

**Aero Corporation and Truck Drivers, Warehousemen & Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Cases 12 CA-7647 and 12-RC-5220**

August 14, 1978

**DECISION, ORDER, AND DIRECTION OF SECOND ELECTION**

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

On April 28, 1978, Administrative Law Judge Peter E. Donnelly 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,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>3</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Aero Corporation, Lake City, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(j):

“(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.”

2. Delete paragraphs 1(c) and 2(a) and reletter remaining paragraphs accordingly.

3. Substitute the attached notice for that of the Administrative Law Judge.

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

<sup>2</sup> In excepting to the Administrative Law Judge's finding that it violated Sec. 8(a)(1) by granting a wage increase on November 22, 1976, Respondent contends, *inter alia*, that the Administrative Law Judge erred in failing to

It is further ordered that the election held in Case 12-RC-5220 be, and it hereby is, set aside, and that said case be, and it hereby is, remanded to the Regional Director for Region 12 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

find, on the basis of the testimony of President Gurnow and Personnel Director Kuhn, that it commenced a wage survey prior to September 26, 1976, which is the date Respondent first became aware of the organizational campaign. See *Aero Corporation*, 233 NLRB 401 (1977). In this regard, President Gurnow testified that “in along about the middle or latter part of September” he asked the personnel director to conduct a wage survey. Personnel Director Kuhn testified initially that the conversation with Gurnow occurred in the “latter part of September—middle of—sometime in there.” On cross-examination, after the General Counsel informed her that Respondent learned of the organizational effort on September 26, Kuhn testified that she “believe[d] [she] had started” the survey before she left town on September 25 to attend a seminar.

Contrary to Respondent's contention, the Administrative Law Judge was not required to credit this testimony, even though it was uncontradicted. *NLRB v. Walton Manufacturing Company & Loganville Pants Co.*, 396 U.S. 404, 408 (1962); *NLRB v. Howell Chevrolet Company*, 204 F.2d 79, 86 (C.A. 9, 1953), aff'd 346 U.S. 482. The Administrative Law Judge's refusal to regard Respondent's witnesses as convincing was particularly warranted here inasmuch as their testimony was indefinite and uncertain. Further, as noted by the Administrative Law Judge, so far as the record discloses, the wage survey was “ cursory in nature” and “without documentation.” Accordingly, while we stop short of finding, as did the Administrative Law Judge, that the survey was, in fact, undertaken after Respondent became aware of the union campaign, we conclude that the evidence offered by Respondent concerning the survey does not satisfy its burden of establishing a justifiable motive for the wage increases. See *Rich's of Plymouth, Inc.*, 232 NLRB 621, 622-623 (1977), enfd. in pertinent part 578 F.2d 880 (C.A. 5, 1978).

<sup>3</sup> We find merit in Respondent's exception to the Administrative Law Judge's conclusion that Supervisor Putman created the impression of surveillance when he told employee Cordle, “I'm quite sure I know how you're going to vote.” The record reveals that Cordle did not attempt to conceal his pronouncement. To the contrary, Cordle testified that he openly supported the Union and that he would tell anyone who asked that he was in favor of the Union. “Since the [employee's] union sympathies were a matter of common knowledge and [he was] aware that [his] views were known to others, we cannot infer that [he] assumed from [the supervisor's] statement that [his] union activities were under surveillance.” *Schementi Bros., Inc.*, 179 NLRB 853 (1969). Accordingly, we do not adopt the Administrative Law Judge's finding that Putman's remark was violative of Sec. 8(a)(1).

<sup>4</sup> Contrary to the Administrative Law Judge, we do not find that the circumstances of this case warrant a broad order, enjoining Respondent from “in any other manner” infringing upon employee rights guaranteed in Sec. 7 of the Act. Accordingly, we shall modify the Administrative Law Judge's recommended Order and notice in this respect.

**APPENDIX**

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

**WE WILL NOT interrogate employees concerning their union membership, activities, and desires.**

**WE WILL NOT interrogate employees concerning the union membership, activities, and desires of other employees.**

WE WILL NOT threaten employees by implying that, if the Union is selected as their collective-bargaining representative, they will be sent home when work was slack rather than retained.

WE WILL NOT tell employees that if they do not like their working conditions they can quit.

WE WILL NOT threaten employees by telling them we would close our plant if the employees selected a union as their collective-bargaining representative.

WE WILL NOT solicit employees to use their influence with other employees to convince them not to become or remain members of the Union, or give support or assistance to the Union.

WE WILL NOT tell employees that they cannot discuss the Union while on their lunch break unless they leave the lunchroom area.

WE WILL NOT grant wage increases to our employees for the purpose of inducing them to refrain from becoming or remaining members of the Union or from giving assistance or support to the Union.

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

#### AERO CORPORATION

### DECISION

#### STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The charge in Case 12-CA-7647 was filed by Truck Drivers, Warehousemen & Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Petitioner or Union, on March 29, 1977. An amended charge was filed by the Union on April 21, 1977. The petition was filed on November 11, 1976, by the Union and pursuant to a stipulation for certification upon consent election, an election was held on January 14, 1977. Objections to the election were timely filed by the Petitioner and on April 22, 1977, the Regional Director for Region 12 issued an order approving withdrawal of certain objections, and directing a hearing on remaining objections and consolidating cases for hearing.

In order to resolve the objections, which are coextensive with certain other misconduct as alleged in the complaint, a complaint in the consolidated cases issued on April 25, 1977, and pursuant to a notice, a hearing was held before the Administrative Law Judge at Lake City, Florida, on July 25, 26, and 27, all in 1977. Briefs have been timely filed by General Counsel and Respondent which have been duly considered.

#### FINDINGS OF FACT<sup>1</sup>

##### I. EMPLOYER'S BUSINESS

Employer is a Georgia corporation with a plant and place of business located in Lake City, Florida, where it is engaged in the remodeling, modification, and repair of commercial and military aircraft. During the past 12 months, Respondent in the course and conduct of its business operations performed services for the United States Air Force and/or the United States Navy valued in excess of \$50,000, and during this same period of time Respondent purchased and received at its Lake City, Florida, facility goods and materials valued in excess of \$50,000 which were shipped directly to it from points located outside the State of Florida. The complaint alleges, the Respondent's answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. LABOR ORGANIZATION

The complaint alleges, the Respondent in its answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### III. ALLEGED UNFAIR LABOR PRACTICES

###### A. Facts

###### I. The 8(a)(1) statements

George Conner is employed by Respondent as an electrician. He is supervised by production supervisor Billy Putman. In about the second or third week of December 1976, Putman called Conner away from his work station and engaged him in conversation. He asked Conner what he knew about union activity within his work crew, which employees had passed out union cards, which had signed union cards, and to name them. He also asked Conner if he himself had signed a union card. Conner responded that he was neither for nor against the Union and did not admit signing any authorization card. Putman denied having made such statements to Conner; however, Conner impressed me as the more credible witness and I credit him.

In another incident, in late December or early January,

<sup>1</sup> There is conflicting testimony regarding some of the 8(a)(1) allegations of the complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses. In this connection, in crediting the testimony of several of the General Counsel's employee witnesses, the fact that they were still employed by Respondent against whom they testified was the factor supporting their credibility, particularly when weighed against the obvious interests of the Employer. In addition, I have considered the inherent probabilities; the probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness, I rely specifically upon his or her demeanor and have made my findings accordingly. And, while apart from considerations of demeanor, I have taken into account the above-noted credibility considerations; my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop and Malco Inc., d-b-a Walker's*, 159 NLRB 1159, 1161 (1966).

employee William Cordle, also supervised by Putman, testified that he was called away by Putman from his work and into the shop area used by Putman as an office. Two employees in the office were asked to leave, and Putman closed the door with the observation that he wanted to have a private talk with him. Once alone, Putman raised the matter of the upcoming election saying, "I'm quite sure I know how you are going to vote." Cordle affirmed Putman's assumption, adding that the shop needed a union to improve conditions. Putman stated that he did not want to influence him one way or another, but did want to talk over the conditions Cordle did not like. When asked if he knew how any of the other men would be voting, Cordle said "No," adding that it was none of his (Cordle's) business and did not consider it any of Putman's business. In discussing the matter of working conditions, Putman told Cordle that if the Union did get in, it would possibly mean that when work was slack employees would be sent home whereas at present they were retained even during slack periods.

During this conversation, General Foreman James Walk came into the room to talk to Putman and remained listening to the conversation. At one point, while Putman and Cordle were talking about conditions, Walk, addressing his remarks to Cordle, said "If you don't like the conditions here, you can always leave, you know."

Although Putman was called by Respondent as a witness, he did not testify about this conversation with Cordle, and I credit Cordle's un rebutted testimony. Walk does not recall speaking to anyone except Putman during this incident. However, I find that the version offered by Cordle is the more reliable and I credit it.

On January 3, 1977, Putman engaged another supervisor, James Cason, in conversation. Putman called Cason away from his work, telling him that he wanted to talk to him privately. They went to a small room used by electricians as a workshop. Putman closed the door and they were alone. Putman asked how he was going to vote and Cason told him he was going to vote for the Union. Putman then described the Teamsters in derogatory terms as a "bunch of gangsters" and "mobsters." He said that he did not think that the Respondent could pay union wages and that he thought they might fold up. Putman also told Cason that he had a lot of influence over other employees and asked him to use his influence to persuade people who favored the Union to "come over" to the Employer.

Putman acknowledges this conversation with Cason but denies having inquired concerning Cason's union sentiments. He further denied having suggested that the Respondent might have to close if the Union came in due to its inability to pay union wages. Putman also denied having asked Cason to use his influence on behalf of the Employer. However, I am unpersuaded by these denials, and I conclude that Putman did make the representations set forth in Cason's account of the incident.

Another incident involving Putman took place on January 13, 1977, the day before the election. Theodore Fowler, an employee, and several other employees were eating lunch in a storage room. Putman was also present. The employees were engaged in a discussion concerning the outcome of the election and union benefits when Putman

told them, according to Fowler, "Shut up that kind of talk and get out of here with it." However, they did not heed the admonition and continued for a while to discuss the Union. The substance of this account is corroborated by Cason who testified, "He [Putman] told us that if we wanted to talk union, we would have to leave and go outside." Putman, although he appeared as a witness, did not testify about this incident, and I credit the corroborated testimony of Fowler and Cason.

Putman figured in another episode in early January 1977, when Cordle came to work wearing a jacket with the word "Teamsters" on it and the Teamster emblem. After Cordle began working, Putman came to him and told him that he should pick up his tools and go with Putman because he was being transferred. Putman told him they were going to see Mr. Patterson, overall supervisor of the electric department. With Cordle still wearing the jacket, they went to see Patterson, at which time Putman left. Patterson asked Cordle if Putman had contacted the supervisor of the maintenance department about the transfer, and Cordle said he did not know. Patterson then called the supervisor of the maintenance department, but Cordle did not hear the conversation. Patterson next took him to the maintenance department, where he was put to work fixing a heater. He was asked by a maintenance supervisor named Jim Moore why he was transferred, and Cordle responded by asking if Moore did not know. Moore said he did not know, and Cordle said, "Well look at the jacket I'm wearing; that's why I've been transferred." Moore replied, "Well you've got to keep warm don't you." No other mention was made of the jacket by any other supervisor, except that he was told by Putman not to wear it within 24 hours of the election. After about a week Cordle was transferred back to his original department and subsequently transferred to another location within the same department working on another project.

Cordle wore the jacket every day for months until the weather got warm and he was never asked by any supervisor to remove it. Neither Putman nor Patterson testified concerning this allegation, and I credit Cordle in this regard.

## 2. Wage increase

In mid-September 1976, Johnny Lassiter, a project supervisor, held a meeting of employees under his supervision. The purpose of the meeting was to increase production. During the course of the meeting, John Grubbs, an employee, asked if there was any possibility of getting a raise. Lassiter told him that he would check it out and get back with them. Grubbs testified, "It was either the next day or two days after that, we had a meeting--he called the whole crew together. And, he let us know then that there was no money in sight, and if we didn't like what we were getting, we could hit the road." Actually, Grubbs thinks that he said "hit 90," in reference to U.S. Route 90, which runs in front of Respondent's plant. Likewise, Glen Barrick, another crew member, states that at a meeting held at about this time the wage question was raised, and the crew was advised by Lassiter that there would be no wage increases, and that if they did not like it they could "hit 90." Lassiter

recalled the meeting and confirms that the employees asked for a wage increase but does not recall his response. In these circumstances, I conclude that Grubbs and Barrick had the more reliable recollection, and I credit their accounts.

On October 6, 1976, the Respondent issued a "Notice To All Employees." It was signed by Joseph Gurnow, president of Respondent. With respect to the matter of a wage increase it read:

In spite of our difficulties, including a very substantial operating loss last year, we have continued with our wage review program and intend to continue with it in the future.

We have been reviewing our wage rate and we have been making a wage survey looking forward to the time when we would be able to make another review of employees' wage rates. Because of these new contracts [Navy and Air Force] we expect to be able to make an announcement in this area within the near future.

A posted announcement dated November 18, 1976 advised all hourly paid employees, *inter alia*:

We are pleased to announce, therefore, as a result of the completed wage review, that all hourly personnel will receive a 20¢ per hr., pay increase effective the pay period beginning November 22, 1976. This increase will be uniformly added on to the existing wage structure. The established periodic wage review given to employees on an individual basis at six month intervals will continue, which means our employees will also continue to receive regular pay increases pursuant to these wage reviews.

A review of wage increases granted by the Respondent since 1968 discloses that on August 8, 1968, a wage increase of 5 percent was granted. On August 29, 1969, another 5-percent wage increase was granted. On April 30, 1971, hourly employees received a 12-cent-per-hour raise. The next raise was effective April 29, 1974, in the amount of 10 cents per hour, and the last raise prior to the one at issue was granted effective October 21, 1974, for 10 cents per hour. All of the above raises were announced in some type of written employee communication without prior notice to employees that the matter was being studied by management, as in the October 6, 1976, communication.

Respondent's witnesses testified that they were officially notified that they had been awarded contracts for work by the Air Force on August 23, 1976, and by the Navy about October 4, 1976. It appears that some work was done on both the Air Force and Navy contracts in August and September 1976.<sup>2</sup> Payment for the first Navy aircraft was received on November 2, 1976, and first payment on the Air Force planes on December 9, 1976.

<sup>2</sup> Navy aircraft was received before the Navy contract was actually awarded, and work on it was performed under a short term extension contract to cover the third quarter of 1976, since beginning on October 1, 1977, the fiscal year was established to run from October 1 through September 30 thereafter.

## B. Analysis and Recommendation

### 1. The 8(a)(1) statements

As found above, Putman interrogated Conner concerning his own activities on behalf of the Union, including his card signing, and further asked him questions to identify other employees who had signed cards. This type of interrogation is manifestly illegal in violation of Section 8(a)(1) of the Act.

In January 1976, Cordle was called in by Putman and, *inter alia*, advised that he (Putman) knew how Cordle was going to vote in the election, since Cordle was a union man. This conveys the impression that Cordle's activities on behalf of the Union were under surveillance, and such remarks constitute 8(a)(1) violations.

In this same conversation, Putman suggested to Cordle the possibility that if the Respondent was organized, employees would be sent home rather than retained when work was slack, as they were now. In my opinion, even though this was not an outright prediction, the implication was unmistakable, and in my opinion, coercive, particularly since there was no factual basis presented to support it. The substance of such remark is not an expression of free speech, but rather a thinly veiled threat to reduce work hours if the employees exercised their right to organize. This violates Section 8(a)(1) of the Act.

I also conclude that Walk's "hit 90" remark to Cordle made during the same conversation was coercive. To suggest to an employee that his alternative to seeking to improve his working conditions is to look elsewhere for employment is coercive, since it is essentially interference with the right of employees to improve their conditions through the exercise of rights guaranteed in Section 7 of the Act.

Putman also engaged employee James Cason in conversation about the Union on January 3, 1977, as set out above. In this conversation, Cason was asked how he was going to vote. This is clearly interrogation concerning Cason's union sentiments proscribed by the Act. In the same conversation, Putman, after characterizing the Union in unflattering terms, opined that the Respondent would be unable to pay union wages and might close if the facility were organized. Without any factual basis for this conjecture, it constitutes, in reality, a veiled threat of job loss as a consequence of the employees exercising their right to organize. As such, it violates Section 8(a)(1) of the Act. Putman, also at this time, asked Cason to use his influence to persuade employees to withdraw their support from the Union and "come over" to the Employer. This effort to undermine the organizational effort constitutes illegal employer interference, in violation of Section 8(a)(1) of the Act.

As to the alleged discriminatory transfer of Cordle, I conclude that the evidence does not support even a *prima facie* case as to that allegation. In the first place, the record does not establish that Putman was responsible for the transfer as alleged in the complaint. The record is silent as to who was actually responsible for it. Moreover, even assuming that Putman was, the record nowhere reflects that he or any other supervisor ever commented to him concerning his wearing of the jacket at the time of his transfer.

Further, it appears that he was qualified to perform the work, was not given more onerous work, and was not reduced in pay. Nor was any comment made to him at any time thereafter concerning the jacket, although he wore it almost daily until the warm weather came, with the exception of being told by Putman not to wear the jacket within 24 hours of the election. It also appears that other employees wore Teamster jackets, apparently without incident. In short, there is no probative evidence to support a finding that he was transferred because he wore the jacket, and I shall recommend that this allegation be dismissed.

As to the allegation that Putman admonished employees not to talk about the Union on their lunch break, it is clear that the comments were in fact made. I further conclude that they were coercive. It appears that the conversation among the employees took place where employees normally took their lunch, and on nonworktime. Such conversations at such times and places are protected, and interference therewith violates Section 8(a)(1) of the Act.

## 2. Wage raise

As a general proposition, an employer may grant wage raises to its employees regardless of a contemporaneous organizational effort so long as the wage raise is one that would have been granted in the normal course of business, apart from the organizational effort. The circumstances of each case determine whether a wage increase is designed to stifle the organizational effort or a business decision prompted by valid economic considerations. In the instant case, the Respondent granted wage increases in the years from 1968 through 1974 to hourly paid employees. There does not appear to be any uniformity either as to the amounts or as to the dates when the raises were granted. In short, there appears to have been no past practice to suggest that the instant raise was granted to conform to any established pattern. As late as mid-September 1976, Respondent, through Supervisor Johnny Lassiter, advised employees, in substance, that there was no expectation of a raise and that if they did not like it they could all leave.

Shortly thereafter, and shortly after the Respondent became aware of the Union's organizational effort,<sup>3</sup> the Respondent announced by written notice to employees that a wage increase was under consideration. It does not appear that such an announcement was made prior to the granting of any previous wage increase. Thus, the timing of the announcement that a wage increase was being given active consideration suggests, that the increase was granted not in the normal course of business but was designed to blunt the Union's organizational effort.

Respondent, on the other hand, contends that the wage increase was a legitimate business judgment. Respondent posits that the timing of the wage increase was consistent with pertinent economic considerations and recites the dates of the contracts, the receipt of contract aircraft, the completion of the initial work and the receipt of payment as supporting the logic of the increase at the time it was

granted. In my opinion, these are inadequate explanations for the increase.

The acquisition of the Navy contract and the renewal of the Air Force contract<sup>4</sup> do not, in my opinion, establish that the raise in issue was given in the normal course of the Respondent's business operations. Both of the basic contracts herein had been executed and were in effect before the advent of the Union, but no raises were granted in the 2 preceding years and apparently none was in prospect as late as mid-September 1976, when inquiries thereon were made by some employees. The precipitous institution of a wage increase shortly after the Union began organizing and the Respondent became aware thereof suggests that considerations other than economic motivated the pay hike. It is significant to note that the terms of the Air Force contract were at least predictable. The variable was in the Navy option. Whatever influence any other work may have had on the decision was not presented by Respondent.

Respondent introduced several documents dealing with the Navy and Air Force contracts, ostensibly to support the contention that a wage increase was feasible. However these do not deal directly with the issue of whether or not the wage increase was justified by the economic condition of the Respondent.

Nor do I deem the wage survey conducted by Personnel Director Barbara Kuhn to be a significant factor in the Respondent's decision. It was undertaken after Respondent became aware of the Union's interest in organizing the employees and was cursory in nature, without documentation insofar as this record discloses.

Accordingly, I conclude that Respondent's wage increase was timed and put into effect for the purpose of undermining the Union's organizational effort and accordingly violates Section 8(a)(1) of the Act.

The Respondent also argues that the 8(a)(1) incidents herein are isolated and consequently should not be viewed as either 8(a)(1) violations or as misconduct sufficient to set the election aside. While it is true that the only two supervisors in one area of a large facility were directly involved in the 8(a)(1) incidents, the raise herein, also deemed an 8(a)(1) violation, reached all of the hourly paid employees and was therefore pervasive in its effect reaching all hourly paid employees. In these circumstances, I feel that the totality of the misconduct herein both violates Section 8(a)(1) of the Act and warrants setting the election aside.

## IV. OBJECTIONS TO THE ELECTION

The objections herein are coextensive with some of the allegations of the complaint. To the extent that I have found merit in the unfair labor practice allegations, I also conclude that the objections based on such misconduct are sufficient to warrant setting aside the January 14, 1977, election. It is therefore recommended that the Board set aside the January 14, 1977, election and remand Case 12-

<sup>3</sup> The facts concerning the organizational effort and the Respondent's knowledge thereof appear in *Aero Corporation*, 233 NLRB 401 (1977), of which I have taken judicial notice.

<sup>4</sup> Actually, the Navy solicitation was pursuant to a fourth-year option in a preexisting Navy contract originally executed in 1974. The Air Force contract was a renewal contract with the renewal terms automatically set by preexisting cost-of-living criteria set by the Air Force.

RC-5220 to the Regional Director for Region 12 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of bargaining representative.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON  
COMMERCE

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

VI. THE REMEDY

Having found that Respondent has engaged and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Nothing in the Order shall be construed as requiring Respondent to withdraw from employees the wage increase granted to them on November 22, 1976.

Upon the basis of the foregoing findings of fact, and conclusions, and the entire record in this case, I hereby make the following:

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

3. By interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

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

ORDER <sup>5</sup>

Respondent Aero Corporation, Lake City, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union membership, activities and desires.

(b) Interrogating employees concerning the union mem-

bership, activities and desires of other employees.

(c) Creating the impression of surveillance of its employees' union activity in order to discourage membership in and activities on behalf of the Union.

(d) Threatening employees by implying that if the Union was selected as their collective-bargaining representative, they would be sent home when work was slack rather than retained.

(e) Telling employees that if they did not like their working conditions, they could quit.

(f) Threatening employees by telling them that Respondent would close its plant if the employees selected the Union as their collective-bargaining representative.

(g) Soliciting employees to use their influence with other employees to convince them not to become or remain members of the Union, or give support or assistance to the Union.

(h) Telling employees that they could not discuss the Union while they were on their lunch break unless they left the lunchroom area.

(i) Granting wage increases to its employees for the purpose of inducing them to refrain from becoming or remaining members of the Union or from giving assistance or support to the Union.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

(a) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amounts of backpay due herein.

(b) Post at its Lake City, Florida, place of business, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's authorized 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 to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

The election held on January 14, 1977, in Case 12-RC-5220 is hereby set aside and said case remanded to the Regional Director for Region 23, to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

IT IS FURTHER ORDERED that the complaint herein be dismissed insofar as it alleges violations of Section 8(a)(1) of the Act other than that specifically found herein.

<sup>5</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>6</sup> In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."