

Consolidated Flavor Corporation and Teamsters Local Union No. 603, Dairy Drivers and Inside Workers and Allied Foods, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and United Flavor Workers of America, Party to the Contract. Case 14-CA-10398

September 22, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On February 13, 1978, Administrative Law Judge Phil W. Saunders issued the attached Decision in this proceeding. Thereafter, Respondent 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,¹ and conclusions of the Administrative Law Judge only to the extent consistent herewith.

1. The Administrative Law Judge found that Respondent, by dominating the United Flavor Workers of America (herein called the Flavor Workers or the Union) and contributing support thereto, violated Section 8(a)(2) and (1) of the Act. Respondent expects, contending that the General Counsel has failed to establish that Respondent either dominated or unlawfully assisted the Flavor Workers. We agree with Respondent.

The essential facts are as follows: The Flavor Workers has represented Respondent's employees since about September 1973.² Immediately prior to obtaining such representation, Respondent's employees had been discussing possible union representation, including whether they should be represented by an affiliated union, such as the Teamsters, or should form their own union. At some point, Dorothy MacMillan, secretary to Respondent's owners and holder

of 15 out of approximately 38,000 outstanding shares of stock in Respondent's corporation, asked employee Sam Rongey to come to the office, where she suggested to him that the employees might benefit from forming their own union rather than joining the Teamsters. MacMillan assured Rongey that Respondent's owners would not object if the employees met in the office area at the end of the day to resolve this question and offered her secretarial services.

Toward the end of that day, most of Respondent's employees (about six or seven) gathered in the plant office. Respondent's owners, Phil Dressel and Carl Fitzwater, who were leaving the office, informed the employees that there were refreshments in the refrigerator for their use. During the ensuing meeting the employees organized the Flavor Workers and discussed several subjects, including salaries. MacMillan took notes and expressed her opinion when she believed employee demands were excessive. In the course of several meetings which followed, the Flavor Workers representatives, Rongey and Larry Ellis, presented the employees' demands to management. In about October 1973, after employee approval, Respondent and the Flavor Workers entered into a contract, which, in addition to providing for wage increases, for the first time established break periods and seniority for part-time employees—two items of particular interest to the employees.

In October 1974, the parties negotiated and entered into a second collective-bargaining agreement, effective through October 1976. For personal reasons Rongey, during September and October 1974, missed a considerable amount of work, and Ellis alone participated in the contract negotiations on behalf of the Flavor Workers. Upon returning to work, Rongey was notified by Fitzwater that the contract had been negotiated and approved by the employees and was pending his signature. Rongey and Ellis then signed this agreement. During negotiations for this contract, Respondent had informed the employees that the plant would soon be moved from its Granite City, Illinois, location to Bridgeton, Missouri;³ that any contract signed would be binding; and that employees could move with Respondent if they so desired.

Due to business trips planned by Dressel, Respondent wanted to commence bargaining for the 1976 agreement at a date earlier than usual. As the Administrative Law Judge notes, there is testimony that Plant Manager Tom Seymour called the employees together and asked them to have a meeting to draw up contract demands and elect representatives. The employees chose Chip Signaigo and Willie Boyd. Following the ensuing negotiations,⁴ Respondent pro-

¹ Respondent 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'd, 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Administrative Law Judge correctly noted that evidence of events occurring before December 25, 1976, and therefore antedating the 6-month limitation period of Sec. 10(b) of the Act, may be used as background in evaluating the events during the statutory period. *Local Lodge No. 1424, International Association of Machinists, AFL-CIO [Bryan Manufacturing Company] v. N.L.R.B.*, 362 U.S. 411 (1960); *Mt. Clemens Metal Products Company*, 126 NLRB 1297 (1960).

³ The move to Bridgeton began in May 1975 and was completed by July 1975.

⁴ Boyd resigned his position as a Flavor Workers representative after the first session.

vided employees with a draft contract and urged them to vote on it as soon as possible. Seymour advised employees that the contract permitted only those who had worked for more than 60 days to vote. About the same time, Seymour told two full-time employees that they should not be concerned about the wage rates set forth in the contract, because Respondent would grant increases based on merit. After employee approval, a 3-year agreement, extending through October 1979, was executed. It was signed by employees Chip Signaigo and Steve Lucietto⁵ on behalf of the Flavor Workers.

In December 1976, Signaigo spoke to co-owner Dressel about the insurance plan. Signaigo was apparently of the view that the employees would be better off with coverage by Blue Cross and Blue Shield. At Signaigo's request, a meeting was later held so that an insurance agent could explain the benefits under the plan then in effect.

In May 1977, Teamsters Local Union No. 603 (the Charging Party herein), after a meeting with several of Respondent's employees, filed a petition with the Board's Regional Office seeking representation of essentially the same employees as those represented by the Flavor Workers. Respondent received and forwarded the petition to Leadman Richard Whitlock.⁶ Within a few days, Whitlock called and conducted two meetings on company property during the employees' morning break period. During the first meeting, lasting a total of about 45 minutes, the employees assembled in the lunchroom, where they elected two representatives, Geoffery Seidler and Michael MacMillan, the son of Dorothy MacMillan. The group then moved to the loading dock, where Dressel gave a 30-minute speech concerning Respondent's history and working conditions generally.⁷ At this meeting Respondent agreed to the employees' requests for cleaning brooms and a power pallet lift. During the second meeting, held the following day and lasting 10 to 15 minutes, the employees elected James Devore as a replacement for MacMillan, who had decided he did not want to be a union representative. The employees also elected Whitlock, who had campaigned for the nomination, as the president of the Flavor Workers.

From its inception the Flavor Workers has not (1) had a constitution or bylaws; (2) collected dues; (3) charged initiation fees; or (4) kept records. Further, the Flavor Workers had not held meetings other than

those to select representatives for the purpose of bargaining with Respondent or, most recently, to elect a president. Additionally, there is no evidence that the Flavor Workers has ever formally processed an employee grievance. It has, however, at various times brought employee complaints to the attention of management.

It is apparent from the Administrative Law Judge's Decision that in finding that Respondent dominated and unlawfully assisted the Flavor Workers he relied in large measure on certain background facts which, in his view, were sufficient to establish a practice of domination and assistance extending within the statutory period. Because of the nearly total absence of probative evidence of domination and unlawful assistance within the 10(b) period and because of the remoteness in time of the background events relied on by the Administrative Law Judge, we are constrained to find that the General Counsel failed to meet his burden of proof and hence that the 8(a)(2) allegations must be dismissed.

In so doing we note that the Administrative Law Judge was undoubtedly correct in remarking on the highly suspicious circumstances surrounding the formation of the Flavor Workers in September 1973, particularly with respect to the questionable role played by Dorothy MacMillan, who was, at the very least, closely connected and allied with management and who appears to have set in motion the events that culminated in the formation of the Flavor Workers.⁸ Nonetheless, we can ignore neither the passage of several years between the inception of the Flavor Workers and the events in issue here, which fall within the 10(b) period, nor the lack of record evidence of domination or unlawful assistance during those years. Thus, contrary to the Administrative Law Judge, we find no evidence that Respondent's vice president "instructed" Union Representative Rongey to sign an agreement at the close of the 1974 contract negotiations. Rather, the record establishes that Rongey merely was informed that the contract, negotiated largely by a second union representative, Ellis, in Rongey's absence, needed his signature.

As to the 1974 contract negotiations, the Administrative Law Judge found Fitzwater "instructed" Union Representative Rongey to sign the contract. The record, however, establishes that Rongey merely was told that the contract, negotiated by a second union representative (Ellis) in Rongey's absence, needed his signature. In view of Rongey's status as an

⁵ Lucietto was selected by the employees to sign the agreement after negotiations were completed.

⁶ By May 1977, both Signaigo and Lucietto had left Respondent's employ. According to the uncontradicted testimony of Respondent's witnesses, Respondent looked to Whitlock as the leader of the Flavor Workers, since he was the individual who took matters to supervisors which would normally be handled by representatives of the Flavor Workers.

⁷ This speech is discussed *infra*.

⁸ The Administrative Law Judge found MacMillan to be Respondent's agent. However, Member Murphy finds the limited facts are insufficient to establish an agency relationship and therefore rejects the Administrative Law Judge's finding in this regard. Nor does Member Murphy find sufficient evidence to warrant concluding, as do her colleagues, that MacMillan was allied with management.

elected representative of the Flavor Workers, his signature, along with that of Ellis, was required to execute the contract on behalf of the Union. Consequently, we find nothing in this exchange which indicates the Union was dominated or unlawfully assisted.

We reach the same conclusion with respect to Seymour's ministerial efforts during the 1976 contract. In order to expedite and insure the negotiation of a new contract before commencement of business trips planned by Respondent's owner, Dressel, Seymour asked the employees to select representatives and to decide what they wanted to put in such contract. Subsequently, and without Respondent's intervention, the employees met, elected representatives, and developed a list of demands, which their representatives then presented to management. Soon thereafter, Respondent presented a draft contract to the employees, and Seymour, as before, pressed toward a final agreement by requesting the employees to assemble and vote on Respondent's proposal. In these circumstances, Seymour's efforts to facilitate the negotiations and ratification of a new agreement are not indicative of domination or unlawful assistance. Further, we find Seymour's statement as to which employees were eligible to vote on ratification was similarly directed to that end and thus amounted to little more than a pronouncement (perhaps presumptuous on his part) of someone who felt the need to voice his opinion on such a matter whether or not it was sought or desired. There is nothing to indicate he was trying thereby to force the exclusion of otherwise eligible voters or to require the Union to permit ineligible employees to vote.

Finally, in concluding that the pre-10(b) events alone are not legally sufficient to establish the General Counsel's case that the Flavor Workers was dominated or unlawfully assisted at the time in issue in this proceeding, we have considered several other factors. Thus, we note, as found by the Administrative Law Judge, that employees did derive certain gains from bargaining and such gains were in demonstrated areas of employee concern, including wages. Furthermore, although in a proper case lack of activity by a union may well raise questions as to its status and may support an inference of domination, here the Flavor Workers represented a small apparently closely knit group of employees and there is no showing that constant activity on the part of the collective-bargaining agent was either necessary or desired by these employees.

Turning to the events within the 10(b) period, we find that such do not establish either domination or unlawful assistance. In finding a violation, the Administrative Law Judge relied heavily on his conclusion that Leadman Richard Whitlock was acting on

behalf of Respondent in stimulating and reactivating the Flavor Workers, calling a meeting, and directing employees to elect officers and representatives.⁹ The record, however, is devoid of any evidence that Whitlock, in assuming control of the Flavor Workers, was carrying out the will of management. Certainly, Whitlock's failure to express openly any "prior interest" in the Flavor Workers does not establish that his efforts in May 1977 to assemble employees to elect union officers and representatives were at the behest of management. It is not uncommon for individuals to act to fill a leadership void. Nor was it unusual for Respondent to give the Charging Party's petition to Whitlock, given the uncontested fact that employees routinely brought problems to Whitlock, who in turn brought these matters to Respondent's attention.¹⁰ Furthermore, the fact that the activities of the Flavor Workers increased following notice of the Charging Party's petition is evidence of neither domination nor unlawful assistance. Such increased visibility is a natural and predictable response to a claim by a rival labor organization. Thus, we find that the Administrative Law Judge's conclusion that Whitlock was acting on behalf of Respondent—the underpinning of his finding of unlawful domination—is unsupported.¹¹ Accordingly, we find insufficient evidence to establish that Respondent unlawfully dominated the Union.

As to the Administrative Law Judge's finding that Respondent engaged in unlawful assistance by donating time and space to the Flavor Workers within the 10(b) period, the record establishes that the Flavor Workers held a total of two meetings during this period for the purpose of electing representatives and an officer. Both meetings were held during, and apparently encompassed, the employees' contractually pre-

⁹ Contrary to the Administrative Law Judge, we draw no adverse inference from the fact that Michael MacMillan, Dorothy MacMillan's son, resigned from his newly elected position as union representative because he felt there was a conflict of interest due to his mother's position with the Company. On the contrary, MacMillan's efforts to avoid even the appearance of improper assistance seem to suggest that the Flavor Workers is independent.

¹⁰ We do not find, as implied by the Administrative Law Judge, that because leadmen customarily acted as intermediaries between Respondent and employees, and because Whitlock was a leadman, Respondent could not have assumed he was the Flavor Workers representative. On the contrary, the record establishes that Ellis, one of the first union representatives, was a leadman at the time he was chosen for that position.

¹¹ Having found Whitlock to be Respondent's agent, the Administrative Law Judge concluded that Respondent instigated the first May 1977 employee meeting. The only evidence which might tend to support this conclusion is Dressel's testimony that he suggested the employees meet on their 10:30 a.m. break. However, according to uncontradicted testimony, Dressel made this proposal in response to Whitlock's request that he address the employees, and there is no evidence that Dressel made any suggestions with regard to when the employees should meet to select representatives. Further, the meeting at which Flavor Workers representatives were elected was held separately and at a different location from the meeting wherein Dressel addressed the employees. Based on the foregoing and on our finding that Whitlock was not Respondent's agent, we reject the Administrative Law Judge's finding that this first employee meeting within the 10(b) period was called by Respondent.

scribed and paid 15-minute break periods. In both instances, matters concerning the Flavor Workers took no more than 15 minutes, the first meeting being extended as a result of Dressel's speech. Thus, the employees in fact met on their own time, although on Respondent's property. In our view, such limited use of company facilities to carry out elemental representational functions is not inherently coercive. In any event, given the limited number and short duration of the union meetings, we would reach the same conclusion even if the meeting had been conducted on company time as well.¹² Accordingly, we find there is insufficient evidence to warrant finding that Respondent unlawfully gave assistance to the Union herein.

Having found that the General Counsel has not established by a preponderance of the evidence that Respondent acted unlawfully within the meaning of Section 8(a)(2) of the Act, we shall dismiss that portion of the complaint.

2. The Administrative Law Judge found that the remarks made by Respondent's president, Dressel, to assembled employees shortly after receipt of the Charging Party's petition constituted a threat of discharge within the meaning of Section 8(a)(1) of the Act. We disagree.

The undisputed facts, as fully set forth in the Administrative Law Judge's Decision, establish that Dressel told employees, *inter alia*, that he had worked in a dairy plant, but that he hated it; that life was too short to spend time working at jobs you hate; that it was important to get into a enjoyable occupation; and that if they were interested in pursuing employment elsewhere he would be glad to grant them time off to do so, since he recognized that they worked during the prime hours for job hunting. Dressel's manner was friendly and his remarks general. Further, the record is devoid of evidence that Dressel even obliquely referred to the employees' recent efforts to secure outside representation or that he, in fact, threatened to discharge them for participating in such activities. Nor were Dressel's remarks directed at employees suspected of organizational activity on behalf of the Charging Party. Based on the foregoing, we conclude that the totality of the evidence herein does not support a finding that the remarks constituted an implied threat of reprisal.¹³ Accordingly, we shall dismiss the complaint allegation that Respondent threatened employees with discharge in violation of Section 8(a)(1) of the Act.

¹² *Longchamps, Inc. and its Wholly Owned Subsidiary, S & B Restaurant of Huntington, d/b/a Steak and Brew of Huntington*, 205 NLRB 1025, 1031 (1973); *Sunnen Products, Inc.*, 189 NLRB 826, 828 (1971).

¹³ *Deringer Mfg. Company*, 201 NLRB 622, 627 (1973).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Judge: Based on a charge filed by the Charging Party on June 10, 1977, a complaint was issued on July 25, 1977, against Consolidated Flavor Corporation, herein the Company or Respondent, alleging violations of Section 8(a)(1) and (2) of the National Labor Relations Act, as amended. Respondent filed an answer to the complaint denying it had engaged in the alleged matter. The Respondent and the General Counsel filed briefs.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor,¹ I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

At all times material herein, Respondent has maintained its only office and place of business in Bridgeton, Missouri, and at this location is engaged in the manufacture, sale, and distribution of food flavors and related products. During the year ending June 1, 1977, Respondent purchased and caused to be transported and delivered at its Bridgeton, Missouri, place of business raw materials for food flavors and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in Bridgeton, Missouri, directly from points located outside the State of Missouri. During the year ending June 1, 1977, Respondent manufactured, sold, and distributed at its Bridgeton, Missouri, place of business products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said place of business directly to points located outside of the State of Missouri. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Flavor Workers of America, herein called the Union or Flavor Workers, is a labor organization within the

¹ The facts found herein are based on the record as a whole upon my observation of the witnesses. The credibility resolutions herein have been derived from a review of the *entire testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of N.L.R.B. v. Walton Manufacturing Company*, 369 U.S. 404 (1962). As to those witnesses testifying in contradiction of the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. *All testimony has been reviewed and weighed in the light of the entire record.*

meaning of Section 2(5) of the Act, and the Charging Party, Teamsters Local Union No. 603, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint, as amended, alleges that the Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge on or about May 31, 1977 and that the Respondent violated Section 8(a)(2) of the Act by dominating and contributing to the support of and interfering with the administration of the Flavor Workers.

In 1967, Phil Dressel and Carl Fitzwater, now president and vice president of the Respondent, decided to start a business manufacturing flavors for the dairy industry. Fitzwater and Dressel were the only two employees for the first few years, but in about 1970 they started hiring additional employees to work with them, and by late 1975, the business had grown to a size where it was necessary for them to spend full time on sales and administration.

In about September 1973, the employees working for the Respondent began discussing the prospect of union representation. Some of the employees desired to be represented by an affiliated union, such as the Teamsters, while others believed it would be advantageous to form their own union. At or about this same time, Dorothy MacMillan, the secretary to the owners and a small shareholder in Respondent's corporation, asked employee Sam Rongey to come to the office, and then suggested to him that it would be better for the employees to form their own union than to be represented by the Teamsters. She also assured Rongey that the owners would not mind if the employees met in the office area at the end of the day to decide what they wanted to do and further offered to take notes at the meeting.²

Toward the end of the day the six or seven production employees gathered in the plant office, and owners Dressel and Fitzwater, who were leaving the office, then told the employees that there were refreshments in the refrigerator for their use. At this organizational meeting, several subjects were discussed, including salaries, and as the meeting progressed, Dorothy MacMillan took notes and interjected her opinion when she believed that the employees' demands were excessive. The meeting lasted for approximately 45 minutes.³

Following this initial meeting, wherein the Flavor Work-

ers was organized, employees Rongey and Ellis met on several occasions with owners Dressel and Fitzwater to discuss contract proposals. The owners rejected the employees' wage demands and granted only the "lower set of figures," informed the representatives that if the employees chose their own union they would not have to pay union dues, acquiesced to the employees' demand for a 1-year contract, discussed other contract provisions, and then offered the services of their attorney in drafting the first contract. About October 1973, the Company submitted the draft of the contract, and it was then agreed upon by the employees and signed by Ellis and Rongey on behalf of the employees and the Flavor Workers.⁴ Between October 1973, and October 1974, during the 1-year running of the initial contract between the Flavor Workers and the Company, as aforesaid, there were no dues, no constitution, no bylaws, no officers, and no grievances, or meetings.

Further background evidence reveals that during September and October 1974, Rongey missed a considerable amount of work for personal reasons. However, he returned to work in October 1974 and was then confronted by Respondent's vice president, Fitzwater, who had a copy of a draft contract for the Flavor Workers. Fitzwater notified Rongey that this second contract had already been negotiated and approved by the employees and was pending his signature. Rongey and Ellis then signed this second contract as representatives of the Flavor Workers.⁵ It appears that during the negotiations for this contract, the Company informed the employees that it was probable the plant would soon be moving to St. Louis but that any contract signed would be binding and that the employees could move with the Company if they so desired.⁶ The Company began to move its plant to Bridgeton, Missouri, a St. Louis suburb, in May 1975 and completed the move by July 1975. Most of the employees moved with it.

It appears that by late summer of 1976 management wanted to negotiate a new contract with the Flavor Workers earlier than it had in the past, due to the fact that Dressel was going to be on business trips during the fall months and therefore the Company wanted the employees to get their demands together so they could begin negotiations. Thereafter, negotiations were handled by Fitzwater and Tom Seymour, and mostly by the latter, who was now plant manager. There is also testimony that in September or October 1976 Plant Manager Seymour called the employees together and asked them to have a meeting and start drawing up their request or demands for their new contract and to elect representatives. The employees, following Seymour's edict, chose Chip Signaigo and Willie Boyd as representatives of the Flavor Workers to meet with the Company, but Boyd resigned for personal reasons after one

² The Company offered testimony to the effect that in the fall of the 1973 it was approached by Local 525 of the Teamsters, represented by Bill McFarland, and they were then asked to sign a recognition agreement. There is further testimony that after this contract by McFarland President Dressel then consulted with his partner, Fitzwater, and they decided that the thing to do was to have a meeting of the employees, and that the meeting was held, with Dressel explaining that he had been approached by the Teamsters, but that he then informed employees that they had some choices - they were free to organize with the Teamsters, free to remain nonunion, and free to form their own union, or they could seek out any other union they wanted. There is additional testimony that within a few days of the above events employees Larry Ellis and Sam Rongey approached Dressel and Fitzwater and informed management they would like to have a meeting of the employees, and then also asked if it would be permissible to use the Company's facility.

³ Dorothy MacMillan stated that she was asked by Rongey to attend this meeting and to take notes for them. MacMillan also testified that she expressed no opinion as to the items discussed and said that she merely took notes as "a favor" to the employees and never reported to management as to what transpired.

⁴ Aside from wages, the contract establishes break periods and seniority for part-time employees. These were two items in which the employees had particular interest. See G.C. Exh. 2.

⁵ This was a 2-year contract effective as of November 1, 1974, and running until October 31, 1976. See G.C. Exh. 3.

⁶ During the course of this second contract with the Flavor Workers, the Company also acquired a plant manager by the name of Harvey Hieken, but apparently he had personality problems with some of the employees, including Rongey, and it was necessary for Dressel to have a number of meetings with the employees involved in order to straighten out the difficulties with Hieken.

meeting. Nevertheless, Respondent provided the employees with a proposed contract, and Plant Manager Seymour told the employees to take a vote on the draft as soon as possible. At about the same time, Plant Manager Seymour also told employees Signaigo and Michael MacMillan that full-time employees should not be concerned about the wage rates as set forth in the contract, because the Company would grant increases based on merit. During this interval Manager Seymour further advised the employees that only members of the Flavor Workers could vote on the contract, and that a person was not a member until he had been an employee for 60 days. Consequently, only five to six of the unit employees were permitted to vote on the contract, but nevertheless, the contract was then voted on and approved, and the employees then selected Chip Signaigo and Steve Lucietto to sign the 1976-79 contract (G.C. Exh. 4) between the Flavor Workers and the Company.⁷

Subsequent to the execution of the current contract, the Union remained relatively inactive until the spring of 1977.⁸ However, in May 1977, several of the Respondent's employees met with an agent of Teamsters Local Union No. 603, the Charging Party herein. The employees so involved signed authorization cards, and a petition was then filed by the Charging Party with the Regional Office of the National Labor Relations Board on May 25, 1977, and served upon the Company. The Company forwarded the petition to Richard Whitlock, who it assumed was the Flavor Workers representative, as aforesaid. Within a day or so subsequent to these events, in late May or on June 1, 1977, a meeting was held for all employees in the lunchroom area. At this meeting the employees elected two union representatives (MacMillan and Seidler). Afterwards President Dressel addressed the employees. Dressel traced the history of the Company and of the Flavor Workers, spoke generally about the various contract terms and provisions on pensions, profit sharing, vacations, and other benefits, and then solicited the employees' grievances regarding working conditions. At this meeting the Respondent agreed to give the employees cleaning brooms and a power pallet lift, which they had also requested.

On the following day, Whitlock called another meeting of the employees because Michael MacMillan had decided that he did not want to be a representative of the Flavor Workers. At this meeting Whitlock announced that they needed to elect a representative to replace MacMillan and they also ought to have a president of the Flavor Workers. James Devore was then elected representative and Richard Whitlock was elected president. Employees were paid for the time spent, both at the meeting at which Dressel spoke,

and at the meeting a day later at which Whitlock was elected president.

The Respondent contends and argues that the evidence shows that the formation of the Flavor Workers was the result of independent action by employees of the Company in the fall of 1973 and that, even though the formal grievance procedures were not used, the Flavor Workers did not become dormant or inactive during the periods between contract negotiations, as certain working conditions were discussed with management. The Respondent further argues that within the 10(b) period (starting December 10, 1976), it was employee Whitlock who called the meeting of the Flavor Workers after the petition was filed by the Charging Party and saw to it that two representatives were elected, and that this was all done on the initiative of Whitlock; and further that it was also Whitlock who asked Dressel to talk to the employees at the meeting of May 30 or June 1, 1977. It is further contended that employees are paid in accordance with the wage scale set forth in the latest contract; that the fact there were no records, constitution, bylaws, or dues does not indicate domination but merely indicates that the organization was informal; and that it must also be considered and remembered that the Flavor Workers was one of the contracting parties and that therefore the Company was bound to cooperate with it in the interest of improving employee relations.

Final Conclusions

I am in agreement with the General Counsel that the Respondent has dominated and assisted the Flavor Workers ever since its inception. The background evidence reveals that in September 1973, Dorothy MacMillan, on behalf of the Respondent, was instrumental in the formation of the Flavor Workers. As pointed out, prior to the incident wherein MacMillan asked employee Sam Rongey to the office and offered the use of the office facility for a meeting, as aforesaid, the employees had merely engaged in general discussions regarding unionization.

Sam Rongey, who voluntarily terminated his employment relationship with Respondent in March 1975, testified concerning the initial development of the Flavor Workers and in so doing exhibited no animus toward the Company and has no interest in the outcome of this litigation. Clearly, Dorothy MacMillan, an agent of the Company, had an interest adverse to those of the employees. As pointed out, not only was Dorothy MacMillan a stockholder in the Company, but she was the personal secretary to the owners, and when she offered to take notes for the employees and suggested that the meeting be held in the plant office, as aforesaid, she assured Rongey that the owners would not mind if the employees used the office for their meetings. Under these circumstances, even if Dorothy MacMillan did not have general agency power to bind the Company in all instances, she had the apparent authority to commit the office space to the employees for their union purposes. Moreover, in relevant periods herein, the feeling of the alliance between Dorothy MacMillan and the owners was so strong that her son, employee Michael MacMillan, refused to execute the 1976 contract, and removed himself from position of union representative in 1977 to avoid any impropriety resulting from a conflict of interest.

⁷ Tom Seymour was terminated as plant manager on November 1, 1976, and was replaced by Larry Ellis, who had been assistant plant manager since May 1976. Signaigo and Steve Lucietto also left the Company, and there is testimony that from then on the Company looked to employee Rick Whitlock as having assumed the leadership of the Flavor Workers. The Company contends that during the early part of 1977, Whitlock was the employee who took matters to supervisors which would normally be handled by the representatives for the Flavor Workers.

⁸ The main exception seems to be when Signaigo, in December 1976, and when he was still with the Company, spoke to Dressel about the Company insurance plan. It appears that Signaigo thought that employees would be better off covered by Blue Cross and Blue Shield, rather than by the program the Company had, and that they should have a meeting, later held, wherein the insurance agent could explain the benefits.

Dorothy MacMillan testified that prior to the organizational meeting of the Flavor Workers, she informed employees that she had no interest in being represented by a union. I agree that it is highly unlikely Rongey would ask MacMillan to be present at the initial meeting wherein they formulated their demands, when they supposedly knew that MacMillan did not wish to be represented. I have credited Rongey's testimony that they initially assumed that MacMillan would be represented by the Union. Moreover, it is not likely that MacMillan would donate her time and energy to help in the formation of the Union when she had no interest in being represented. All indications show that she was present to monitor and assist the Union, and by such actions the Company exhibited its initial assistance and domination of the Flavor Workers. Moreover, the only corroboration Dressel received in his account on the formation of the Flavor Workers, as earlier detailed herein, was through a former employee but now plant manager, Larry Ellis. Ellis, of course, is now a key man on the part of management. On the other hand, Sam Rongey, who has neither a personal nor pecuniary interest in the outcome of the litigation, has no recollection of these events.

The General Counsel argues that the contract now in effect is essentially the same as the first contract executed in 1973, with the exception of wage rates. It further points out that the terms of the contract are so weighted in favor of Respondent that the contract is "quasi-unconscionable" and not the sort of document agreed upon by parties who deal at arms length, and moreover that the Respondent's dominance of the Flavor Workers is exhibited in the grievance clause of the contract. In exchange for a no-strike clause, the employees were bound to a grievance procedure which culminates with the use of Federal mediation. Consequently, the employees are deprived of self-help as well as binding arbitration. I am in agreement that there are considerable similarities in all three of the contracts with the Flavor Workers and that, outside of increased wages, the employees appear to have gained very little in any additional benefits or improved working conditions. As further indicated, the 1974 contract negotiations provided further evidence of Respondent's domination over the Flavor Workers. After Sam Rongey returned to the plant, he was presented with a copy of a contract with instructions to sign it. Likewise, Respondent's dominance over the Flavor Workers is also evidenced by Plant Manager Seymour's conduct at the time of the 1976 contract negotiations. In the period of August-October 1976, Seymour called a meeting of the employees and directed them to choose representatives and to draw up a list of demands, and then, after a draft contract was prepared, Seymour again assembled the employees for the purpose of inducing them to ratify the contract and also indicated who was eligible to participate in the ratification vote. Seymour stimulated the Union, required it to choose representatives, and then advised who was to vote on the contract.

As detailed more fully by the General Counsel, prior to May 1977, there were no meetings of the Union, with the exception of contract discussions; no dues were collected nor initiation fees charged; there was no constitution or bylaws; and no records were kept. There were no regular officers or representatives selected, but only representatives for the purpose of negotiating and executing contracts, and

admittedly there were no official employee grievances filed since the formation of the Flavor Workers. However, the Respondent contends that from time to time the Union brought matters to its attention on the subject of insurance and problems with supervision. With regard to the insurance, this record establishes that individual employees merely sought an explanation of the insurance plan or its coverage, and this, of course, falls short of grievance processing. As to the difficulties that employee Sam Rongey had with former Plant Manager Hieken, it appears that such problems were resolved by Rongey complaining to management and requesting that they alleviate the problem and that there was no actual intervention by the Union, as such.

On or about May 27, 1977, Respondent received a petition from Teamsters Local Union No. 603 and immediately forwarded the petition to Richard Whitlock, one of its leadmen. The Company maintains that they assumed Whitlock was the union representative or spokesman for the Flavor Workers.⁹ However, there is no reliable indication in this record that Whitlock had engaged in any prior activities on behalf of the Flavor Workers, nor is there evidence that he expressed any prior interest in the Flavor Workers. As indicated, there is no reasonable explanation as to why Whitlock assumed control over the Flavor Workers unless it was to carry out the will of management.

After having received the Teamsters' petition as forwarded to him by the Company, as aforementioned, Whitlock then called a meeting of the employees about 10:30 a.m. The Respondent, however, contends that the idea of the meeting emanated from Whitlock.¹⁰ From the evidence and events in this record, I find that management instigated this meeting. Before Dressel spoke to the employees, Whitlock appeared and insisted that the employees choose two union representatives, as aforesaid. Dressel then emerged and addressed the employees who were assembled on the loading dock or ramp. A few days after this meeting, Michael MacMillan, one of the representatives, resigned from his union post because he felt there was a conflict of interest due to his mother's position with the Company. Again Whitlock called a union meeting, and MacMillan was replaced, but Whitlock then also announced that the Flavor Workers had to elect a president even though there had never been a president in the past, and Whitlock was nominated and chosen to be president.¹¹ I am in agreement that there is no adequate explanation in this record as to why Whitlock decided that there must be a president of the Union, or why he chaired that meeting when the employees

⁹ Respondent contends that Whitlock was the union representative because he had approached management on employment problems, but the credited testimony establishes that the employees have traditionally brought production problems individually to the attention of their leadmen, and if the leadman could not remedy the situation, he would then bring the matter to the attention of his supervisors.

¹⁰ The Respondent produced testimony through Dressel to the effect that Whitlock approached him early in the morning and asked if Dressel would explain the contract and answer employees' grievances about working conditions. Dressel then testified that he suggested that the employees meet on their 10:30 a.m. break.

¹¹ Prior to this meeting, Whitlock had asked MacMillan to nominate him for the position of president.

had already elected union representatives. As suggested, a reasonable answer is that Whitlock was again acting on behalf of Respondent and wished to be nominated president so as to control the Union.

In the final analysis, it appears to me that the Company disregarded the contracts when it was advantageous to do so. As mentioned, breaks were taken when employees finished their work rather than at specified breaktimes as called for in article 4, section 4, of the contract. Plant Manager Seymour assured employees Signaigo and MacMillan that they should not be concerned about the wage provisions because Respondent would give raises based on merit. Under the provisions of article 2, section 3, of the current contract, an assistant leadman is to be paid \$4 per hour, and employees Geoffrey Seidler, David Kemper, Gary Holland, and Matt Dobbs were given increases to \$4 an hour during the months of June and July 1977, but this record establishes that Michael MacMillan was the only *assistant* leadman. Leadman Steve McGowen testified that he was never notified that any other employees were promoted to assistant leadman.

When viewed in its entirety, it is clear from this record that Respondent initially interfered with the formation of the Flavor Workers and then negotiated a 1-year contract. The Flavor Workers remained inactive until October 1974, when the Respondent prepared a second contract for the perfunctory signature of the Flavor Workers' representatives.¹² Again, the Flavor Workers slipped into obscurity until the months preceding October 1976, when the Respondent resurrected it for the purposes of negotiating a new contract, and on this occasion Plant Manager Seymour dominated the Union by dictating the negotiation and ratification process. Then, near the end of May 1977, after the Company received the petition by the Charging Party, as aforesaid, and within the 10(b) period, the Company again stimulated and reactivated the Flavor Workers and assisted the Union by calling a meeting, solicited and rectified grievances, donated time and space once again, and directed employees in the election of their officers and representatives. In accordance with the above, I find that Respondent initially dominated and assisted the Flavor Workers and continued this practice within the 10(b) statute of limitations, in violation of Section 8(a)(2) and (1) of the Act.

The complaint, as amended, alleges that President Dressel threatened employees with discharge by telling them that if they did not like the conditions of employment they should seek employment elsewhere.

In his talk to employees at the ramp on May 31 or June 1, 1977, Dressel admitted telling employees the following:

Yes, I explained to them that I had been in, my family had owned a dairy and I had worked in the dairy plant when I was younger as just a manual laborer and that I had been a member of the Teamsters Union and that

I had become the plant manager and had been the plant manager for approximately 8 years and that I hated every minute of it. I didn't realize that I hated it but afterwards I did. I said that when I was 20 years old, which was about the age of our employees, I said that I really felt that I was going to live forever, and now that I am 40, I recognize that I don't have forever and I felt that it was important to get into an occupation or acquire a skill or trade that they enjoy doing, if they could enjoy working because, if they hated something every day, life just wasn't worth it to go to something that they hated every day. And that in some ways we kind of had them locked in, they were there from 7:30 to 4:00, Monday through Friday, which were the prime hours to go out and look for a job, and that if we had employees who felt they could better themselves in the past and wanted time off to go look for a job, we said that we would be more than happy to give them time off to go out and look for a better job. We wanted people who wanted to grow with us and become part of our organization. We didn't want them to do something they hated. . . . I then asked if they had any complaints that they wanted to air.

The Respondent argues that Dressel's remarks that he hated working in the dairy business and that life was too short to spend your time working at a job you hated cannot be construed as a threat to the employees, as he was simply advising them that if they really hated the job they should try to learn a trade or get into some job that they would like doing.

I am in agreement with the General Counsel that when viewed in the totality of these circumstances, including the fact that Respondent had just received a petition from the Teamsters, the plain meaning and import of the speech was that if employees found it necessary to seek outside representation then they should go elsewhere, or in other words, if the employees did not like the working conditions at the plant, they should quit rather than seek outside representation to improve the working conditions. This constitutes a threat of discharge in violation of Section 8(a)(1) of the Act.

It is well-established Board and court law that in determining whether an employer's conduct amounts to interference, restraint, or coercion within the meaning of Section 8(a)(1), the test is not the employer's intent or motive but whether the conduct is reasonably calculated or tends to interfere with the free exercise of the rights guaranteed by the Act. It is further well recognized that the illegality of such inquiries and remarks are not cured by the casual nature of the conversation or the personal relationship of the parties thereto, nor by the employees' rejection of such questions or statements.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial rela-

¹² The landmark case with regard to the use of incidents occurring prior to the 10(b) statute of limitation period is *Machinists Local 1424 [Bryan Manufacturing Company]*, 362 U.S. 411 (1960). *Bryan* held that the General Counsel may adduce evidence of pre-10(b) conduct to throw light on post-10(b) occurrences as long as the occurrences within the 10(b) limitation period in and of themselves constitute, as a substantive matter, an unfair labor practice.

tionship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

I have found that Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them under Section 7 of the Act and thereby violated Section 8(a)(1) of the statute. I shall therefore order that Respondent cease and desist therefrom.

I have also found that the Respondent dominated and interfered with the administration of the Flavor Workers Union and contributed other support thereto and thereby violated Section 8(a)(2) of the Act. I shall therefore recommend that Respondent completely disestablish the Flavor Workers Union as the representative of any of its employees for the purpose, in whole or in part, of dealing with or discussing grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work.

CONCLUSIONS OF LAW

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

2. The Union and the Charging Party are labor organizations within the meaning of Section 2(5) of the Act.

3. By dominating and interfering with the administration of the Flavor Workers and contributing other support thereto, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

4. By threatening employees with discharge, the Respondent is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the purview of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]