Allen-Stone Boxes, Inc. *and* United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC. Case 26-CA-7624

September 30, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On July 30, 1980, Administrative Law Judge Henry L. Jalette issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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, and conclusions[1] 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, Allen-Stone Boxes, Inc., Halls, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] We find merit in the General Counsel's exception to the Administrative Law Judge's inadvertent error in the last paragraph of sec. III, A, 3, of his Decision wherein he used the word "unwarranted" when he meant to say "warranted." We hereby correct the error.

DECISION

STATEMENT OF THE CASE

HENRY L. JALETTE, Administrative Law Judge: This proceeding involves allegations that the above-named Respondent engaged in conduct violative of Section 8(a)(1) of the Act which was so serious and substantial in character and effect to render the holding of a fair election impossible and to warrant a finding that Respondent violated Section 8(a)(1) and (5) of the Act and the issuance of a bargaining order. The proceeding is based on a charged filed by the above-named Union on February 5, 1979, pursuant to which a complaint issued on March 23, 1979. On November 26, 27, and 28, 1979, a hearing was held in Dyersburg, Tennessee, before Administrative Law Judge C. Dale Stout. Following the conclusion of the hearing, Administrative Law Judge Stout died before rendering a decision in the case and by order dated May 21, 1980, in conformity with Section 102.36 of the Board's Rules and Regulations, Series 8, as amended, Acting Chief Administrative Law Judge Arthur Leff designated me to prepare a Decision and recommended Order in this case or to take such other appropriate action deemed required to perform the function and responsibility of preparing and issuing a Decision.

Upon the entire record, and after consideration of the briefs of the parties, I hereby make the following:

FINDINGS OF FACT

I. FACTUAL SETTING

Respondent is a corporation doing business in the State of Tennessee with an office and place of business in Halls, Tennessee, where it is engaged in the manufacture of corrugated boxes and packaging. The complaint alleges, Respondent admits, and I find that Respondent meets the Board's $50,000 direct inflow and outflow standards for the assertion of jurisdiction.

On August 21, 1978, the Union filed a petition for an election in Case 26-RC-5836, for a unit of production and maintenance employees, including truckdrivers. On the same date, Respondent received a letter from the Union requesting recognition. On September 11, 1978, a hearing on the petition was held. On September 20, 1978, the Regional Director issued a Decision and Direction of Election and on October 19, 1978, an election was held in which 20 ballots were cast in favor of union representation and 23 against. Thereafter, timely objections to conduct affecting the results of the election were filed and on November 16, 1978, a hearing on objections was held. On January 8, 1979, the Hearing Officer issued a report on objections wherein he recommended dismissal of all but two objections. Based on his finding of merit to two objections, the Hearing Officer recommended the holding of a second election. Respondent excepted to such recommendations, but on February 8, 1979, the exceptions were overruled and the Regional Director adopted the Hearing Officer's report in its entirety. Respondent filed a request for review which the Board denied.

The complaint alleges 12 instances of interference, restraint, and coercion. As to seven of them (par. 7(a), (b), and (c) and 8(a), (c), (g), and (h)), Respondent moved for summary judgment before Administrative Law Judge Stout on the authority of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, or on the theory of *collateral estoppel*. Respondent contended that each of those allegations had been fully litigated at the hearing on objections and had been found to be without merit. As there was no claim of newly discovered evidence, Respondent argued that relitigation was barred. Administrative Law Judge Stout denied the motion and heard testimony on all the allegations of the complaint. Respondent has renewed its argument in its brief. In my judgment, Board precedent, if not expressly so, is implicitly contrary to Respondent's position and its argument is rejected. See *Viking of Minneapolis*, 171 NLRB 1155 (1969); *McEwen Manufacturing Company and Washington Industries, Inc.*, 172 NLRB 990 (1968).

II. CREDIBILITY

In many significant respects, the issues presented herein are issues of credibility and the principal protagonists are, on behalf of Respondent, President R. C. Allen, and, on behalf of the General Counsel, present and former employees of Respondent. As noted earlier, I did not preside at the hearing in this case and have not had an opportunity to observe the witnesses. Nevertheless, I am persuaded on the basis of the printed record as a whole that a reasoned judgment may be made as to the general credibility of the witnesses and, in particular, the credibility of R. C. Allen. In my judgment, the falsity of Allen's testimony leaps out at the reader from the printed page. To put it another way, Allen's testimony is for the most part inherently incredible.[1]

My conclusion that Allen's testimony is undeserving of credence was derived from a review of his testimony on three subjects: Statements at a meeting of employees relative to the sale of the business, merging operations, or jobbing out work; a change in the no-smoking rule; and statements at individual employee meetings. Detailed analysis of these three subjects will appear below, but it should be noted here that on all three subjects, Allen proffered almost nothing besides his own unsupported word in explanation of conduct which from its timing or nature one would be justified in inferring was intended to effect the results of the election.

III. THE ALLEGED INTERFERENCE, RESTRAINT, AND COERCION

A. *By R. C. Allen*

1. The September 12, 1978, employee meetings

On September 11, 1978, a hearing was held on the representation petition in Case 26-RC-5836. The following day, the work force was divided into three groups and Allen spoke to each group separately. He told each group that he was calling the meeting to let the employees know what had taken place in Memphis the day before so there would be no misunderstanding or rumors. He told the employees that the Company had asked that there be no election at that time or in the near future because there was a distinct possibility that the work force would be reduced or drastically changed in some way. He gave three reasons why this might happen: That the Company had been, and was still considering, selling out to another party; that the Company was considering merging its operations with the operations at another plant it owned in Guthrie, Kentucky; and that the Company had been considering, and was still considering, jobbing out its work. Allen did not state that any of these eventualities depended on the outcome of the election.

Respondent contends that Allen's conduct was not violative of the Act, because all it consisted of was a factual report of what had been said at the representation hearing and that what had been said at the representation hearing was itself a true picture of Respondent's economic condition and prospects.

In my judgment, Allen's report to employees about what he had testified to at the representation hearing was calculated and had the tendency to coerce employees in the exercise of the right to make a free choice in the matter of union representation and was violative of Section 8(a)(1) of the Act.

To the best of my knowledge, the factual situation here presented is unique. The statements of Allen did not involve "predictions" in the usual sense, because they did not on their face, purport to be at all related to the employees' attempts at unionization. Nevertheless, an employee would have to be dense not to observe the context in which the possibilities of plant sale, merger, or jobbing out of work, had arisen; namely, in the context of their attempt to obtain union representation through an election. None of these possibilities so vital to their job security had been mentioned to them before. In the circumstances, the employees could reasonably infer that these possibilities had arisen only because they were seeking union representation, and they could reasonably infer they would become realities if they selected the Union to represent them. As the Supreme Court noted in *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575, 617 (1969), "And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear."

Respondent contends that it may not be held to have violated the Act for truthfully informing employees of the facts. But this is not what happened here. The "facts" reported by Allen were, I find they were which he had created for the representation hearing. I find they were fictions because they were wholly unsupported by any evidence other than Allen's testimony, which, as noted above, is not worthy of credence. For example, one possibility which Allen mentioned at the representation hearing and to the employees was the possibility of jobbing the work. However, he did not advert to any plans for doing so, nor to any discussions with comanagers or manufacturers. He offered only his word that this possibility existed. Yet, according to his own testimony, except on a limited basis, jobbing out work is not practicable if customers are to be serviced promptly.

As to the possible sale of the business, the only evidence in support of that possibility, apart from Allen's word, was a solicitation by a broker on August 19, 1978. As undated handwritten note by Allen to his associate, Albert Stone, identifies a prospective purchaser, but the tenor of the notes indicates, if anything, that a sale of the business was at best a remote possibility.

On the possibility of merger of operations, Allen's testimony is supported by a communication dated August 30, 1978, from an associate who was responsible for operating a facility in Guthrie, Kentucky, which is named Bardcor and owned by Respondent. But all this commu-

[1] Interestingly enough, the Hearing Officer in his report on objections also found parts of Allen's testimony inherently incredible. Respondent describes such a conclusion as astounding because it related to uncontradicted and unimpeached testimony by Allen. That is no bar in its rejection. My conclusion is based on my review of the record and I have not relied on the Hearing Officer's conclusion.

nication shows is that this associate, William Freeman, was suggesting a merger of certain operations. Nothing in the communication indicates any imminent possibility of the merger taking place. As a matter of fact, as Allen testified at the representation hearing, Allen-Stone and Bardcor had been discussing consolidation ever since Allen-Stone had bought Bardcor 3 years earlier and nothing had ever come of the discussions. Why, then, raise this specter of loss of jobs at the representation hearing and repeat it to the employees?

According to Allen, these possibilities were occasioned by a bad yearend statement which showed that in the last fiscal year which had ended on July 31, 1978, Respondent had made $7,700 or $7,400 before taxes. However, the yearend results should have been no surprise to Respondent, because Allen testified that as far back as December 1977, he had mentioned the Company's losses to the employees. In other words, there was really nothing new in the yearend report. Yet, when one analyzes Allen's testimony, no steps of any significance were ever taken by Respondent either before or after the representation hearing. In short, nothing changed.[2] All that remained was Respondent's speculations holding out before the employees the prospect of loss of jobs. In the circumstances, the conclusion is warranted that sale of the business, merger of operations, or jobbing out of work were ideas which were raised by Respondent and reported to employees as a means to coerce them from exercising a free choice of representation and that Respondent thereby violated Section 8(a)(1) of the Act.

2. The ringleader incident

During the preelection period, Allen held a number of meetings with employees. At one of them, he compared wages and benefits at plants where the Union had contracts. In the course of the meeting, employee John Connell asked him about the Gaylord contract. Allen was about to send a supervisor out to see if the Company had a copy of that contract when Connell pulled one out of his pocket and handed it to Allen. Connell testified that Allen got a little upset and pointed his finger in his face and told him he was one of the ringleaders of all this.

Allen described a meeting similar to that wherein Connell handed him a copy of the contract. According to him, the scene was a humorous one with him chuckling at the quickness with which Connell produced the contract. Allen denied shaking his finger at Connell or calling him a "ringleader." He testified that somewhere during the meeting he remarked, "John, now you're a leader" and that Connell said, "No, that he had not caused all of this."

On the printed record alone, Allen's testimony has a false ring and I do not credit it. Nevertheless, I am not persuaded that the incident as described by Connell warrants a finding of interference, restraint, or coercion. The remark contained no threat, express or implied, and arose out of the fact that Connell had thrust himself into the discussion by his reference to, and production of, the Gaylord contract. Connell had the right to do this free from reprisal, or the threat thereof, because of it. I see no threat here, nor, in the circumstances of the case, do I view Allen's conduct as tending to coerce employees.

3. The individual employee meetings

It is undisputed that during the preelection period Allen conducted a number of individual meetings with employees. The complaint alleges that in the course of these meetings Allen interrogated employees, solicited grievances, and impliedly promised to rectify them.

According to Jerry Nelson, he was called to the sample room sometime in September where he had a conversation with Allen. According to Nelson, Allen, who had a pad on which to write notes, asked him if he thought the Union would be good for the factory and Nelson told him in a way yes. Allen said that things would get better, he said, "that moneywise, everything was going to get a lot better." In the course of the meeting, Allen said if the Union came in it would cause a layoff or a strike and he asked Nelson who would pay his bills if the Union came in and went out on strike.

Employee Vassar Miller testified to a similar meeting with Allen on direct examination dated at 2 to 3 weeks before the election.[3] He testified Allen asked him what his gripes were, what kind of problems there were. Miller mentioned wages and insurance and referred to problems with plant machinery. In his testimony, Miller did not indicate that Allen made any response to Miller's complaints, but in his prehearing affidavit he stated that Allen said he would see what he could do about part of them. At the hearing on objections, he testified that Allen said he would see what he could do about the problem. Allen said that "conditions would be getting better."

Miller also testified on direct examination that Allen asked him if he thought a union would be good for the plant and he answered he thought so. On cross-examination, he testified, "I don't believe he said union, but I think he asked if a third party or something like that would help the Company."

Employee John Connell testified to a similar meeting with Allen which he dated 2 to 3 weeks before the election wherein Allen asked him "what was our gripes." Connell told him holidays and wages. He testified that Allen did not make any promises, but he said things were going to get better.

Former employee William Smith testified to a similar meeting with Allen 4 to 6 weeks before the election wherein Allen asked him if he had any gripes or complaints. Smith told him, "Yes, more money and holidays." Allen said he could not promise him anything but things would be better. He said he did not believe the employees needed a third party.

On the basis of the foregoing, the General Counsel contends that a finding of unlawful interrogation and of unlawful solicitiation of grievances is warranted.

Respondent contends that there is no basis for a finding of any violation because of any conduct of Allen

[2] The Regional Director rejected the employer's position in the representation case and directed an election.

[3] On cross-examination, he dated the meeting at 4 to 6 weeks before the election.

with regard to individual meetings with employees. Allen admittedly held meetings with 19 employees, including the employees referred to above. Assertedly, he did so because of a steady decline in productivity and in an effort to find out how to improve productivity through employee input, and also because of a desire on the part of some employees to meet with him. These employees were afraid to meet with him because of peer pressure and Allen believed that through these individual meetings he could give these employees the opportunity they desired free of any peer pressure. Allen testified his questions to employees dealt with productivity and that he did not inquire about their grievances, nor into their union sentiments.

As stated earlier, I find Allen's testimony to be incredible. Here is an employer who assertedly had had a productivity problem for months. So much so that, as noted in the preceding section, he assertedly had been considering selling, merging operations, or jobbing out the work. Admittedly, prior to the filing of the representation petition, Allen had never mentioned these possibilities to the employees. With the prospect of an upcoming election, however, not only did he suddenly see fit to mention these possibilities, all of which posed a threat to their jobs but, also, he would have the trier of the facts believe that thereafter he met with employees to get input on productivity and to listen to employees who had requested to meet with him under circumstances that would relieve them of peer pressure. The testimony is patently not worthy of credence.

It is uncommon for an employer to conduct private interviews of employees to find out about production problems. It is particularly uncommon when he has never done so before and it is undisputed Allen had never done this before. It is yet again particularly uncommon when, as noted below, the employer assertedly has a production problem of which he is fully aware; namely, the violation of a no-smoking rule, and nothing has been done to correct the problem.

As to the assertion that the meetings were a means of disguising the fact that certain employees desired to meet but feared peer pressure, it is noteworthy that no employees in this category were ever identified. It is also noteworthy that there were some employees who openly opposed the Union and there is no showing that they were harassed or pressured by pro-union employees. Moreover, Allen's own testimony supports the finding that the individual meetings were held because of the pending election. Thus, Allen testified that at the meetings he had in hand a card which the Company had earlier mailed to employees with questions they were urged to ask of the union representative,[4] and Allen testified he asked employees if they had asked those questions of the union representative. The very fact that he had the card with him demonstrates the purpose of his meetings. On the matter of grievances, Allen admitted employees talked about such matters, but he told them that was not his reason for being there. Nevertheless, he did not stop them from airing their grievances and even took notes.

For the foregoing reasons, I find that Allen's testimony about the reason for his individual meetings with employees is false. Because he chose to conceal his reason for the individual meetings, the inference is warranted that the true reason was unlawful; namely, to find out what employees grievances were as testified to by the employees above and to convey the impression working conditions would be improved. Respondent contends that the testimony of the employees to such effect is inconsistent or contradictory or vague and lacking in specifics. That was certainly true of employee Lewis Braden and I have, therefore, not even adverted to his testimony. To the extent there are flaws in the testimony of Nelson, Miller, Connell, and Smith, however, they are not sufficient to warrant a rejection of their testimony when weighed against Allen's total lack of credibility. The issue is, does their testimony support a finding of unlawful interrogation and unlawful solicitation of grievances. I find it does.

Nelson's testimony that Allen asked him if he thought the Union would be good for the factory and Miller's testimony that Allen asked him either if he thought a union or a third party would be good for the Company support a finding of unlawful interrogation. The questions clearly required the employees to reveal their sentiments, had no legitimate purpose, and occurred in the context of other unfair labor practices, including as found below, a contemporaneous unlawful solicitation of grievances. In the circumstances, such questioning tends to be coercive and is violative of Section 8(a)(1) of the Act.

As to the solicitation of grievances, I find that this was the main purpose of the meetings. Miller's, Connell's, and Smith's testimony is mutually corroborative that Allen asked them what their gripes were and all testified that Allen said things would get better. Such remarks contained an impled promise of improved working conditions.[5] In all the circumstances, including the timing of the interviews and the fact that Respondent had not in the past solicited employee complaints, a finding is unwarranted that Respondent's conduct constituted an unlawful solicitation of grievances.

4. The meeting of February 15, 1980

Employee Russell Sanders testified, without contradiction, that at a meeting of the employees in February 1980, Allen told the employees that he had received another love letter from the National Labor Relations Board. He told them the campaign had cost him a whole lot and was eating up the profits and there would be no profits for the profit-sharing plan. He said the lawyer had already cost him $20,000.

General Counsel contends these remarks constituted implied threats of loss of benefits. I find the contention lacking in merit. *Rospatch Corp.*, 193 NLRB 772 (1971).

[4] One question was "If a union goes into the plant and a strike is called will the Union pay your grocery bills."

[5] *Peavey Company*, 249 NLRB 853 (1980).

B. *By Talmadge Nelson*

1. The union sign

Talmadge Nelson is a production supervisor and an admitted supervisor within the meaning of Section 2(11) of the Act. On August 23, employee Jerry Nelson returned to his work station from break wearing a sign on his back which said, "Vote for the Union." He testified that Talmadge Nelson came up to him and told him he had better take that piece of paper off or else (he did not say what else). Jerry Nelson took it off. The complaint alleges that Talmadge Nelson's conduct constituted an unlawful threat of unspecified reprisals because of an employee's union activities.

Talmadge Nelson admitted that there was an incident wherein he told Jerry Nelson to remove a sign that was on his back. He testified that several employees had congregated about Jerry Nelson and he asked him to take the sign off, that if he wanted to wear it, he could do so at break.

It is undisputed that on some date in August and September, as a result of words spoken to Jerry Nelson by Talmadge Nelson, Jerry Nelson removed a prounion sign he had been wearing on his back. Whether or not Talmadge Nelson told Jerry Nelson to remove the sign or else, as Jerry Nelson testified, or whether or not Talmadge Nelson merely asked Jerry Nelson to remove it, is in conflict. In my judgment, whether Talmadge Nelson asked or told Jerry Nelson to remove the sign, and whether he added "or else" is immaterial. A request by a supervisor that an employee remove union insignia cannot be distinguished from a demand that he do so and an employee can reasonably infer that his failure to comply will have adverse consequences on him.

The wearing of union insignia is a Section 7 activity and an employer who interferes with an employee's wearing of union insignia violates Section 8(a)(1) of the Act unless the employer can show that the interference was necessary to avoid disruption of production or the like. Respondent has not met that burden here. All that it has shown is that employees had congregated about Jerry Nelson at the moment he first appeared with the sign. There is no showing that Jerry Nelson was away from his work area and acting in a way to cause a disturbance. To the contrary, the clear import of Talmadge Nelson's testimony is that the other employees were neglecting their work. Yet, Talmadge Nelson did not speak to those employees, nor did he instruct them to go about their duties; rather, he chose to cause Jerry Nelson to remove his insignia. An employee may not be deprived of the right to wear union insignia on such a showing and Talmadge Nelson's conduct was violative of Section 8(a)(1) of the Act.[6]

2. Interrogation

The complaint alleges that on or about October 19, 1978, Talmadge Nelson interrogated an employee regarding his union desires. The allegation is based on testimony of Jerry Nelson that in either September or on October 19, 1978, the day of the election, Talmadge Nelson asked him if he was going to vote for the Union. Jerry Nelson told him he did not know. Talmadge Nelson denied engaging in such interrogation. There are no circumstances to aid me in resolution of credibility on this issue. Accordingly, I shall recommend dismissal of the allegation for failure of proof.

3. Stricter enforcement of work rules

The complaint alleges that on or about September and the middle of October 1971, Talmadge Nelson enforced work rules more strictly against prounion employees by telling them they could not leave their machines and talk to other employees. The allegation is based on the testimony of employees Vassar Miller and John Connell.

According to Miller, about 1 week before the election, he was away from his machine, which was temporarily down, and was talking to a man at another machine. Talmadge Nelson came over and told him to return to his machine and stay there, "that everybody knew about the situation and all," which Miller presumed was a reference to the union situation. Miller testified he had talked to employees before and had not been told to stop.

According to Connell about 3 or 4 weeks before the election, on his return to his machine from a visit to the restroom, Talmadge Nelson came over and told him he did not want to catch him away from his machine anymore and that everybody had got the word. Connell had never been spoken to about this in the past. He testified he knew no rule prohibiting employees from leaving their machine to go to the restroom, but he believed the rule prohibited going around chatting with people.

Talmadge Nelson admitted telling Connell to stay at his machine. He testified that he did so after Connell's third visit to the restroom when it seemed that Connell was following employees into the restroom. He testified he also spoke to four other employees. He did not testify as to what he told these employees or why he spoke to them. Implicit in his testimony is that he did so because there was more stopping and talking than usual and production was down.

I shall recommend dismissal of the allegation of a stricter enforcement of rules. In Connell's case, according to Nelson's uncontradicted testimony the restriction appears to have been based on his abuse of restroom visits. The remaining instance of a restriction on Miller can as reasonably be explained by a need to maintain production as by a purpose to restrict union activity and must be dismissed for lack of sufficient evidence.

C. *The Change in Smoking Rules*

Prior to the organizational campaign, Respondent had a rule which prohibited smoking during working time.

[6] Respondent's principal argument on this issue is that Jerry Nelson was not a credible witness. The analysis above is based on such an assumption. Were I to decide credibility, however, I would credit Jerry Nelson over Talmadge Nelson. The variances in Jerry Nelson's testimony adverted to by Respondent related principally to noncritical matters such as the date of the incident and the location. They can be attributed as well to faulty recollection or confusion of the witness from lengthy questioning as to a lack of credibility. On the other hand, Talmadge Nelson's testimony that he did not know what the sign said, all he did was ask Jerry Nelson to remove the sign, and that his only concern was productivity, defies credulity.

According to Allen, 1 or 2 weeks before the election small smoking buckets were placed beside the machines of the employees and they were told they could smoke during working time.

The General Counsel contends that this change in the smoking rule constitutes the grant of a special privilege whose purpose was to interfere with the employees' exercise of a free choice in the election. *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405 (1964).

Respondent contends that the no-smoking rule had been ignored by the employees, by going to the restroom to smoke, to such an extent that productivity was affected and the supervisors were not enforcing the rule. Accordingly, according to Allen, in early 1978 it requested permission of its insuror to permit employees to smoke at work. Permission was not granted until just before the smoking buckets were placed at the machines. In the circumstances, Respondent contends a finding of a violation is not warranted.

I reject Respondent's argument and find that the smoking rule was changed with a purpose to interfere with the employees' exercise of a free choice. In my judgment, it defies credulity to believe that the employees' disregard of the no-smoking rule was so blatant and extensive that it created a productivity problem and that the only solution to the problem was to permit them to smoke. But Allen would have the trier of fact believe not only that, but also that it was mere coincidence that approval from the insurer was obtained so shortly before the election. I can believe none of his testimony.

Allen offered no records to support this claim that the existing no-smoking rule had created a loss of productivity. Moreover, it seems reasonable to expect that Respondent would have taken some steps to correct the problem pending approval of its insurer if the problem was so serious. On the very matter of approval of its insurer, there was nothing in Respondent's insurance policy which required it to obtain such approval. Apart from that, none of the alleged discussions Allen had with the insurer, including the insurer's approval of the change, was ever reduced to writing. (If the approval was deemed necessary to avoid a dispute over a claim in the event of a loss due to fire, one would believe the approval would be obtained in writing.) Accordingly, there is no way of verifying Allen's testimonial assertions about his discussions with the insuror. Even on the matter of the timing of the insurer's approval the best that can be said on the basis of the insurance agent's testimony was that it was given in the fall of 1978.

In my judgment, all the circumstances, compel a finding that the change in the smoking rule was for the purpose of interfering with the employees in their exercise of a free choice in the election and was conduct violative of Section 8(a)(1) of the Act.

IV. THE REFUSAL TO BARGAIN

The complaint alleges that since on or about August 18, 1978, the Union had been designated by a majority of the employees in an appropriate unit as their representative for the purpose of collective bargaining, that on or about August 18, the Union requested Respondent to bargain with it and that Respondent refused. Based on these allegations and the unfair labor practices of Respondent as described earlier, the General Counsel asserts that a finding is warranted that Respondent violated Section 8(a)(5) of the Act and that a bargaining order is appropriate pursuant to the principles of *N.L.R.B.* v. *Gissel Packing Co., supra*

The demand for recognition and refusal were established by the Union's letter of August 18 to which Respondent did not reply. As to the appropriate unit, the parties stipulated that the unit described in the complaint was appropriate. As to the Union's majority status, the parties stipulated that for each week in the period from August 18 to October 21, 1978, a majority of the employees in the appropriate unit had designated the Union as their exclusive bargaining representative through valid authorization cards.

The principles governing the issuance of a bargaining order in "card" cases are, by this date, of longstanding. They were established in *N.L.R.B.* v. *Gissel Packing Co., supra*, decided in 1969, wherein the Court held that a bargaining order is warranted if an employer's unfair labor practices are deemed sufficiently serious or pervasive that the possibility of erasing the effects of such practices and insuring a fair election by the use of traditional remedies, though present, is slight and employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order. Unfortunately, as Respondent notes, there is no clear-cut, mechanical method which can be utilized to determine whether a bargaining order is required. Each case must be decided on its own facts and circumstances.

For this reason, case precedent is of little value in formulating a decision. While threats of plant closure are regarded as serious violations of the Act, they do not mandate a bargaining order in every case. In *Hedstrom Company*, 235 NLRB 1193 (1978), cited by the General Counsel, the possibility of plant closure was an issue which loomed large in the election campaign. In this case, the threat of loss of jobs was made early in the campaign and not repeated thereafter. Moreover, the threat was implied rather than express, and its impact may well have been dissipated when the Regional Director discounted the possibility of sale, merging of operations, or jobbing of work, and directed an election.

As to the solicitation of grievances, while I have found that the solicitation was accompanied by implied promises, the promises were vague, i.e., "things would get better" and there is no evidence that Respondent did, in fact, grant the employees any benefits.[7] Respondent did change its no-smoking rule, but I view such a "benefit" as too inconsequential to support a bargaining order.

As to the other unfair labor practices herein found, the interrogation and the order to Nelson that he remove a union sign, I can conceive of no reason why the effects thereof cannot be remedied by traditional cease-and-desist provisions and notice posting.

For the foregoing reasons, I shall dismiss the 8(a)(5) allegation and I reject the request for a bargaining order.

[7] Respondent may have instituted a profit-sharing plan after the election, but, if so, there is no allegation its action in that regard was unlawful.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section I, above, occurring in connection with the operations described herein, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Allen-Stone Boxes, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO,CLC, is a labor organization within the meaning of the Act.

3. By threatening to sell its business, merge operations, or jobbing out its work in order to coerce employees from selecting the above-named Union as their bargaining representative, by soliciting employees grievances in a manner and under circumstances implying that employees did not need the Union to redress their grievances, by interrogating employees about their union sentiments in a manner and under circumstances tending to coerce employees, by requiring employees to remove union insignia, and by changing its no-smoking rule, Respondent has engaged in , and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

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

ORDER[8]

The Respondent, Allen-Stone Boxes, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Soliciting employee complaints and grievances and impliedly promising to improve working conditions in order to induce employees to withhold support from, and to cease giving assistance to United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO,CLC, or any other labor organization.

(b) Interrogating employees about their union sentiments in a manner or under circumstances constituting interference with, restraint, and coercion of employees in the exercise of rights guaranteed by Section 7 of the Act.

(c) Changing its rules on smoking in order to induce employees to withhold their support from, and to cease giving assistance to, the above named-Union, or any other labor organization.

(d) Threatening employees with the sale of the business, merger of operations, or jobbing out of work in order to coerce them from selecting the above-named union, or any other labor organization, to represent them for purposes of collective bargaining.

(e) Requiring employees to remove union insignia while at work.

(f) In any like or related manner interfering with, restraining, or coercing, employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Post at its Halla, Tennessee, facility copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and 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 26, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the allegations of the complaint found not to have been supported by a preponderance of the evidence be dismissed.

[8] In the event no exceptions are filed as provided in 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.

[9] In the event that this Order is enforced by a Judgment of the 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."

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT solicit your gripes and grievances and impliedly promise to improve working conditions in order to induce you to withhold support from, or cease giving assistance to, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO,CLC, or any other labor organization.

WE WILL NOT change smoking rules to induce you to withhold support from, or cease giving assistance to, the above-named Union, or any other labor organization.

WE WILL NOT threaten to sell the business, merge operations, or job out the work, in order to coerce you from selecting the above-named Union, or any other labor organization, to represent you for purposes of collective bargaining.

WE WILL NOT require employees to remove union insignia while at work.

WE WILL NOT question employees to remove union insignia while at work.

WE WILL NOT question employees about their union sentiments.

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

ALLEN-STONE BOXES, INC.