

American Telecommunications Corporation, Electro-mechanical Division and Communications Workers of America, AFL-CIO. Case 31-CA-7861

June 10, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND TRUESDALE**

On December 4, 1978, Administrative Law Judge Bernard J. Seff issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering 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 briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge only to the extent consistent herewith.

While we agree with the Administrative Law Judge that "the sole issue in this case is whether or not any of the remarks made by Respondent's Director of Operations either contained promises of benefit or threats of reprisal," we disagree with his conclusion that Respondent has not thereby violated Section 8(a)(1) of the Act.

The record here indicates that Respondent operates three plants in California; one in Upland at which the alleged threats and promises occurred, one in the City of Industry, and one in Anaheim.

On February 10, 1978,² an NLRB representation election was conducted at the City of Industry facility, as a result of which the Charging Party herein, Communications Workers of America, AFL-CIO, received a majority of the ballots cast. As of the time of the hearing in the present case, no certification of representative had issued with respect to the unit of employees at City of Industry, because Respondent had filed objections to that election, which matter was not resolved as of the date of the hearing herein.

¹ 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), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² Unless otherwise indicated, all dates are 1978.

On February 16 Respondent posted notices at the City of Industry and the Upland plants,³ notifying the employees at each facility of the holidays to be recognized at their plant during the upcoming calendar year. The notice posted at the Upland facility, while listing the same holidays as were to be given the employees at the City of Industry facility, also included two holidays not listed in the notices to employees at City of Industry: George Washington's Birthday recognized on February 20 and Good Friday recognized on March 24. Employees at the Anaheim plant also were granted two additional holidays in 1978.

Although the Union, during the events described herein, did not file a petition for a representation election among the employees at Upland, an unspecified amount of organizational activity was undertaken with respect to these employees, and the Respondent had become aware of such organizational activity. In response to this organizational activity, Respondent called two meetings of its Upland employees, on March 7 and 23.

Paul Prutzman, Respondent's director of operations at Upland, spoke at each of these meetings. The Administrative Law Judge's composite of Prutzman's testimony indicated that he made the following statements at these meetings:

Prutzman told the employee that, if CWA [the Union] was able to get the employees of the City of Industry any increase benefits, Upland would get those benefits because Respondent as a corporation had always made a practice of spreading benefits equally throughout all operating divisions. If the Respondent granted a benefit in one of the operations, the same benefit would be duplicated in the others "whether it was instigated by corporate policy or union or anything."

Prutzman told the employees at Upland that they had received a paid holiday that employees at City of Industry had not yet received. Prutzman was told by Mel Bowman, vice president of manufacturing, and Ed Contratto, director of industrial relations, "there was a legal reason why the holidays could not be given to the people at the City of Industry because they were involved in litigation as a result of the Union winning the election over there and it was a negotiable change in benefits; and since they had a problem with the way Respondent viewed the election results that it could not be done at this time."

In other words this was the sole exception to the corporatwide extension of benefits.

³ The record is unclear whether a similar notice was posted at the Anaheim plant.

With respect to the holidays, the General Counsel's witnesses gave parallel testimony that Prutzman told the employees at these meetings that Respondent gave them two new holidays, Good Friday and Washington's Birthday, which the City of Industry plant still had not received. Although one of the General Counsel's witnesses stated that Prutzman explained that Respondent was testing the certification of the election at the City of Industry,⁴ Prutzman, by his own account, also told the Upland employees that, while they were off on Good Friday, they could try calling their friends who worked at Respondent's City of Industry plant, but that they would not be home because they would be working that day. Finally, it was testified that employees were told by Prutzman that they "didn't need a union you just pay dues and get nothing for it."

For the reasons stated below, we find that Respondent clearly violated Section 8(a)(1) as a result of Prutzman's statements to employees at these meetings. With respect to Prutzman's reference to Respondent's benefit policy, his comments were not strictly limited to informing the Upland employees that in the past Respondent had a practice of giving the same benefits at all of its plants. In addition to this, his remarks were clearly phrased so as to indicate that Respondent would continue to grant the same benefits at all plants in the future, regardless of which plant, if any, was unionized. Moreover, Prutzman also addressed the effects of the recent selection of the Union as the bargaining representative among the City of Industry employees. Hence, it is unmistakable that he was thereby also conveying the message that any benefits which would accrue to the City of Industry employees pursuant to subsequent collective bargaining automatically would be granted to the Upland employees, and that these employees would receive such benefits whether or not they also selected the Union as their bargaining representative.

Prutzman's comments in this regard are violative of Section 8(a)(1) of the Act on several interrelated grounds. First, his statement that the Upland employees would receive all the benefits of a union contract without a union was a promise of benefits made for the purpose of coercing the employees into rejecting the Union.⁵ Second, this statement

also indicated that union representation for the Upland employees would be a futility and that in no event would union representation result in improvements of working conditions at Upland.⁶ Moreover, in order that the futility of the selection of a bargaining representative would be made clear to the employees, Prutzman did not rely solely on continuing uniform benefits, despite unionization of employees, but also on his statement that with "a union you just pay dues and get nothing for it"⁷ Prutzman further demonstrated that his statement about "uniform benefits" was aimed particularly at the employees' right to choose union representation by pointing out that benefits had been withheld from those who had selected the Union at Respondent's City of Industry plant. Finally, this statement about maintaining uniform benefits was also a clear indication that, regardless of the existence of union representation at any of its plants, Respondent would continue to insist on uniform benefits throughout its organization. Such a statement is entirely contrary to the bargaining obligation that would ensue if the Union is certified as the representative of employees at one of the plants, whether it be at Upland or the City of Industry plant. In such a situation the certified unit is the unit with respect to which bargaining must be conducted. Thus, although the employer may propose that the benefits be uniform at both the represented and the unrepresented plants, since the established scope of the bargaining unit is not a mandatory subject of bargaining,⁸ he may not broaden the scope of the unit for negotiation by insisting that the benefits be the same at all plants. Consequently, by stating in effect that Respondent would not grant unionized employees more than it was willing to give to its unrepresented employees, Respondent was stating that it had no intention of lawfully bargaining with the representative of any of its employees and that it would violate Section 8(a)(5) of the Act in anticipation of the possible event.⁹

We also conclude that Respondent violated Section 8(a)(1) of the Act by informing the employees at the Upland plant that the unrepresented employees had received two holidays that the City of Industry employees did not receive.¹⁰ While it is

⁴ As noted above, the record shows that no certification of representative had issued at this time because objections to the election were pending.

⁵ This Board has repeatedly found that the prior existence of a policy of uniform benefits does not protect an employer from the finding of an 8(a)(1) violation if it tells its employees during the course of a representation campaign that it has a policy of granting uniform benefits, and that the employees would get the same benefits with the union that they would without it. *Casey Manufacturing Company*, 167 NLRB 89 (1967); *Dixsteel Buildings, Inc.*, 186 NLRB 393 (1979); *Montgomery Ward & Co.*,

Inc., 222 NLRB 965 (1976); *GTE Sylvania Incorporated*, 227 NLRB 146 (1976). See also *South Shore Hospital*, 229 NLRB 363 (1977), enforcement denied 571 F.2d 677 (1st Cir. 1978).

⁶ *South Shore Hospital*, *supra*, 229 NLRB at 367.

⁷ See *Montgomery Ward & Co., Incorporated*, 225 NLRB 112, 117-118 (1976), where a similar statement was made to employees therein.

⁸ *National Fresh Fruit & Vegetable Company*, 227 NLRB 2014, 2015 (1977).

⁹ *Montgomery Ward & Co., Inc.*, *supra*, 222 NLRB at 967.

¹⁰ While the General Counsel contends that Prutzman's statement in this regard shows Employer animus against the Union, thereby support-

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clear that Prutzman stated that there were certain legal problems with respect to that election and that Respondent was contesting its validity, his announcement conveyed the message that employees who selected union representation would not receive additional benefits granted other nonunionized employees. Such a withholding of a benefit, which would otherwise have been granted to employees in the normal course of the employer's business, has consistently been held to be violative under Section 8(a)(1) of the Act. This is true whether the withholding of the benefits occurs prior to the election,¹¹ subsequent to the election but before certification,¹² or after the certification has issued.¹³ While the decision to withhold benefits in the cases cited above has typically been considered a form of reprisal exacted against employees as a result of their union activities, it also has been found to be a form of inducement to the unorganized employees who have been granted the benefit which has been denied to the employees who have selected a bargaining representative.¹⁴

The threat of reprisal here results from the statement that the City of Industry employees, who had recently selected union representation, were now being denied benefits that the Respondent's nonunionized employees were being granted. The inescapable inference to be drawn from this statement is that, if the employees at Upland also selected the Union as their representative, they would be placed on par with the City of Industry employees and also would be denied further improvements in benefits given to the remaining organized employees at Anaheim. As a corollary, Prutzman's statement also indicated that if the Upland employees rejected union representation they would continue to receive all further benefits, such as additional holidays, which would be denied unionized em-

ployees. In this respect Prutzman's statement was also an unlawful promise of benefit.¹⁵

As stated above, Prutzman told the Upland employees that Respondent could not grant the additional holidays at City of Industry because it considered them a negotiable change in benefits. Such a broad statement, however, does not correctly reflect Board precedent. In *Chevron Oil Company, Standard Oil Company of Texas Division*, 182 NLRB 445, 449 (1970), the Board declared that only in certain limited circumstances may an employer withhold benefits to organized employees that he grants to unorganized employees. As stated therein:

It has long been an established Board principle that, in a context of good-faith bargaining, and absent other proof of unlawful motive, an employer is privileged to withhold from organized employees wage increases granted to unorganized employees or to condition their grant upon final contract settlement. *Shell Oil Co.*, 77 NLRB 130.¹⁶

The facts here show that the announcement to the Upland employees did not conform to this standard. By telling the Upland employees that they could try calling the City of Industry employees on Good Friday, a newly granted holiday at Upland, but that they would not be home because they had to work that day, Prutzman tainted his announcement with union animus. The expression of such an unlawful motive served to discourage union support at Upland by placing the onus on the Union for the withholding of this additional benefit at City of Industry. In view of the above, we reject Respondent's defense that Prutzman told Upland employees only that it legally had to withhold the benefits from the organized employees.¹⁷ In *Baker*

ing its allegation that Prutzman's statements heretofore discussed were violative of Sec. 8(a)(1) of the Act, we find for the reasons stated below that they were independently violative of Sec. 8(a)(1) of the Act. See *Alexander Dawson, Inc., d/b/a Alexander's Restaurant and Lounge*, 228 NLRB 165 (1977).

¹¹ *The Gates Rubber Company*, 182 NLRB 95 (1970); *Montgomery Ward and Co., Incorporated*, 187 NLRB 956, 963 (1971); *G. C. Murphy Company*, 223 NLRB 604, 606 (1976); *Oscro Drug, Inc., a Wholly Owned Subsidiary of Jewel Food Companies, Inc.*, 237 NLRB 231 (1978).

¹² *Florida Steel Corporation*, 220 NLRB 1201 (1975).

¹³ *Tube-Lock Products, Eastern Division of Portland Wire & Iron Works*, 209 NLRB 666 (1974); *Verona Dyestuff Division Mobay Chemical Corporation*, 233 NLRB 109 (1977). The same result is reached even if the Board's certification is being tested on appeal, *Russell-Newman Mfg. Co., Inc.*, 167 NLRB 1112 (1967); *Howard Johnson Company*, 172 NLRB 763 (1968); *The Catholic Medical Center of Brooklyn and Queens, Inc., Mary Immaculate Hospital Division, and St. Mary's Hospital Division*, 236 NLRB 497 (1978).

¹⁴ *Russell-Newman Mfg. Co., Inc.*, 153 NLRB 1312 (1965); 167 NLRB 1112 (1967).

¹⁵ While we find that Prutzman's statements in March that additional holidays were granted to the Upland employees and withheld from the City of Industry employees were violative of Sec. 8(a)(1) of the Act, we do not find that the actual granting and withholding of holidays announced several weeks earlier was unlawful. These matters were neither alleged in the complaint nor fully litigated at the hearing.

¹⁶ See also *McGraw-Edison Company (Bersted Manufacturing Division)*, 172 NLRB 1604, 1609-10 (1968).

¹⁷ While it appears that the new holidays at Upland were first announced on February 16, several days after the February 10 election at City of Industry, there is no evidence in the record with respect to when Respondent first decided to grant these additional holidays. In any event, as stated in fn. 15, *supra*, there is no allegation that Respondent's decision to grant the additional holidays at Upland and to withhold them at City of Industry or the announcements on February 16 were unlawful. However, even assuming that Respondent decided not to vary the terms and conditions of employment of its City of Industry employees subsequent to the majority vote for the union there, for the reasons stated in *Mike O'Conner Chevrolet-Buick-GMC Co., Inc.*, 209 NLRB 701, 703 (1974), the later *Florida Steel* case (220 NLRB 1201) indicates that Respondent may not necessarily withhold such benefits if they are granted to unorganized employees on a companywide basis. In any case, Prutzman's remarks, as noted above, clearly indicated that he was trying to discredit the Union.

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Brush Co., Inc., 233 NLRB 561, 562 (1977), the Board in a related-fact situation aptly summarized the basis for the finding of unlawful conduct there, which is likewise applicable to the instant case:

[T]he natural effect of Respondent's campaign announcements was to convince employees that they did not need a union in order to obtain wage increases, and by shifting to the Union the onus for not implementing the promised wage increases when scheduled, Respondent sought to disparage the Union by conveying the impression that the Union stood in the way of the employees' prompt receipt of a higher wage. Thus, Respondent held out to the employees a benefit which, but for the Union, they would receive . . . This conduct was clearly designed to undermine, and discourage support for, the Union.

In view of the above, we need not consider whether Prutzman's statement further fails to meet the standard set forth in *Chevron Oil Company, supra*, due to Prutzman's further statement to Upland employees that Respondent was refusing to engage in bargaining with the Union at City of Industry.

Accordingly, we conclude that Respondent violated Section 8(a)(1) of the Act both by promising the Upland employees benefits to discourage them from supporting the Union and by threatening them with reprisals if they should select the Union as their bargaining representative. We find Prutzman's statements in this regard to be particularly serious since as a result of the entirety of his statements he communicated to the Upland employees that they had nothing to gain from supporting the Union and a great deal to lose if they should disregard his warning.

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. Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order that it

Consequently, this showing of unlawful motive on Prutzman's part at the Upland employee meetings is sufficient to show a violation of Sec. 8(a)(1) of the Act. See also *J. P. Stevens & Co., Inc.*, 239 NLRB 738 (1978).

cease and desist therefrom and from any like or related conduct, and to post the appropriate notices.

While it is apparent that Respondent seized upon the grant of two extra holidays to all of its employees except those at the City of Industry plant as a means by which it threatened employees at Upland with reprisals if they should select the Union as their representative, the complaint does not allege and the record is insufficient to show that the actual withholding of the benefit was unlawful. This issue was not litigated by the parties and the record does not indicate what, if any, correspondence took place between the Union and Respondent with respect to this matter. Consequently, although the cases cited above uniformly state that an employer may not withhold benefits to employees at an organized plant if it has a policy of awarding such benefits companywide, the record is insufficient to indicate that Respondent was not somehow justified in withholding these benefits approximately 1 month prior to the events which took place as described elsewhere herein. Accordingly, we shall refrain from ordering that Respondent grant the two additional holidays to employees at the City of Industry facility.¹⁸

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, American Telecommunications Corporation, Electromechanical Division, Upland, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Promising benefits to employees to discourage them from selecting the Union as their collective-bargaining representative.
- (b) Threatening reprisals against employees, such as withholding benefits from them, to discourage them from selecting the Union as their collective-bargaining representative.
- (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

- (a) Post at its place of business in Upland, California, copies of the attached notice marked "Appendix."¹⁹ Copies of said notice, on forms pro-

¹⁸ But see *Verona Dyestuff, supra*, where the withholding of an additional holiday was alleged and litigated.

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 Order of the National Labor Relations Board".

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vided by the Regional Director for Region 31, after being duly signed by the Company's representative, shall be posted by it 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 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

ant 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

WE WILL NOT promise benefits to our employees to discourage them from selecting Communications Workers of America, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT threaten reprisals against our employees, such as withholding benefits from them, to discourage them from selecting the above-named Union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

AMERICAN TELECOMMUNICATIONS
CORPORATION, ELECTROMECHANICAL
DIVISION

DECISION

STATEMENT OF THE CASE

BERNARD J. SEFF, Administrative Law Judge: This case was heard before me on September 28, 1978,¹ in Los Angeles, California. The complaint in the instant case was issued by the Regional Director for Region 31 of the National Labor Relations Board on May 26. The complaint alleges that American Telecommunications Corporation, Electromechanical Division, through its director of operations made two speeches to employees on company time in which promises of benefit were made which violate Section 8(a)(1) of the National Labor Relations Act, as amended. The Company's answer ad-

mitted jurisdictional facts but denied the commission of any unfair labor practices.

The sole issue in this case is whether or not any of the remarks made by Respondent's director of operations either contained promises of benefit or threats of reprisal which represent the gravamen of the complaint.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Respondent filed a brief; the General Counsel relied on oral argument.

Upon the entire record of the case and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a corporation duly organized under and existing by virtue of the laws of the State of California with an office and principal place of business located in Upland, California, where it is engaged in the manufacture of telecommunication equipment.

Respondent annually sells and ships goods and services valued in excess of \$50,000 directly to customers located outside the State of California. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent operates three plants: one in Upland which is the subject of the instant case, one in the City of Industry, and one in Anaheim. All three of these operations are located in the Los Angeles area.

An NLRB election conducted in the plant known as the City of Industry was won by the CWA, which Union received 248 votes; 9 votes were cast for the Teamsters and 164 were cast for no union. No certification has issued as yet with respect to the City of Industry because Respondent has filed objections to the election which matter is currently in litigation.

Paul Prutzman, who is the director of operations at Upland, conducted two meetings with approximately 300 of Respondent's employees on March 7 and 23, 1978. The gravamen of the instant case is found in allegation 6 of the complaint:

Respondent, acting through Prutzman, on or about March 7 and March 23, 1978, had a meeting of employees at 2066 W. 11th Street, Upland, California, offered and promised to its employees wage increases, and other benefits and improvements in their rates of pay, wages, hours of employment, and other terms and conditions of employment.

¹ All dates are in 1978 unless otherwise indicated.

The General Counsel stated that any benefits negotiated for the City of Industry employees by the Union would be passed along to Upland employees as well. It is the General Counsel's position that such a promise of benefits, implying as it does the futility of electing union representation at the Upland facility, when made in a context of repeated hard-line antiunion captive audience speeches, amounts to a violation of Section 8(a)(1) of the Act.

It is the position of Respondent that it made no promises of benefit and uttered no threats of reprisal of any kind whatsoever and, furthermore, that the remarks of its admitted agent, Prutzman, merely consisted of information to the assembled employees concerning benefits that were given or were to be given to all employees of Respondent on a corporatwide basis.

In order to establish a frame of reference covering the matter of speeches to employees it will be helpful to quote the opinion written by Chief Justice Learned Hand in *N.L.R.B. v. The Federbush Co., Inc.*, 121 F.2d 954, 957 (2d Cir. 1941):

No doubt an employer is as free as anyone else in general to broadcast any arguments he chooses against trade unions, but it does not follow that he may do so to all audiences. . . . Arguments by an employer directed to his employees have such an ambivalent character; they are legitimate enough as such, and *pro tanto* the privilege of "free speech" protects them; but so far as they also disclose his wishes, as they generally do, they have a force independent of persuasion. The Board is vested with power to measure these two factors against each other, a power which does not trench upon the First Amendment. . . . What to an outsider will be no more than the virgorous presentation of a conviction, to an employee may be the manifestation of a determination which it is not safe to thwart. The Board must decide how far the second aspect obliterates the first.

The nub of the problem concerns what was said by Prutzman in his speeches which were admittedly made in the plant on company time. In answer to my question as to whether or not the speeches were read from a prepared script Prutzman replied that they were not. He did have some kind of an outline but he made no effort to read directly what was said in this outline. No copy of the outline was offered in evidence nor was there any writing prepared by Respondent which incorporated the substance of the two speeches.

In order to prove its case the General Counsel offered the testimony of two employees who heard the speeches: Anna Pierce and Samuel Chavez. Respondent sought to present its case through the testimony of two employees, Bobbi Reynolds and Loretta Sawyer, and, of course, the testimony of Prutzman.

The testimony of the General Counsel's witnesses, Pierce and Chavez, paralleled to some extent what they claimed Prutzman had said. He discussed the subject of the CWA campaign at the City of Industry plant; he said that during the election campaign there had been vio-

lence—slashed auto tires—broken windshields, and considerable arguing among employees. Prutzman said Respondent gave two new holidays, Good Friday and Washington's Birthday, which the people at the City of Industry had not yet received; also that "we didn't need a union you just pay dues and get nothing for it; unions were no good—that he was going to fight the Union but he wouldn't fight his people." There was also some discussion about the fact that a leaflet handed out by CWA at the Upland facility spoke about a minimum wage of \$4.02. Prutzman said the Company could not afford to pay \$4.02 because they were in a highly competitive business.

With relation to holidays, Chavez said Prutzman made the remark that "we [the employees at Upland] had received two additional paid holidays and the City of Industry plant still hasn't gotten these two holidays." Chavez then stated that Prutzman mentioned the fact that the Company was testing the certification of the election at the City of Industry and that they were filing charges against the Union because of the tactics the Union used. Chavez testified that with respect to the violence that had been mentioned Prutzman said something to the effect that he did not know who caused the violence and that he did not say the Union caused the violence.

Respondent's two employee witnesses, Barbara Reynolds and Loretta Sawyer, gave testimony that did not shed any particular light on what Prutzman said during his two speeches to the employees. Neither of them impressed me by their demeanor and both answered a number of questions with "I don't remember or I can't recall" responses. However, they both testified they did not regard Prutzman's remarks as antiunion.

Respondent's chief witness was Prutzman. While he did not phrase his answers on either direct or cross-examination with special clarity he impressed me as a truthful witness. A brief composite of the principal points made by Prutzman in his testimony covered the following subjects:

Prutzman told the employees that if CWA was able to get the employees of the City of Industry any increased benefits Upland would get those benefits because Respondent as a corporation had always made a practice of spreading benefits equally throughout all operating divisions. If Respondent granted a benefit in one of the operations the same benefit would be duplicated in the others "whether it was instigated by corporate policy or unions or anything."

Prutzman told the employees at Upland that they had received a paid holiday that employees at the City of Industry had not yet received. Prutzman was told by Mel Bowman, vice president of manufacturing, and Ed Contratto, director of industrial relations, "there was a legal reason why the holidays could not be given to the people at the City of Industry because they were involved in litigation as a result of the Union winning the election over there and it was a negotiable change in benefits; and since they had a problem with the way Respondent

viewed the election results that it could not be done at this time."

In other words this was the sole exception to the corporatewide extension of benefits.

Prutzman also discussed the union handbill where they mentioned a \$4.02 starting rate for union employees. Prutzman explained to the employees that "the Company could not afford to pay that because it takes us totally out of the competitive environment."

"We have extremely high-priced products now. Part of the problem we have in the operation, as a matter of fact, is that sales are diminishing, and our customers were responding and putting a lot of pressure on us for reducing prices and costs were going up all the time."

And therefore, "in analyzing the business we cannot afford to pay so much for certain jobs and starting positions at this Company at this time we cannot afford to pay \$4.02 an hour."

Question by Respondent's counsel: "Did you ever tell the employees in either of these meetings that, if you were forced to pay that rate, you would close the plant down?"

A. "Absolutely not."

B. Concluding Findings and Analysis

It is specifically significant that nowhere in the complaint issued by the General Counsel nor in the record as it developed at the hearing was any evidence adduced of independent 8(a)(1) violations of the Act. What the General Counsel is pinning his case on apparently is the fact that two holidays, Good Friday and Washington's Birthday, were granted to both the Anaheim and the Upland facility but these holidays were not granted to the City of Industry where the Union had won an NLRB-conducted election. The General Counsel argues that in the context of what was said to the employees in the two speeches that were given by Prutzman it was implied that the employees did not need to join the Union in order to get the two holidays which had been granted to the two facilities which were not organized. In this connection it is important to call attention to the fact the General Counsel stated his position as being that "a promise of benefits, *implying* as it does the futility of electing a union to represent the employees at the Upland facility when made in a context of hard-line anti-union captive audience speeches, amounts to a violation of Section 8(a)(1) of the Act."

From a collation of the statements made by Prutzman it does not appear that he delivered to the employees what the General Counsel characterizes as hard-line anti-union speeches. While Prutzman made it clear to his listeners that he personally did not like labor unions and intended to do whatever he could to keep them out of the Upland plant, his statements in this regard did not exceed the protection of Section 8(c) of the Act. He made no promises of benefit nor threat of reprisals conditioned on the employees' rejection of the labor union. The most the General Counsel contended on the record was that Respondent implied that two additional holidays were granted at Upland to demonstrate to the employees the

futility of electing union representation. The General Counsel sought to prove his contention by the testimony of two witnesses out of a work force of approximately 300 employees. Respondent on its part also adduced testimony from two witnesses. What they had to say contradicted what was testified to by the General Counsel's witnesses. Attention is again called to the fact that no independent violations of Section 8(a)(1) of the Act were alleged in the complaint. It is illogical to believe that a company bent on illegally keeping a union out of its plant would have made no intimidatory attempts to accomplish this purpose by interrogations or threats among approximately 300 employees.

At the very least it must be said that the General Counsel did not prove his case by a preponderance of the credible evidence and thus failed to carry his burden of proof. I so find.

The General Counsel relied heavily on the case of *Dixisteel Buildings, Inc.*, 186 NLRB 393 (1970), to support his case. My attention was called to the language in the *Dixisteel* case that:

He placed the employees on notice that there was no need for them to organize collectively, since, if a nearby unionized plant, organized by the same Union in Tallapoosa, "receives any wage or benefit increase you will receive the same or more." [186 NLRB at 394.]

The General Counsel said, "We feel this promise is strikingly similar to the promise herein." I disagree. The indented material, *supra*, is explicit and does not depend for understanding by unsophisticated factory people on an implication. Much more significant is the fact that it is important to evaluate what was said by Prutzman in the context of the labor situation at Upland as against what prevailed at *Dixisteel*.

Administrative Law Judge Ohlbaum sets forth the facts of *Dixisteel* as follows:

The complaint alleges 1 episode of surveillance, 15 episodes of interrogation, 7 episodes of economic allurements, 7 threats of futility of organizational efforts, and 17 threats (involving 11 episodes) of economic detriments, or, in all, some 47 "independent" violations of Section 8(a)(1) of the Act, as well as 2 alleged violations of Section 8(a)(3), and also alleged continuing violations of Section 8(a)(5) of the Act. [*Ibid.*]

Obviously the factual situation in the case at bar bears no recognizable similarity to the *Dixisteel* case on which the General Counsel places such heavy reliance. If the facts in Respondent's case were posited on a complaint alleging extensive 8(a)(1) violations then the added statement that the employees would do as well without the Union as if they designated one might have some validity. Such is not the situation in Respondent's case.

Similarly, the facts in *Lincoln Property Company C & S, Inc., etc.*, 224 NLRB 494 (1976), and *Glacier Packing Co., Inc.*, 204 NLRB 597, 599 (1973), are clearly not opposite to the case at bar. In *Glacier*, the statement attributed to the respondent clearly constituted promises of benefit if

the employees voted against the union and veiled threats in the event the union was voted in. In sum and based upon the entire record and the totality of events described herein, I find that the preponderance of the evidence does not establish that Respondent violated Section 8(a)(1) of the Act from the speeches made by Prutzman on March 7 and 23, respectively.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in any unfair labor practices in violation of Section 8(a)(1) of the Act. In view of the fact that the General Counsel has failed to establish by a preponderance of the evidence that Respondent has violated the Act as alleged in the complaint, I will recommend that the complaint be dismissed. [Recommended Order for dismissal omitted from publication.]