Paul Krueger and Patrick Shirte, who participated in the strike on April 9, voluntarily resigned from the Company thereafter and have never resumed working for Respondent. The evidence also establishes that by Thursday, April 12, there were only four employees who were engaged in picketing, these being Patrick Shirte, Roy Bachman, Thomas Daniels, and Glen Schweitzer.

were leaving, Alfred Faicco approached them in the presence of two or three of the striking employees who were standing behind him⁸ and stated, in substance, that Respondent should recognize the Union. The credible evidence establishes that Al Agresta became somewhat agitated by this remark and stated that he would lock the doors first. At this point the transaction ceased as Al Agresta was calmed down by Ronald Agresta and Richard Krueger and they all left in their cars.

During the strike, Richard Krueger called Roy Bachman at home and asked if he would return to work. Krueger is alleged to have asked Bachman why he was out on strike, whereupon Bachman responded for "better benefits." Krueger allegedly told Bachman at this point that Respondent could not make any changes until the Union was gone. Krueger is further alleged to have told Bachman during another phone conversation during that week that there would be a lot of changes when the Union was gone. With respect to these allegations, Krueger testified that he did speak to Bachman during the week, that he told Bachman he was surprised that the employees had gone out on strike, and that he further told Bachman that if the employees were dissatisfied they should have first spoken to the owners of the Company. Krueger denied, however, that he made any promises of benefits to Bachman. Bachman concedes that no specific promises were made to him at any time.

Regarding the above conversation, I note that Bachman generally had great difficulty in remembering the various transactions he was questioned about and on several occasions counsel for the General Counsel found it necessary to tender to Bachman his pre-trial affidavit for the purpose of refreshing his recollection. In this regard I note that the transactions which Bachman was called upon to relate were neither numerous or excessively complicated in nature. In short, I was not impressed with Bachman as a witness. On the other hand, Richard Krueger testified in a straightforward and candid manner. Therefore, based on the above and my observation of the demeanor of these two witnesses, I credit Krueger's version of the conversations described above.

It further was alleged that during the strike and on April 16, Al Agresta violated Section 8(a)(1) of the Act during the course of two conversations with Thomas Daniels.⁹ According to the testimony of Daniels, he received a phone call from Al Agresta, who stated that he wanted to know what was going on. Daniels testified that he said that the employees thought that Al Agresta had been losing the power, that the shop was being run by Herman Weiss, and that Weiss was not good to the employees. Daniels stated that Al Agresta then said that if Daniels wanted to come back to work he could and that Al Agresta further said he was hurt by the strike.

Daniels testified that he returned to work on April 16 and had another conversation with Al Agresta. Accord-

⁸ As noted above, most of the employees who had struck on April 9 had abandoned the strike and returned to work by April 12.

⁹ At the time of the strike Daniels, who was stipulated to be part of the bargaining unit, was employed essentially as a leadman. After the strike ended, and in May, Daniel's duties were more clearly defined and it was agreed by the parties that he became a supervisor within the meaning of the Act at that time.

ing to Daniels, he told Al Agresta that he was not sorry for what he did (participating in the strike), and Al Agresta responded by saying that he could not make any promises because of the law, but that things would get better and that changes would be made.

Al Agresta was not called as a witness by Respondent so Daniel's testimony stands uncontradicted. I therefore credit his testimony with respect to these conversations.

The General Counsel alleges that, after the strike ended on April 16, Respondent unlawfully granted a benefit to employees by eliminating a procedure whereby certain employees were required to make records of the amount of daily production. Respondent asserts, in substance, that the alleged change was a minor alteration in the procedure for keeping track of production, that it was made for efficiency reasons, that it either had no impact or a negligible impact on the employees, and that the change was not motivated by a desire to influence its employees' support for the Union.

The evidence establishes that a procedure whereby certain employees made a production count was initiated in the fall of 1978 for the purpose of ascertaining whether an incentive wage system was feasible. It also was established that, well before the Union commenced its organizing campaign, the idea for an incentive system was dropped. Nevertheless, as a byproduct, the foreman, Richard Krueger, realized that a count of production was useful in keeping track of inventory and useful for the purpose of ordering supplies. As a result, the procedure whereby a few employees in the departments wrote out a count of production was maintained.

According to the uncontradicted testimony of Richard Krueger, at some point after the strike had ended, he realized that it would be just as efficient to have the production count reported to him orally and so, to this limited extent, the procedure was changed. It also is noted that neither the original procedure nor the revised procedure required much time or effort by the employees involved and the production count in no way was or is used to determine whether an employee is good or poor in the performance of his or her duties.

During the first day of the hearing, the General Counsel, apparently on the basis of some information he received on the weekend preceding the hearing, amended the complaint to allege that in July 1979 Respondent unlawfully granted a wage increase to its employees. In support of this allegation, the General Counsel elicited from two of his witnesses that they had indeed received raises in July 1979. These witnesses further testified, however, that they had previously received similar raises in prior years during July. Whether or not the testimony came as somewhat of a surprise to the General Counsel is not known by me. Nevertheless, the General Counsel, at the hearing, subpoenaed Respondent's records, which were produced on December 11, and introduced them into the record. I do note in this regard that it is clear to me that, prior to the time these records were offered in evidence, the General Counsel had not examined them and had not made any analysis of what these records disclosed.

In any event, the General Counsel argues in his brief that the raises granted in July 1979 were disproportion-

ately larger than raises granted in 1977 and 1978. As such, the General Counsel urges that these 1979 raises therefore raise an inference that they were granted for the purpose of dissuading employees from supporting the Union.

Respondent's records establish that it has a practice of granting wage increases to its employees in July of each year. These records also establish that other raises had been given at various times during the year to selected employees in addition to the annual raises. It further is noted that in July 1979, although the instant complaint had been issued, the petitions for elections filed by both the Union and Respondent no longer were pending. Additionally, in July the strike which had commenced on April 9 had long since been abandoned and there is no evidence on this record that after the strike ended the Union made any further efforts to organize the employees or that the employees continued to engage in union activity.

Respondent's records do not disclose a clear pattern in relation to wage increases. Thus, in none of the years in question did Respondent grant a flat percentage wage increase to all its employees. On the contrary, employees received widely disparate increases during 1977, 1978, and 1979, and although not explained it is reasonable to assume that the disparities reflect, in some measure, merit considerations. For example, the records establish that in 1977 wage increases ranged from a low of 7.1 percent to a high of 26.1 percent. In 1978, wage increases ranged from no percent to 30.4 percent. In 1979 wage increases ranged from 7.7 percent to 18.8 percent.¹⁰

The General Counsel argues that the July 1979 wage increases, on average, were higher in percentage terms, than wage increases granted in 1977 and 1978. To a limited extent this is true.¹¹ But it also is true that averages are not enlightening as to individual cases and the evidence establishes that some employees received higher increases in years preceding 1979. Moreover, it also is true, and I take official notice, that the rates of inflation have increased in each year from 1976 through 1979. Even though in 1979 most, if not all, employees received wage increases that were somewhat higher than in 1978, the fact remains that in July 1979, most of the employees received very small increases in terms of real income. Indeed it can be fairly said that the wage increases granted in 1979 merely put Respondent's employees in the position of maintaining or slightly increasing their real earnings.¹²

¹⁰ Appended hereto as Appendix B are tables showing wage increases for 1977, 1978, and 1979. [Appendix B omitted from publication.]

¹¹ Although, on average, the wage increases for 1979 were larger than those granted in 1978, they do not appear to be significantly different than those granted in 1977.

¹² Statistics from the Bureau of Labor Statistics, U.S. Department of Labor, based on the consumer price indexes, show as follows: From July 1976 to July 1977 inflation on a national basis was up 6.7 percent, from July 1977 to July 1978 inflation on a national basis was up 7.7 percent, and from July 1978 to July 1979 inflation on a national basis was up 11.3 percent.

VI. ANALYSIS

Relying on cases such as *Sullivan Electric Company*, 199 NLRB 809 (1972),¹³ the General Counsel asserts that a bargaining obligation was established on April 9 when the employees were polled by Ronald and Al Agresta and stated their desire to be represented by the Union. On the other hand, Respondent argues that, even though the evidence establishes that employees were asked if this was the Union they wanted, the evidence does not support the conclusion that a majority of the employees did in fact evince their support for the Union. On this issue I agree with Respondent.

In relation to the events of April 9, it seems to me that the evidence is insufficient to establish that, pursuant to a poll, a majority of the employees affirmatively stated to Respondent their support for the Union. In a demonstration of the law of diminishing returns, the witnesses presented by the General Counsel testified, respectively, that all, a majority, some, perhaps half, and finally a couple of the employees vocally voiced their support for the Union when asked if this was the Union they wanted. Given the inconsistent versions of this event as described by the General Counsel's own witnesses, the corroborative version presented by the Respondent, and my observation of the demeanor of the witnesses, I credit the version as testified to by Ronald Agresta and Richard Krueger. I therefore cannot conclude that in response to the poll a majority of the employees in the unit expressed their support for the Union so as to warrant the conclusion that Respondent thereby incurred a bargaining obligation. I further conclude that the fact that a majority of the employees commenced picketing on April 9 cannot be construed as eliminating all doubt of majority support for the Union, thereby requiring Respondent to bargain with the Union. In this respect the Supreme Court in *Linden Lumber Division, Sumner & Co. v. N.L.R.B.*, 419 U.S. 301 (1974), made it quite clear that a bargaining order cannot be premised on the fact that an employer has looked at union authorization cards without a prior agreement to be bound by a card check, and/or the fact that a majority of the employees engaged in a strike and picketing in support of a union's recognition claim.¹⁴

In the instant case I note that, although a majority of the unit employees did engage in recognition picketing on April 9, a majority of these employees had abandoned the strike by the end of the week. Therefore, if any inference can be drawn from the strike, it would be that the Union's initial support was extremely transitory. It also might be inferred from the abandonment of the strike

¹³ See also *Direct Image Corporation of New York, a subsidiary of Direct Image Corporation*, 233 NLRB 365 (1977).

¹⁴ Indeed, to conclude that recognition picketing by a majority of a company's employees would, of itself, require a company to recognize and bargain with a union would eliminate the company's right to invoke Sec. 8(b)(7)(C) of the Act, which precludes recognition picketing conducted for more than a reasonable period of time without a petition for an election having been filed under Sec. 9 of the Act. See *International Hod Carriers Building and Common Laborers Union of America, Local 840, AFL-CIO (Charles A. Blinne d/b/a C. A. Blinne Construction Company)*, 135 NLRB 1153, 1161, 1162 (1962), where the Board held that the provisions of Sec. 8(b)(7)(C) precluded recognition picketing even when the Union enjoyed majority support.

that Respondent had a substantial doubt as to the employee's continued support for the Union. It therefore was not unreasonable for Respondent, as it did herein, to respond to the Union's claimed majority status by filing a petition for an election.

Regarding the events of April 9, I also conclude that the poll does not rise to the level of coercive interrogation in the circumstances of this case. I further conclude that the strike which commenced on that date was an economic, rather than an unfair labor practice strike.

With respect to the allegation that the poll constituted unlawful interrogation, it is my opinion that, although the poll was not conducted with the *Struckness* standards,¹⁵ the circumstances would not justify the conclusion that Respondent coerced, restrained, or interfered with its employee's Section 7 rights. In this case the Union's representatives were present when the poll was conducted, the employees were unified in a group determined to strike if recognition was not immediately granted, and the Union's action of tendering the authorization cards could reasonably be calculated to cause Respondent to ask the assembled employees if this was the Union they wished to have represent them. If one were to ask who, subjectively, were the persons most inclined to feel ill at ease as a result of this transaction, it would seem more likely that it was the Agrestas and not the employees. In these circumstances I therefore conclude that the poll on April 9 does not amount to coercive interrogation within the meaning of Section 8(a)(1) of the Act. *Bushnell's Kitchens, Inc.*, 222 NLRB 110 (1976).

Regarding the allegation that the strike on April 9 was an unfair labor practice strike, this contention must rest, at least insofar as the strike's commencement, on whether Respondent had unlawfully refused to recognize and bargain with the Union. This is so because the motivation for the strike clearly was to obtain recognition. As I have previously concluded that Respondent did not commit an unfair labor practice by refusing to recognize the Union on April 9, it therefore follows that the strike could not have been caused by Respondent's unfair labor practices. I further find that the strike was not converted to an unfair labor practice strike at any subsequent time. Although it is clear that on April 12 Al Agresta told Al Faicco in the presence of a few employees that he would close the plant before recognizing the Union, the evidence is insufficient to warrant the conclusion that the strike was prolonged by this statement. In fact, by the time this statement was made, most of the striking employees had already returned to work and the strike ended on April 16.

As noted above, the evidence establishes that on Thursday, April 12, Alfred Faicco approached Al Agresta at the picket line and told him that Respondent should recognize the Union. In response, Al Agresta stated that he would close the doors first. Although the statement was directed to the Union's representative and not to employees, the fact remains that some employees were present when the statements were made and they did overhear the colloquy between the two men. As

¹⁵ *Strucknes Construction Co., Inc.*, 165 NLRB 1062 (1967).

such, I conclude that the statement of Al Agresta was violative of Section 8(a)(1) of the Act as it was made in the presence of employees. *Sullivan Surplus Sales, Inc.*, 152 NLRB 132, 148 (1965).

I do not conclude, however, that the alleged statements made to Thomas Daniels and Roy Bachman during the strike are violative of the Act. As to the conversation between Bachman and Foreman Richard Krueger, I credit Krueger's testimony, and, based thereon, find nothing in his statements which, in my opinion, can be construed as interrogation, unlawful solicitation of grievances, or promises of benefits.¹⁶ Similarly, nothing in the phone conversation between Daniels and Al Agresta during the week of the strike can reasonably be argued to be violative of the Act. In essence, Al Agresta merely asked Daniels what was going on and further asked Daniels if he would return to work. Daniels was the one who volunteered the reasons why the employees were dissatisfied and why they had gone on strike. At no time during this conversation were any promises made by Agresta to Daniels, nor was Daniels interrogated.

With respect to the conversation between Daniels and Al Agresta on April 16, the testimony of Daniels was uncontradicted and, therefore, is credited. In this instance, the evidence discloses that, although Al Agresta did tell Daniels that he could not make promises, he went on to say that things would get better and that changes would be made. In my opinion this statement, while rather vague in nature, does constitute a promise of benefits in violation of Section 8(a)(1) of the Act. *Xidex Corporation*, 238 NLRB 1208 (1978); *Hubbard Regional Hospital*, 232 NLRB 858, 870 (1977); *Federal Alarm*, 230 NLRB 518, 527 (1977).

The General Counsel further alleges that Respondent unlawfully granted benefits to employees in order to induce them to withhold their support for the Union. In substance, he alleges two benefits being granted: (1) the elimination of the production count and (2) the July 1979 wage increases.

In reference to the production count I do not believe that the evidence establishes that any significant change was in fact made when Respondent changed its procedures for keeping track of its inventory. Nor do I conclude that this "change" was made to influence the employees. As I have described above, the original procedure for counting production was hardly onerous on the employees who did this operation and the change from making a written to an oral report is, in my judgment, insignificant. Further, the evidence convinces me that this change was made purely for efficiency reasons when it was realized that an oral report would do just as well as a written report. I therefore conclude that this slight

¹⁶ The mere fact that Krueger told Daniels that he was surprised that the employees had struck and that if they were dissatisfied they should have first gone to see the owners does not in my opinion amount to an unlawful solicitation of grievances. In *Uraco Incorporated*, 216 NLRB 1, 2 (1974), the Board stated:

However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the Employer.

modification in Respondent's procedures for keeping track of inventory was not motivated in any unlawful manner, and I shall recommend that this allegation be dismissed.

I am also unpersuaded that the July 1979 raises were granted for the purpose of dissuading employee sympathy or support for the Union. The July wage increase was granted at that time because it had been established company policy to grant wage increases each July. As such, the mere fact that wage increases were given at this time can hardly support an inference of illegality. *Starbright Furniture Corp.*, 226 NLRB 507, 510 (1976); *Gould, Inc.*, 221 NLRB 899, 906 (1975).

The General Counsel nevertheless argues that the July 1979 wage increases were sufficiently higher than raises given in either 1977 or 1978, thereby warranting the inference that the size of the raises was designed to improperly influence employees. In this connection, the Board has held, for example, that unusually large wage increases given prior to an election or at the time when a Union was about to commence a strike can give rise to a rebuttable inference of unlawful motivation. *San Lorenzo Lumber Company*, 238 NLRB 1421 (1978); *Colonial Haven Nursing Home, Inc.*, 218 NLRB 1007 (1975); *The Savings Bank Co.*, 207 NLRB 269 (1973). In such cases, however, and absent direct evidence of unlawful motivation, it must be shown that the wage increases were disproportionately large and that they were timed to influence employee union activity. *San Lorenzo Lumber Company, supra*; *Summitville Tiles, Inc.*, 190 NLRB 640, fn. 1 (1971).

In the present case I do not believe that the General Counsel has shown that either the timing of the raises was suspicious or that the amounts given were disproportionately large. As to timing, I have already pointed out that wage increases normally are given in July. Moreover, apart from the fact that the instant complaint was pending, no election was pending, there was no strike in progress or contemplated, and in fact, there is no evidence of any union activity occurring at or about the time the raises were given.¹⁷

The evidence also does not convince me that the size of the July 1979 increase was disproportionate in comparison to wage increases given in previous years. In this respect, the evidence does not, in my opinion, establish any clearly defined pattern of wage increases from year to year. The Company's records indicate a wide disparity of wage increases granted to employees in any given year and also shows that some employees received higher wage increases in 1977 than in 1979. To the extent that the bargaining unit employees received somewhat higher raises in 1979 than in 1978, it seems to me that the most probable reason for this was the increasing rates of inflation that we have all felt in each year from

¹⁷ In *Sigo Corporation*, 146 NLRB 1484 (1964), the Board held that promises of benefits made 1 day after a union had withdrawn its petition for an election were not violative of the Act. See also *Tennessee Handbags, Inc.*, 179 NLRB 1045 (1969). Cf. *M Restaurants, Incorporated, d/b/a The Mandarin*, 221 NLRB 264 (1975), where wage increases were held unlawful. In that case, even though the union had withdrawn its petition for an election, the employer was aware that the union was continuing its organizing campaign.

1976 to the present. It therefore seems to me more reasonable to infer that the 1979 raises reflected the higher rate of inflation as of July 1979 than a design to improperly influence employees. Indeed, when one takes into account the inflation rate extant in this country as of that time, it is evident that the employees received very small increases in terms of real wages.

Based on the above, it is my conclusion that the General Counsel's allegation relating to the July 1979 wage increase lacks merit and I shall recommend that it be dismissed.

The General Counsel finally argues, in the alternative, that an 8(a)(5) finding should be made based on a *Gissel* theory. In *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 613-615 (1969), the Supreme Court set forth certain standards relating to bargaining orders as follows:

1. A bargaining order may be granted even in the absence of an 8(a)(5) violation where an employer's unfair labor practices are "outrageous" and "pervasive."

2. A bargaining order may be granted "in less extraordinary cases marked by less pervasive practices which nonetheless still have a tendency to undermine majority strength."

3. A bargaining order is not appropriate in cases involving minor or less extensive unfair labor practices "which, because of their minimal impact on the election machinery, will not sustain a bargaining order."

In the instant case, it is my conclusion that the only unfair labor practices chargeable to Respondent are the two statements made respectively on April 12 and April 16. The first of these was the statement made by Al Agresta to Alfred Faicco to the effect that he would close before recognizing the Union. The other was the rather vague promise to Thomas Daniels that changes would be made and things would get better. The first of these statements is without doubt the more serious incident. Nevertheless, I note that the statement was not directed to employees, but was an extemporaneous response made to Alfred Faicco outside the plant. Indeed, if no employees had been present, this short conversation between Al Agresta and Alfred Faicco would not be violative of the Act. Further there is no evidence that this statement was transmitted to the other employees of Respondent and there is no evidence of any similar threats made at any other time.

On balance, it is my opinion that the two statements, while violative of the Act and requiring a traditional remedy, are essentially isolated in nature and not of a kind, in the circumstances of this case, to warrant the conclusion that a free and fair election cannot be held. I therefore conclude that a bargaining order is not required or appropriate to remedy the violations found herein.

CONCLUSIONS OF LAW

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

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

3. Respondent, by Al Agresta, violated Section 8(a)(1) of the Act by promising benefits to its employees for the

purpose of persuading them to withhold their support for the Union.

4. Respondent, by Al Agresta, violated Section 8(a)(1) of the Act by telling a union representative in the presence of employees that he would close the plant before recognizing the Union.

5. Except to the extent as found above, Respondent has not violated the Act in any other manner.

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

THE REMEDY

As noted above, I have concluded that a bargaining order is not warranted in this case.

Upon the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁸

The Respondent, Alco Venetian Blind Co., Inc., Lindenhurst, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising benefits to its employees to induce them to refrain from joining, assisting, or supporting Local Union No. 1922, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Union, or any other labor organization.

(b) Threatening to close its plant before it would recognize the Union, or any other labor organization.

(c) In any like or related manner interfering with, restraining, or coercing any of 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) Post at its place of business copies of the attached notice marked "Appendix A."¹⁹ Copies of said notice, on forms provided by the Regional Director of Region 29, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁹ In the event that 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."

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX A

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

WE WILL NOT promise benefits to our employees for the purpose of persuading them to withhold

their support for Local Union No. 1922, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

WE WILL NOT threaten to close our plant before we would recognize the Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act, as amended.

ALCO VENETIAN BLIND CO., INC.