

**Aero Corporation and Theodore Fowler, John E. Grubbs, and L. B. Brannen.** Cases 12-CA-7430-1, 12-CA-7430-2, and 12-CA-7430-3

November 11, 1977

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND MURPHY

On July 21, 1977, Administrative Law Judge Jennie M. Sarrica 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 of the Administrative Law Judge,<sup>2</sup> to modify the remedy so that interest is to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>3</sup> and to adopt her recommended Order, except that the attached notice shall be substituted for that of the Administrative Law Judge.<sup>4</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 and hereby orders that the Respondent, Aero Corporation, Lake City, Florida, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

<sup>1</sup> The 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 her findings.

The Administrative Law Judge found that at the time of the layoffs planes C-52, C-54, and C-55 were under repair in the hangar where the three discriminatees worked. Examination of the record reveals that the work on plane C-54 had been completed prior to October 1, 1976. This finding does not detract from our agreement with the Administrative Law Judge, however, that Respondent has violated Sec. 8(a)(3) of the Act in this proceeding. For while it appears there were only two planes in the hangar at the time of the layoffs, employee Barrick's credited testimony indicates extensive work which the laid-off employees could perform was necessary on these two planes at that time. We also note the balance of Barrick's credited testimony on work availability.

<sup>2</sup> In the absence of exceptions, Chairman Fanning and Member Jenkins adopt *pro forma* the Administrative Law Judge's finding that Respondent did not violate Sec. 8(a)(1) by its no-distribution rule which precluded the distribution of literature at all times in any working area. Chairman Fanning

relies on his dissenting opinion in *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962).

<sup>3</sup> See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>4</sup> The Administrative Law Judge inadvertently failed to conform the notice with her recommended Order.

## APPENDIX

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

Section 7 of the Act gives all employees these rights:

- To organize themselves
- To form, join, or help unions
- To act together for collective bargaining or other mutual aid or protection
- To bargain collectively through representatives of their own choosing
- To refuse to do any or all of these things.

WE WILL NOT interfere with you in the exercise of the aforementioned rights. All our employees are free to become or remain a member of Teamsters Local 512, or not to become or remain a member of that or any other union.

WE WILL NOT question you regarding your membership in, sympathies for, or activities on behalf of Teamsters Local 512, or any other union.

WE WILL NOT engage in surveillance of your union activities or engage in any conduct which makes it appear that we are watching your union activities.

WE WILL NOT discourage membership in the aforesaid or any other labor organization by discriminatorily laying off employees or changing the terms and conditions of employment of our employees, or in any other manner discriminating against any employee in regard to the hire, tenure, or any other term or condition of employment.

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

WE WILL give John Grubbs, Theodore Fowler, and L. B. Brannen the pay and any other benefits they lost, with interest.

AERO CORPORATION

## DECISION

## STATEMENT OF THE CASE

JENNIE M. SARRICA, Administrative Law Judge: The complaint<sup>1</sup> in this case alleges that during an organizational campaign by Truckdrivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, among the employees of Aero Corporation, hereinafter referred to as Respondent or the Company, the latter engaged in surveillance of its employees while engaged in a union meeting; interrogated employees concerning their union activity and the union activity of fellow employees; promulgated an unlawful no-distribution rule; and discharged three employees because of their union and/or concerted activity, thereby violating Section 8(a)(1) and (3) of the National Labor Relations Act, hereinafter referred to as the Act. By its answer, Respondent admitted the formal allegations of the complaint, but denied the commission of any unfair labor practices.

At the hearing of this case before me at Lake City, Florida, on February 7, 8, 9, 14, and 15, 1977, all parties were afforded full opportunity to participate in the proceeding, to introduce evidence, to examine and cross-examine witnesses, to argue orally on the record, and to submit briefs. Oral argument was waived. A brief from Respondent (no brief was received from the General Counsel) has been duly considered. Upon the pleadings, stipulations of counsel, evidence, including my observation of the demeanor of the witnesses while testifying, and the entire record in the case, I make the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

The complaint alleges, the answer admits, and I find that Respondent is engaged at Lake City, Florida, in the repair, overhaul, modification, and fabrication of aircraft and related components. During the past year, Respondent has furnished to the United States Air Force and Navy services of a value in excess of \$100,000, and during the same period, received at its Lake City, Florida, plant, directly from points and places outside the State of Florida, goods and materials valued in excess of \$50,000.

I find that Respondent is now, and has been at all times material herein, an employer within the meaning of Section

<sup>1</sup> Issued December 21, based on charges filed and served October 13, these two dates and all dates hereafter are 1976, unless otherwise indicated.

<sup>2</sup> Young's Park is a public park owned and maintained by Lake City. The park is a rather large area, the portion thereof involved here being bounded on the north by DeSoto Street, on the south by Madison Street, on the east by Fifth Street, and on the west by Seventh Street. The distance between DeSoto and Madison Streets is roughly 293 feet. Within that area are located a large picnic area, restrooms, tennis courts, and a basketball court. North of DeSoto Street is another area containing a football field, a boys club, a swimming pool, and a pool house.

<sup>3</sup> These are the three employees laid off on October 1, allegedly for discriminatory reasons.

<sup>4</sup> The foregoing findings are based on a composite of the credited testimony of Wheeler, Grubbs, Fowler, and Brannen. Patterson had an entirely different version of this incident, but I am unable to credit his testimony. According to Patterson, the plant worked on Sunday, September

2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Truckdrivers, Warehousemen and Helpers Local Union No. 512, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is now, and has been during all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Events of September 16*

In late August or early September, the Union began organizing Respondent's employees. In furtherance of this objective, it arranged a meeting in a picnic area of Young's Park<sup>2</sup> on Sunday, September 26, at 2 p.m. At the appointed time, Union Representative James H. Wheeler and approximately 30 employees of the Company had gathered in the picnic area of the park. They soon discovered that Assistant Production Manager Leon Patterson, an admitted supervisor, was seated in his car parked on DeSoto Street facing the tennis court area, approximately 150 feet from the area where the employees were gathered, observing that area. Among the employees attending the meeting were John E. Grubbs, Theodore Fowler, and L. B. Brannen.<sup>3</sup> Patterson remained seated in his car for a period estimated at 30 to 40 minutes and engaged in no activity other than looking into the area where the employees were assembled. Concluding that Patterson was at the park to engage in surveillance of their union activity, the employees decided to disburse in different directions and resume their meeting at a local motel where arrangements were then made for that purpose. However, of the 30 employees who had congregated at the park, only about 21 attended the meeting at the motel. When the employees began to leave the park area, Patterson also left. Employee Grubbs followed Patterson to the main highway, at which point Patterson crossed the highway going into a housing development, and Grubbs turned right heading downtown. According to Grubbs, prior to reaching the main highway, Patterson did not stop anywhere, nor was anyone else in his car.<sup>4</sup>

26, and he was the supervisor on duty. He left the plant and drove across town to his home some 6 to 8 miles distant, where he picked up his son and his son's friend, and took the two boys to Young's Park to play tennis. He left the park about 12:45 p.m., and returned to the plant where he remained until the appointed time to pick up the boys between 2 and 2:30 p.m. He returned to the park about 2:30, parked headed toward the tennis area, and scanned the area, but not seeing the boys, waited there for about 10 minutes watching for them. He finally saw two boys across the park on Madison Street, a distance of approximately 300 feet, on skateboards. Thinking this might be his son and his son's friend, he went to the area, picked up the boys, and took them home, leaving the park at approximately 3 p.m.

According to Patterson, while waiting for the boys he saw a group of about a dozen people in the picnic area where company employees had congregated, but did not recognize anyone. He gave three reasons for nonrecognition: (1) that he was not interested in the group, but was intent on watching for the boys; (2) that he knew employees only from their attire

### B. *The Events of September 29*

Louis Menendez, Respondent's vice president in charge of operations, admitted that he learned of the union activity at the plant on Monday, September 27. He testified that such information was given to him by one of his plant supervisors, but claimed not to be able to recall the name of the supervisor who did so. Early in the afternoon of September 29, all employees were told to leave their jobs and assemble at hangar 1, where Company President Gurnon made a speech. Approximately 500 to 600 employees were assembled to hear the speech. Gurnon prefaced his remarks by saying that a speech had been prepared for him and that he had to read it without change, and that, as a result, he could not say what he really wanted to. Gurnon then told the employees in substance that they should consider the Company's side of the questions as well as the Union's side, and to stick by whatever decision they made.<sup>5</sup>

Later during the afternoon of September 29, John Brooks, admitted supervisor of quality control, approached employee Grubbs while the latter was at work, and asked that Grubbs accompany him outside the building for a talk. Outside the building, Brooks asked Grubbs what was going on with the Union. Grubbs professed not to know what Brooks was talking about. Brooks then asked Grubbs how many employees had signed union cards and whether the Union was going to be at the gate the next day. Grubbs replied that he did not know and that the next day all would see whatever happened. Grubbs then returned to his work.<sup>6</sup>

### C. *The Events of September 30*

On September 30, officials of the Union distributed literature at the plant gate. As Grubbs was leaving the plant at the end of that day he stopped at the gate to deliver to the union agent some authorization cards on which he had obtained signatures. At that time the union agent gave Grubbs some leaflets asking Grubbs to have them posted on the employee bulletin board in the plant.<sup>7</sup> The following morning, before the starting hour of 8 a.m.,

in the plant where they dressed differently from the way they would dress when they came to the park; and (3) that with his impaired vision, even though he wears corrective glasses, he is unable to distinguish features at a distance beyond 40 feet. Patterson did not explain how, in view of his claimed impaired vision, he could distinguish two boys on skateboards across the park on Madison Street, a distance of approximately 300 feet. As indicated, I do not credit Patterson's explanation for his presence at the park on September 26. On the contrary, my consideration of the entire record convinces me that Patterson was at the park on the occasion in question for the purpose of observing the union activity of Respondent's employees.

<sup>5</sup> The General Counsel makes no contention that anything Gurnon said in his speech violated the Act.

<sup>6</sup> These findings are based on the admission of Brooks and the credited testimony of Grubbs. Brooks admitted that he had a conversation with Grubbs outside the hangar, but recalled that it took place on September 28. According to Brooks, as a result of his visit to Grubbs' father, who had been his friend for many years, he called Grubbs out of the plant to inquire why Grubbs had left the farm, and in this conversation he asked how things were going. Grubbs replied, very well. They had about 30 percent signed up. Brooks then asked when things were going to start to happen and Grubbs replied just watch the gate. I perceive no logical reason why an official would invite an employee for a private conversation away from the work area just to make such a mundane and casual inquiry as to why he stopped farming. Nor am I able to believe that Grubbs, who participated in attempts

Grubbs posted copies of the leaflet on the bulletin board in hangar 2 and on another bulletin board across from hangar 2. Both bulletin boards are maintained for the use of employees to post notices of a personal nature, such as living quarters for sale or rent, or personal items that employees might wish to buy or sell. As Grubbs was returning to hangar 2 from the second bulletin board, he observed Billie Putman, whom I find to be a supervisor within the meaning of the Act,<sup>8</sup> removing the leaflets posted on the bulletin board in hangar 2. Thereupon, Grubbs posted another copy in that location but Putman also took that one down. Grubbs then posted a copy of the leaflet on his toolbox<sup>9</sup> which was kept near his work station. There is no evidence that Putman made any statement while engaging in these leaflet removal actions.

The evidence also shows that copies of the leaflet were posted on the toolboxes of other employees and at least one copy was posted on a cowl rack,<sup>10</sup> but there is no evidence as to when, by whom, or under what circumstances they were posted. During the afternoon of October 1, Navy Project Manager Gaylon Roberts and Navy Project Supervisor John Lassiter, came through the plant while the employees were at work and, observing the leaflets posted on the cowl rack and toolboxes, Roberts asked employee Brannen, according to the latter, if he knew who posted the leaflets. Brannen replied that he did not. Roberts then stated that employees were not supposed to post any material without permission.<sup>11</sup>

Employee rules promulgated by the Company and distributed to all employees at the time of hire contain the following rule:

No solicitation of any kind will be allowed on working time without special permission. Distributions of literature of any kind will not be allowed in any working area on Company property.

### D. *Events of October 1*

Early in the afternoon of October 1, employees Grubbs and Brannen, who were assigned to station 13 on the Navy line, and Fowler, who was regularly assigned to station 13,

to keep union activity secret, would, in reply to a general question as to how things were going, volunteer that the Union had signed cards from 30 percent of the employees, or would volunteer the prediction that there would be union activity at the gate.

<sup>7</sup> The leaflet, in evidence as G.C. Exh. 2, is dated September 30, is on the Union's letterhead, and is addressed to Respondent's employees, asking them to attend a meeting to be held at the City Hall in Lake City at 2 p.m. on Sunday, October 3, for the purpose of answering any questions employees might have regarding the Union. At the bottom of the page in large letters appears the legend "Please Post On Bulletin Board."

<sup>8</sup> The evidence shows that Putman supervised the employees in the electrical shop.

<sup>9</sup> The toolbox is a large red box on wheels. The contrast of the white leaflet on the red box caught the attention of a number of people, employees and representatives of management, who stopped to look at it.

<sup>10</sup> This is a rack in the work area where cowls are stored after being removed from the plane.

<sup>11</sup> Roberts testified that on this occasion he was in the plant, and remarked, "Who in the hell is posting all those posters," and that Brannen, who was standing close by, remarked that he did not know. Roberts claims that his remark was general and not directed to any particular person and denied that he made any statement regarding the necessity for the consent of management for the posting of any material. For reasons hereafter stated, I find it unnecessary to resolve the conflict.

but who was then temporarily working on what Respondent calls the commercial project, were informed by Roberts that they were being laid off because of lack of work, but that as soon as sufficient work became available, probably in about 2 to 4 weeks, they would be recalled to work. Each was in fact recalled to work during the first week of December. According to Roberts and Personnel Director Barbara Kuhn, layoffs are made by station seniority and the seniority list received in evidence without objections shows that Grubbs, Brannen, and Fowler were the least senior at station 13 on the Navy line. Respondent contends that the layoffs were made necessary by the fact that there was no work available at station 13 on the Navy line.

Before detailing the evidence relating to the necessity for the layoff, some background evidence is required for an understanding of Respondent's operations. As heretofore stated, Respondent is engaged in the overhaul and repair of C-130 aircraft. The greatest portion of the work is for the United States Government pursuant to separate contracts with the Navy and Air Force, but it also does so-called commercial or civilian work, which is work being done principally for the governments of Colombia and Peru. The Navy, Air Force, and commercial contracts are performed on separate lines and each line has designated stations. For example, there is a station 13 on the Navy line and a station 13 on the Air Force line, but these stations do not necessarily perform the same operation on the planes. When a plane arrives at Respondent's plant for work it is assigned a sequence number, such as C-52, C-53, etc., and if it is a United States Government plane it is assigned to the appropriate Navy or Air Force line.

Station 13 on the Navy line is physically located in hangar 2, which hangar can accommodate four planes.<sup>12</sup> The work performed at station 13-Navy involves the inspection and replacement, if necessary, of any hoses in the engine; a check for any visibly damaged parts; removal of the props which are sent out for any necessary repair; and the removal of the engine, if necessary. This involves disconnecting all hoses and cables. The actual repair work on engines is usually performed at station 19-Air Force. After any necessary repairs the engine and props are returned to station 13 for installation by station 13 employees. If the repair order calls for the removal of the wings, the outboard engines must be removed, even though such removal might not otherwise be necessary. The work of actually removing and reinstalling the wings is generally done by a night crew.<sup>13</sup> Station 13 employees reinstall any engines that have been removed from the planes and coordinate the controls with the cockpit.

In August and early September, the crew of station 13-Navy consisted of seven employees: Supervisor Lassiter, Leadman Glenn Barrick and five assembly mechanics,

<sup>12</sup> Hangar 1 is also utilized for Navy work and can accommodate three planes. Hangar 3 is used only for painting. Hangars 5 and 6 are used for work on Air Force and foreign planes.

<sup>13</sup> For reasons of safety, it is prudent to remove and reinstall wings at times when as few people as possible are in the area.

<sup>14</sup> According to Roberts, five other persons were transferred from the Navy line to the commercial line from stations other than station 13. The record does not identify those stations, nor does the complaint make any reference to those five employees.

<sup>15</sup> Menendez had a slightly different version of these events. According

Bradley, Brannen, Douglas, Fowler, and Grubbs. According to Roberts, it came to his attention that the volume of work on his line was diminishing and he raised this subject at a production meeting held on September 20. When John Williams, program manager for the commercial line, announced he could use the surplus personnel, Roberts, on the following day, transferred Douglas and Fowler to the commercial line.<sup>14</sup> Williams reported, at a meeting held about the middle of the week of September 27—Wednesday was September 29—that his manpower was over his budgeted allotment. Menendez, who was present, stated that he "would try to work out something and he'd get back with us as soon as possible and tell us what to do." On Friday, October 1, Menendez issued instructions for the layoff of the three employees from station 13.<sup>15</sup>

To support its contention that the layoffs here involved were motivated solely by economic considerations, Respondent relies basically upon the testimony of Roberts, Lassiter, and Respondent's Exhibit 8, which is a compilation logging the movement of aircraft through the facility.

Roberts testified in essence that at the time of the layoff there were only two aircraft in hangar 2 to be worked on, one nearing completion and the other there for a wing modification which would take approximately 90 days, which would leave ample time for the reduced crew to perform the other functions required. The testimony of Lassiter in this respect is substantially in accord with that of Roberts.<sup>16</sup>

The September 21 transfer of Douglas and Fowler to the commercial project left three assemblers in station 13. On October 1, Fowler was, for purposes of layoff, returned to station 13 and three assemblers were laid off. Thus, after October 1, the working crew of station 13 consisted of the leadman and one assembler. The evidence shows that the leadman, prior to the layoff, did no work with his tools. His job was to schedule the work at his station, assign the work to the men, and see that they performed their duties properly. After the layoff, he was required to work as an assembler, which permitted no time for other duties.

Respondent's Exhibit 8 shows the date each aircraft arrived at Respondent's facility and the number of days which elapsed between the arrival of a given aircraft and the arrival of the next one. It starts with aircraft sequence number C-39, which arrived on September 25, 1975, and ends with sequence number C-61, which arrived December 27, 1976. The compilation does not reveal, nor is there any other evidence to show, how long each plane remained on Respondent's premises, nor what work was to be performed on the respective planes. For the entire period the average number of elapsed days between each arrival was 21.8 days. From the time of the layoff on October 1 to December 27, 1976, the last arrival shown by Respondent's

to Menendez, he told his production manager a week or two before October 1 that the transfer of people to commercial would not solve the problem and that a layoff was necessary. Menendez further testified that he made the decision for the layoff, on September 29, after discussion with Company President Gurmon. The latter did not testify.

<sup>16</sup> Lassiter went on sick leave on October 8, was absent from work for about 6 weeks, and at the time of the hearing had not resumed supervision of the Navy project. In his absence Wendell Winko served as supervisor of Navy project station 13, of the power plant department at Air Force project station 13, and of the commercial project.

Exhibit 8, a total of five planes were delivered to Respondent's plant.<sup>17</sup> The average elapsed time between such deliveries was 20.4 days. For the last five planes delivered to Respondent prior to the layoff<sup>18</sup> the average elapsed time was 25.8 days.

The evidence introduced by the General Counsel, however, shows considerably more. Leadman Barrick credibly testified<sup>19</sup> that it was his duty to schedule the work at station 13 and to assign the men to do it; that on October 1 he observed no surplus of men at station 13, having lost two men on September 21 by reason of the transfers to the commercial project; that at the time of the layoff there were three planes in the hangar, sequence numbers C-52, C-54, and C-55; that the C-52 had no wings on it, which meant that the two other engines had to be installed and rigged when the wings were reinstalled; that the C-54 had an engine sitting on the dock to be sent out for work and then reinstalled and rigged; that work on the C-55 had to await reinstallation of wings and the return of engines before further work could be done; that the C-56, which arrived at Respondent's premises on September 21, was brought into the hangar on October 7; that during the week following the layoff his crew consisted of only one man and himself and both were very busy, there being a great deal of work; that on the following Saturday and Sunday engines and propellers were installed on the C-52 and four were removed from the C-56 by employees from station 19, at overtime rates, work which ordinarily would have been performed by station 13 employees and that such assignment of station 19 employees at overtime rates had never occurred before; and that the engines were removed from C-56 and later reinstalled by station 19 personnel, also work which in the past had been performed by station 13 employees. Even Supervisor Winko admitted that had station 13 been at full strength such personnel would have been assigned to do all this work except for the actual work on the internal parts of the engine and the removal, overhaul, and reinstallation of the wings.

The evidence further shows that on October 1 Respondent laid off five employees, all from station 27, in addition to the three involved in this proceeding. Although the complaint herein does not allege that the layoff of the five employees from station 27 was discriminatorily motivated—and I make no findings in that regard—it is relevant to note that the five employees laid off from station 27 were recalled to work about 3 weeks after their layoff.<sup>20</sup> Equally significant is the conversation between Supervisor Brooks and Supervisor Winko in late October, which was overheard by employee Deloach. As heretofore stated, Winko succeeded Lassiter as supervisor of station 13. About 3 or 4

weeks after the October 1 layoff, Brooks asked Winko when the three men laid off from station 13 were going to be recalled to duty. Winko replied, "Those people are never gonna work for me again."<sup>21</sup>

#### IV. CONTENTIONS AND CONCLUSIONS

##### A. *The 8(a)(1) Allegations*

The mere presence of management officials at a public place where the Union happens to be meeting, without more, establishes neither surveillance nor a reasonable basis for an impression of surveillance in the minds of employees in attendance at the meeting.<sup>22</sup> To establish the violation it must be found that the presence of the management representative at the location was not for a legitimate purpose or that it was for the purpose of observing the meeting. Having discredited Patterson's account of his actions on September 26, his reason for such a lengthy absence from the plant in the middle of a day when he was the official in charge, and his explanation for his presence at Young's Park, I can only conclude, and therefore find, that his purpose in being at Young's Park on the occasion involved was to engage in surveillance of the union activities of Respondent's employees,<sup>23</sup> and that he in fact did so. That an employer's surveillance of the union activities of his employees is unlawful is too well settled to require the citation of authority. I find that Respondent thereby violated Section 8(a)(1) of the Act.

The interrogation of employee Grubbs by Supervisor Brooks, I find and conclude, violated Section 8(a)(1) of the Act. The Board has frequently held that interrogation with respect to the union attitudes and sympathies of employees, without a legitimate purpose and adequate assurances against reprisal, which is the situation disclosed by this record, is inherently coercive, and hence violates Section 8(a)(1) of the Act.<sup>24</sup>

The evidence fails to establish that Respondent promulgated an unlawful no-distribution rule which required that, in the future, all material posted or distributed must be approved by Respondent, as alleged in paragraph 5(d) of the complaint. I find that the incident involving the posting of the notice of a union meeting on the various toolboxes and racks was no more than the lawful enforcement of Respondent's valid rule<sup>25</sup> which prohibits distribution of literature in work areas of the plant. The evidence leaves no doubt that the toolboxes and racks to which the union notices were attached were all in a work area of the plant. Even assuming that the bulletin board is not in fact a work area, and that Respondent could not lawfully prohibit the posting of the union notice thereon, the mere act of

he made the latter remark because he did not want inexperienced men working for him. He admitted that he had no knowledge as to the experience of the men involved. To the extent that Winko's testimony conflicts with that of Deloach and Brooks, I do not credit him.

<sup>22</sup> *Atlanta Gas Light Co.*, 162 NLRB 436, 438 (1966).

<sup>23</sup> A fact finder clearly may reject even the uncontradicted testimony of a witness and find that the fact is that which the witness denies. See *N.L.R.B. v. Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962). In the instant case, however, Patterson's testimony does not stand wholly uncontradicted.

<sup>24</sup> *J.D.B., Inc., d/b/a Jim Bradley's Bucks Co. Country House*, 223 NLRB 1163 (1976); *Airborne Freight Corporation*, 229 NLRB 1141 (1977).

<sup>25</sup> *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, 621 (1962).

<sup>17</sup> This was on October 12, October 26, November 16, December 8, and December 27. The last plane delivered prior to October 12 was delivered on September 21.

<sup>18</sup> These were delivered on June 10, June 30, July 30, August 25, and September 21. The last plane delivered prior to June 10 was May 12.

<sup>19</sup> In all areas where the testimony of Roberts and Lassiter conflicts with that of Barrick, I credit the latter, because he impressed me as the more credible witness.

<sup>20</sup> Based on the uncontradicted and credited testimony of Jean Deloach.

<sup>21</sup> Based on the credited testimony of Deloach and the admissions of Brooks. Winko admits that Brooks asked him if he was going to recall the men from station 13, but claims that his answer was that he had no authority to do so, and that he would not have them working for him again. He claims

removing the posted material does not constitute a promulgation of a rule absent some pronouncement or reprimand in connection therewith. Further, there is no allegation in the complaint that such removal was a discriminatory application of a valid rule, a matter which was neither raised nor litigated.

Accordingly, I recommend that this allegation of the complaint be dismissed.

Further, because I find no evidence in the record to establish that Production Manager Roberts, on or about October 1, interrogated an employee concerning his union activity or the union activity of other employees, as alleged in paragraph 5(c) of the complaint, I shall recommend that said allegation also be dismissed.

#### B. *The 8(a)(3) Allegations*

Upon consideration of the entire record, I am convinced, and therefore find and conclude, that Respondent's layoff of Grubbs, Fowler, and Brannen on October 1 was discriminatorily motivated. The General Counsel proved the classic indicia of a discriminatorily motivated layoff when he established that the tenure of employment of admittedly satisfactory employees was affected without prior warning or notice hard upon discovery that such employees were engaged in protected union activity. A *prima facie* case having been established, the burden of proving a lawful motive for such action then shifts to Respondent.<sup>26</sup> To carry this burden of evidence Respondent relies upon the compilation of aircraft arrival records and the testimony of Roberts and Lassiter to the effect that available work had diminished to the point that a layoff of the men was a matter of economic necessity.

The exhibit previously referred to does not show the necessity for the layoff. All the compilation shows is the date each plane arrived at Respondent's plant and the elapsed time between the arrival of a given plane and the arrival of the next one. The exhibit shows neither the nature and quantity of work to be performed on a given plane nor the period of time the plane remained at Respondent's plant. There is testimony that each work section receives a specific manpower budget as part of Respondent's cost control recordkeeping. Certainly, where this type of record is kept, in a plant the size of the one involved herein, extensive production records must also have been maintained from which the flow, type, and volume of work for any given period could be determined. No such records were presented by Respondent, nor was any reason advanced for not producing them. In this posture, the language of the Supreme Court in *Interstate Circuit Inc. v. United States*, 306 U.S. 208, 226 (1939), is particularly pertinent. The Court there said, "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse." And the Board has frequently held that the

failure to introduce available business records to support an economic defense makes the defense suspect.<sup>27</sup>

The testimony of Roberts and Lassiter regarding the volume of work available at station 13 is substantially contradicted by that of Barrick. As heretofore set forth, in such areas of dispute I have credited Barrick, which in itself leaves the defense unsubstantiated. But, even if the testimony of Roberts and Lassiter stood uncontradicted, Respondent's case would not be advanced, for the trier of facts is not required to accept without question the uncorroborated evidence of Respondent's agents that reduced business made the layoff necessary. The best evidence to establish that fact is, as heretofore indicated, Respondent's books and records, and these were not presented.<sup>28</sup>

Having concluded that Respondent has failed to establish economic considerations as its motive, and having found that the General Counsel has presented a *prima facie* case of a discriminatory motive, I conclude<sup>29</sup> and find that Grubbs, Fowler, and Brannen were laid off because of their assistance to, and support of, the Union and, hence, the layoffs violated Section 8(a)(3) and (1) of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I state the following:

#### CONCLUSIONS OF LAW

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

2. The Union, Truckdrivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in surveillance of the union activities of its employees, and by interrogating employees with respect to their union activities and sympathies, Respondent interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discriminating in regard to the hire, tenure, and other terms and conditions of employment of John Grubbs, Theodore Fowler, and L. B. Brannen because of their assistance to and support of the Union, thereby discouraging membership in the Union, Respondent engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

5. Except to the extent set forth in Conclusions of Law 3 and 4, above, the General Counsel has failed to prove by a preponderance of the evidence that Respondent engaged in any unfair labor practice alleged in the complaint.

If he [the trier of fact] finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference.

<sup>26</sup> See *J. J. Gumberg Co. and Pennley Park South, Inc.*, 189 NLRB 889, 890 (1971).

<sup>27</sup> *Tabulating Card Company, Incorporated*, 123 NLRB 62, 73 (1959); *New England Web, Inc., National Webbing Inc., et al.*, 135 NLRB 1019, 1025 (1962); *Morrison Motor Freight, Inc.*, 137 NLRB 933, 939 (1962).

<sup>28</sup> *Joseph J. Lachniet d/b/a Honda of Haslett*, 201 NLRB 855, 867 (1973).

<sup>29</sup> As the Court of Appeals for the Ninth Circuit stated the principle in *Shattuck Denn Mining Corporation v. N.L.R.B.*, 362 F.2d 466, 470 (1966):

THE EFFECT OF THE UNFAIR LABOR PRACTICES  
UPON COMMERCE

ORDER<sup>30</sup>

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

## THE REMEDY

Having found that Respondent interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act, and discriminatorily laid off three employees, I shall recommend that it be required to cease and desist from such conduct and take affirmative action designed and found necessary to effectuate the policies of the Act. The unfair labor practices found being of a character which go to the very heart of the Act, an order requiring Respondent to cease and desist from in any other manner infringing upon employee rights is warranted, and I shall so recommend. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4, 1941); *California Lingerie, Inc.*, 129 NLRB 912 (1960).

Having found that Respondent discriminatorily laid off John Grubbs, Theodore Fowler, and L. B. Brannen, I shall recommend that Respondent be required to make each of them whole for any loss of earnings suffered by reason of the discrimination against them, by paying to each employee a sum of money equal to the amount said employee would have earned as wages from October to the date said employee was recalled by Respondent, less the net earnings of that employee during that period, the same to be computed in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and shall bear interest at the rate of 6 percent per annum as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). A requirement for reinstatement is not recommended as the record shows that each employee was recalled by Respondent in early December. Respondent will be required to restore to them any seniority or other employment benefits lost by reason of the discriminatory layoffs. It will also be recommended that Respondent be required to preserve and, upon request, make available to authorized agents of the Board, all records necessary or useful in determining compliance with the Board's Order, or in computing the amount of backpay due.

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

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

## 1. Cease and desist from:

(a) Interrogating employees regarding their membership in, sympathies for, or activities on behalf of, Truckdrivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen Helpers and of America, or any other labor organization of its employees.

(b) Engaging in surveillance of the union activities of its employees, or in any conduct which can reasonably be calculated to convey to its employees the impression that their union activities are under its surveillance.

(c) Discouraging membership in the aforesaid or any other labor organization of its employees, by discriminatorily laying off employees, or changing the terms and conditions of employment of its employees, or in any other manner discriminating against any employee in regard to the hire, tenure, or any other term or condition of employment.

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

## 2. Take the following affirmative action found necessary and designed to effectuate the policies of the Act:

(a) Restore to John Grubbs, Theodore Fowler, and L. B. Brannen any seniority or other employment benefits lost by reason of their layoff, and make them whole for any loss of earnings they severally suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its plant in Lake City, Florida, copies of the attached notice marked "Appendix."<sup>31</sup> Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by an authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

<sup>30</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>31</sup> In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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

IT IS FURTHER ORDERED that paragraphs 5(c) and (d) of the complaint herein be, and the same are, hereby dismissed.