

**Willow Mfg. Corp.; Oak Apparel, Inc. and Local 107,
International Ladies' Garment Workers' Union,
AFL-CIO. Cases 29-CA-4928 and 29-CA-5123**

September 26, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND MURPHY

On March 7, 1977, Administrative Law Judge Benjamin K. Blackburn issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, Charging Party, hereinafter called Local 107 or the Union, filed a brief in answer to Respondents' exceptions, and General Counsel filed a brief in support of the Administrative Law Judge's Decision and a brief in reply to Respondents' exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

1. We agree with the Administrative Law Judge, for the reasons set forth by him and for the further reasons discussed below, that Respondent Willow Mfg. Corp., herein called Willow, violated Section 8(a)(1) of the Act by interrogating employees with respect to their union activities, soliciting an employee to withdraw his authorization card, promising employees benefits if they refrained from union activity, and threatening employees with plant closure if the Union became their collective-bargaining representative.²

The Administrative Law Judge found that Gene Vitrano, president and co-owner of Willow, unlawfully interrogated employee Louis Carr during a

conversation between the two men on February 18, 1976,³ 1 day after the Union's demand for recognition. Similarly, the Administrative Law Judge found that the interrogation of employee Anthony Serino on March 8 or 9 by Anthony Vitrano, father of Gene and part owner and manager of labor relations at Oak, violated Section 8(a)(1) of the Act. Respondents attack the findings as to the interrogation of Carr essentially on credibility grounds. Inasmuch as we have affirmed the Administrative Law Judge's credibility resolutions, we find no merit to Respondents' exceptions in this regard. Respondents further contend that the interrogation of Serino was not unlawful because it occurred in "an atmosphere totally devoid of any coercion." We find no merit to this contention in view of our conclusion, discussed below, that during this same conversation Anthony Vitrano made unlawful threats of plant closure if the Union's organizing campaign were successful. In any event, we find that the interrogation had no legitimate purpose and was not accompanied by any assurances against reprisal. Under these circumstances, we conclude that the questioning was indeed coercive and, accordingly, violated Section 8(a)(1) of the Act.⁴

In the February 18 conversation with Carr, Gene Vitrano emphasized that the Union's excessive demands had forced other plants on Long Island to go out of business. Similarly, Anthony Vitrano told Serino that, if Local 107 successfully organized Willow's employees, the shop might not be able to make any money and would therefore be forced to close. Likewise, during the week of February 23, Gene Vitrano told employee Milton McKnight that Local 107 had forced other plants to close, mentioning particularly a business owned by the father of one of McKnight's fellow employees. During this same conversation with McKnight, Vitrano said that Willow's employees would get the same benefits from their employer that Local 107 would allegedly obtain for them. In this context of unlawful interrogation and promise of benefits,⁵ we conclude that the foregoing statements regarding possible closing of

¹ Respondents have 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.

² The Administrative Law Judge also found, *inter alia*, that Respondents Willow and Oak Apparel, Inc., herein called Oak, constitute a single employer within the meaning of Sec. 2(6) and (7) of the Act, and that certain other allegations of the complaint should be dismissed. We agree with these findings. We further agree with the Administrative Law Judge that Willow's grant of increased holiday pay to employees violated Sec. 8(a)(1) of the Act but, in view of the broad Order herein, find it unnecessary to pass upon his conclusion that the grant of benefits also violated Sec. 8(a)(3) of the Act.

³ All dates herein are 1976 unless otherwise indicated.

⁴ See *Erie Technological Products, Inc.*, 218 NLRB 878 (1975); *General Automation Manufacturing, Incorporated*, 167 NLRB 502 (1967).

⁵ In addition to the unlawful promise of benefits made to McKnight by Gene Vitrano, Foreman Robert Pallateri, as found by the Administrative Law Judge, commented to McKnight during the latter part of February that McKnight had already received increased benefits and would soon be promoted. We agree with the Administrative Law Judge that these statements constituted implied promises of benefits, particularly inasmuch as they were made in the course of a conversation in which Pallateri raised the question of why Willow's employees needed a union to represent them. It is clear from the unlawful promises of benefits, considered in tandem with the threats of plant closure, that at the same time that Respondents were decrying the adverse economic effects of unionization and predicting the resulting potential necessity to close the plant, Respondents also indicated to employees that they could obtain the same benefits that a union could offer without being represented. Thus, in effect, Respondents stated that although they could not afford to meet Local 107's demands, they could nonetheless afford to give employees equivalent financial benefits. These

the plant were not "predictions carefully phrased on the basis of objective fact but rather were not-so-subtle threats [of] plant closure."⁶ Accordingly, we agree with the Administrative Law Judge that these statements violated Section 8(a)(1) of the Act.

We further agree with the Administrative Law Judge that Gene Vitrano's comment to Carr during the February 18 conversation, that the latter could withdraw his authorization card if he did not mean what he said when he signed it, was unlawful. Having already coercively interrogated Carr and threatened him with plant closure as a result of unionization, Vitrano "suggested" that Carr could retrieve his card. In these circumstances, we find that the suggestion constituted a solicitation to Carr to withdraw his card in violation of Section 8(a)(1) of the Act.⁷

2. The Administrative Law Judge concluded that Willow's change from an oral to a written warning system violated Section 8(a)(3) and (1) of the Act on grounds that the employees' union activities "triggered a change in their attitude and work habits" which in turn caused Willow to implement a written warning system to document incidents of misconduct. We disagree with the Administrative Law Judge's conclusion that the change was unlawful.

It is well established that the use of a warning system as part of a disciplinary procedure is permissible where the procedure is not implemented in response to protected union activities of employees.⁸ In the instant case, the undisputed evidence establishes that prior to the organizing campaign Willow had in effect a disciplinary system consisting of oral warnings. The evidence further establishes that, following the Union's demand for recognition, employees refused to obey supervisors' orders, productivity declined, and employee discipline essentially collapsed. It is further undisputed that the written warning system was adopted solely in order to document instances of employee misconduct. In these circumstances, we conclude that a preponderance of the evidence does not warrant a finding that the change in the warning system violated Section 8(a)(1) or (3) of the Act, and we shall therefore dismiss this allegation of the complaint.

3. We agree with the Administrative Law Judge that issuance of a bargaining order is warranted to remedy Respondents' unfair labor practices. Notwithstanding our conclusion that the change in the warning system did not constitute an unfair labor

practice, it is clear that a bargaining order is required in light of our conclusions that Respondents coercively interrogated employees, solicited an employee to withdraw his authorization card, made threats of plant closure, promised benefits to employees if they refrained from union activity, and granted benefits to induce employees to abandon their support for the Union. The possibility of erasing the effects of these unfair labor practices and of ensuring a fair election is slight and therefore the employees' choice, as expressed by authorization cards, will be better protected by a bargaining order.⁹ The verbal communications found herein to have violated Section 8(a)(1) of the Act were at the height of the organizing campaign at a time when there was considerable concern among employees that union representation would lead to the closing of the plant. Thus, although only 3 employees were directly involved in this unwarranted conduct, the total unit was comprised of only 17 employees and it is reasonable to infer that the unlawful statements made by top management officials to individual employees were disseminated to most, if not all, of the other unit employees. Furthermore, the grant of increased holiday pay found herein to have been unlawful clearly affected the entire bargaining unit. Accordingly, we agree with the Administrative Law Judge that Willow has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and that the Order should run against both Willow and Oak.

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 thereby orders that the Respondents, Willow Mfg. Corp. and Oak Apparel, Inc., their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Delete paragraph 1(f) from the recommended Order and reletter the subsequent paragraphs accordingly.
2. Delete paragraph 2(a) from the recommended Order and reletter the subsequent paragraphs accordingly.
3. Substitute the attached notice for that of the Administrative Law Judge.

Gene Vitrano also unlawfully interrogated Carr, a day or so after the February 18 conversation, as to whether Carr was still with Local 107, a query which may well have been prompted by Vitrano's concern as to whether his tactics had achieved the desired effect. This second interrogation of Carr further buttresses our conclusion that the earlier "suggestion" was in fact a solicitation to Carr to withdraw his card.

⁶ *Hogue & Knott, Inc.*, 217 NLRB 565 (1975).

⁹ *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 614-615 (1969).

mutually inconsistent statements afford further support for our conclusion that Respondents' statements regarding possible plant closure were not mere economic predictions.

⁸ *Russell Stover Candies, Inc.*, 221 NLRB 441, 443 (1975).

⁷ *Cf. Moldamatic, Inc.*, 223 NLRB 1096 (1976), in which the Board held that questions asked in a discussion during which other coercive statements were made violated Sec. 8(a)(1) of the Act, even though such questions might have been permissible standing alone.

IT IS FURTHER ORDERED that, with respect to all other unfair labor practices not found herein, the complaint be, and it hereby is, dismissed.

APPENDIX

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

The National Labor Relations Act gives all employees these rights:

- To engage in self-organization
- To bargain collectively through a representative of their own choosing
- To act together for collective bargaining or other aid or protection
- To refrain from any or all these things.

WE WILL NOT interrogate you about your union activities and sympathies.

WE WILL NOT solicit you to retrieve authorization cards you have given to a union.

WE WILL NOT promise you benefits if you refrain from union activities.

WE WILL NOT threaten you with plant closure in the event a union becomes your bargaining representative.

WE WILL NOT grant you benefits to induce you to abandon your support for a union.

WE WILL NOT refuse to recognize and bargain with Local 107, International Ladies' Garment Workers' Union, AFL-CIO, as the representative for purposes of collective bargaining of Willow Mfg. Corp.'s production and maintenance employees.

WE WILL NOT in any other manner interfere with you or attempt to restrain or coerce you in the exercise of the above rights.

WE WILL, upon request, bargain collectively with Local 107 International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of Willow Mfg. Corp.'s employees in a unit of all production and maintenance employees at Willow Mfg. Corp.'s plant located at 41 East Ranick Drive, Amityville, New York, excluding office clerical employees and supervisors as defined in Section 2(11) of the Act, and, if an understanding is reached, embody such understanding in a signed contract.

All our employees are free, if they choose, to join Local 107, International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization.

WILLOW MFG. CORP.;
OAK APPAREL, INC.

DECISION

STATEMENT OF THE CASE

BENJAMIN K. BLACKBURN, Administrative Law Judge: The charge is Case 29-CA-4928 was filed on March 26, 1976,¹ and amended on April 7. The complaint was issued on May 28 and amended on July 16. The hearing opened in Brooklyn, New York, on August 16 and continued on August 17 and 18. On the latter date I recessed the hearing indefinitely in order to give the General Counsel an opportunity to enforce his subpoena against Frank Romano in the United States District Court for the Eastern District of New York.

The charge in Case 29-CA-5123 was filed on July 26. The complaint was issued on September 8. I granted the General Counsel's motion to consolidate Case 29-CA-5123 with Case 29-CA-4928 for hearing on September 27. The hearing resumed in Brooklyn on November 11 and was concluded on November 12.

The issue litigated was whether Respondent Willow violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, under circumstances and in a manner which justify a finding that it refused to recognize and bargain with Local 107 in violation of Section 8(a)(5) of the Act under the principles enunciated by the Supreme Court in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). For the reasons set forth below, I find it did.

Upon the entire record, including especially my observation of the demeanor of the witnesses, and after due consideration of briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondents are both New York corporations. Willow has a plant in Amityville, New York, where it is engaged in the business of cutting fabric for women's clothing and related products. Oak has a plant in Copiague, New York, where it is engaged in the business of sewing women's clothing and related products. Each annually performs services valued at more than \$50,000 for firms located in States other than New York which themselves annually sell and ship goods valued at more than \$50,000 across state lines.

II. THE UNFAIR LABOR PRACTICES

A. *The Single Employer Issue*

All of the activities alleged as unfair labor practices in both complaints are attributed to Willow. The unit for

¹ Dates are 1976 unless otherwise indicated.

which the General Counsel seeks a bargaining order is limited to Willow's employees. However, the complaints allege that Willow and Oak constitute a single integrated business enterprise. The General Counsel seeks to have any order handed down in this proceeding run against Oak as well as Willow because Oak has already been found to have committed unfair labor practices in *Oak Apparel, Inc.*, 218 NLRB 701 (1975).

Most of the facts relating to this issue are stipulated. The criteria against which the facts must be measured to determine whether Willow and Oak are one employer for purposes of administering the Act were recently and summarized by the Board in *Stoll Industries, Inc.*, 223 NLRB 51, 53-54 (1976), when it adopted the Decision of Administrative Law Judge Herzel H. E. Plaine. Judge Plaine said:

The ultimate question is whether the two enterprises are sufficiently integrated to consider the business of both together in applying the standards of the Act. The principle factors weighed in deciding that sufficient integration exists include the extent of (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. While none of the factors has been held to be controlling, stress has been laid upon the first three factors to show operational integration, particularly centralized control of labor relations.

Here, there is little dispute that the first, third, and fourth tests are met. Both Willow and Oak work on contracts for jobbers in the garment industry; that is, each works on fabric which it does not own to produce a product which also does not belong to it. Willow cuts material for the customers which engage its services. Oak sews. Of the garments sewn by Oak, 98 percent have been cut by Willow for the same jobbers. However, only 20 to 25 percent of the fabrics cut by Willow are sewn by Oak. When Willow sends cut material to Oak to be sewn it does so on the instruction of the jobber who owns it, not because of any contractual arrangement between Willow and Oak. In the words of the stipulation, "both Willow and Oak receive work from substantially the same jobbers."

As to common ownership and management, the stipulation reveals that Oak is owned by Joseph (Gene) Vitrano and his wife Emma, while Willow is owned, in equal shares, by Gene Vitrano and two persons who are unrelated to him or his family. Gene and Emma Vitrano are the only officers and directors of Oak. Gene Vitrano and his unnamed associates are the only officers and directors of Willow. Gene Vitrano handles substantially all of the negotiations with jobbers for the work done by both Willow and Oak. He signs the paychecks for the employees of both Willow and Oak. Both payrolls are prepared at Willow's plant.

The dispute over this issue turns on the second criterion enumerated in *Stoll*—centralized control of labor relations. In this area, the stipulation only reveals that Anthony Vitrano, Gene Vitrano's father, "manages and controls labor relations at Oak Apparel, Inc." However, it is clear from *Oak Apparel, Inc.*, *supra*, that Gene Vitrano and Anthony Vitrano both have a hand in control of labor relations at Oak. Parts of the record in this proceeding

other than the stipulation establish with equal clarity that Anthony Vitrano plays a significant role in control of labor relations at Willow.

Gene Vitrano is the active day-to-day manager of Willow. His father is known in the plant as "the chief." Father was in Florida when, as is more fully set forth below, Local 107 demanded Gene Vitrano recognize it on February 17. Sometime during the following week, employees learned the chief was coming back to straighten things out. (In this respect, I do not credit the testimony of Gene Vitrano that his father was in Florida because he had retired. Retirement status is inconsistent with the stipulation by Respondent that Anthony Vitrano "manages and controls labor relations" at Oak.) When, exactly, he arrived on the scene is unclear in the record. However, he participated in the events in early March which surrounded the termination of Frank Romano, the employee who was the General Counsel's principal witness in this proceeding. (A charge filed by Local 107 that Romano was discharged in violation of Section 8(a)(3) and (1) of the Act was withdrawn after investigation revealed it had no merit.) On March 9, Anthony Vitrano was present as Romano was quizzed about why his timecard had been punched out at 5 p.m. the day before when he had left for lunch at noon and not returned. Romano was given a written warning later that day by Foreman Robert Pallateri. (The fact that the warning was in writing is the only aspect of Romano's departure which is germane to the unfair labor practice allegations in this proceeding.) On March 12, when Romano returned to the plant and asked to be allowed to change his mind about quitting, Anthony Vitrano was one of the persons he talked to. Romano was told he could not come back to work. On the basis of these incidents, I find Gene and Anthony Vitrano share control of labor relations at Willow just as they do at Oak.

Since Willow and Oak meet all four of the criteria set forth above in *Stoll*, I find they are a single integrated business enterprise.

B. Credibility

The events surrounding the two changes in Willow's operations which the General Counsel has alleged as violations of Section 8(a)(3) and (1) of the Act are undisputed. The conversations which underlie the independent 8(a)(1) allegations are another matter. The General Counsel called six employees as witnesses. Five of them testified about conversations with Gene Vitrano, Anthony Vitrano, Cosmo Sagristano, Willow's plant manager, Robert Pallateri, Willow's foreman in charge of the cutting operation, and/or John Avino, a rank-and-file employee. (The testimony of Tomas Pabon related only to the 8(a)(3) holiday pay issue.) Respondent called only Gene Vitrano and Sagristano in its defense. (Pallateri was no longer employed by Willow at the time of the hearing. Respondent's counsel readily stipulated that, if called, he would testify he shifted from oral to written warnings for violations of company rules sometime after Local 107 demanded recognition.)

The major part of the testimony relied on by the General Counsel came from Frank Romano. It pitted him, in large measure, against Gene Vitrano. I do not credit Vitrano,

principally because of his statement on the witness stand that an affidavit which he gave a Board investigator in connection with this proceeding was only 90 percent accurate. However, the General Counsel's case is not automatically established thereby, for I do not credit Romano either. In his case, my reluctance to believe him when his testimony is an irreconcilable conflict with that of either Vitrano or Sagristano grows out of the events which surrounded his leaving Willow's employ. He went home for lunch on March 8, fell asleep, and failed to return to work. Someone punched his timecard out as of the end of the day. When he returned to work on March 9, he was given a written reprimand. This upset him so badly that he quit. He told Local 107 he had been discharged because of his union activities. Local 107 filed an unfair labor practice charge on his behalf, then withdrew it when the investigation revealed he had not been discharged at all. In both Vitrano's case and Romano's case, attitude toward the truth in dealing with the Board's investigative processes is complemented by demeanor on the witness stand in my decision not to credit them.

Since the General Counsel has the burden of proof, my discrediting of Romano means that I make no findings of fact as to incidents where his version is disputed by one or the other of Respondent's witnesses. For example, the only evidence to support an allegation that Sagristano "threatened . . . employees with plant closure" is Romano's account of a conversation he claimed to have had with Sagristano on February 18. Like the General Counsel's witnesses other than Romano, Sagristano was generally credible. He denied saying the things attributed to him by Romano. Therefore, there is no reference below to any such conversation, just as there is no reference to conversations which Romano claimed to have had with Gene Vitrano.

To recapitulate, I have relied on the testimony of Frank Romano and Gene Vitrano only to the extent they are corroborated by others. The findings of fact which follow are a synthesis of the testimony of the witnesses I found to be credible and represent, I hope, an accurate picture, based on the record as a whole, of what happened at Willow's plant in late February and early March 1976.

C. The 8(a)(1) Issues

1. Facts

Armed with valid authorization cards signed by 11 of Willow's 17 production and maintenance employees, Edward Banyai and Gasper Sciacca, officials of Local 107, went to Willow's plant at noon on February 17 to demand recognition. As the lunch hour began, they rounded up the 11 employees who had authorized Local 107 to represent them, gave them large buttons declaring support for the International Ladies' Garment Workers' Union which the employees pinned to their clothing, and proceeded to the office. Eventually, all 13 men were admitted to the private office of Gene Vitrano, Willow's managing owner. Banyai

² Carr placed this conversation on the afternoon of February 17. However, his recollection was so uncertain that the affidavit he gave to a Board investigator, coupled with Sagristano's testimony about what happened that afternoon, convinces me that, as to this detail, Gene Vitrano

handed Vitrano a letter in which Local 107 claimed to represent a majority of Willow's employees in a production and maintenance unit and demanded recognition. Banyai made the same demand orally. Vitrano asked if Mary still worked for Local 107. Banyai said she did. (This was an allusion to *Oak Apparel, Inc.*, *supra*, where two of Local 107's paid organizers named Mary Calligaris and Antoinette Jackson were found to have been discharged by Oak in violation of Sec. 8(a)(3) and (1) of the Act.) Vitrano said he understood what was going on, Banyai did not have to explain the situation to him. Banyai said fine, when could he expect to hear from Vitrano? Vitrano said in a week or two, as soon as he had a chance to get in touch with his lawyer. The meeting was over before 12:30. Banyai and Sciacca left. The employees finished their lunch hour.

Work resumed at 1 p.m. However, little if any production was accomplished in the plant that afternoon. Instead, the employees gathered in groups and discussed the situation. The question that was uppermost in their minds was whether Local 107's demand would lead to closing of the plant. This rumor was started by the Avino brothers, John and Joseph, and Greg Giardano, three of the six employees who had not signed authorization cards. In the course of railing at the cardsigners for putting all their jobs in jeopardy, the Avinos and Giardano said that Gene Vitrano had told them he would close the plant rather than go union. Pallateri was at his desk in the production area but out of earshot while these conversations were going on. Sagristano spent all but a few minutes of the afternoon in his office, adjacent to Vitrano's in the office area. He, too, did not overhear what the employees were saying to each other. Vitrano spent the entire afternoon in his office and, consequently, did not overhear what the employees were discussing. John Spampinato, one of the 11 employees who had signed authorization cards, came into Vitrano's office to talk to him near quitting time. There is no credible evidence in the record of what Vitrano and Spampinato said to each other. Conversations in which employees discussed the possibility of the plant closing occurred on the days immediately following February 17.

The next day² Louis Carr, one of the employees who had signed Local 107's authorization cards, went to the office to talk to Gene Vitrano about his fears. Vitrano asked Carr what he thought about Local 107. Carr said he was worried because of an experience he had had with the Teamsters on a previous job. Carr asked Vitrano what he was going to do about Local 107's demand. Vitrano said that Local 107, by making demands which employers had been unable to meet, had caused many plants on Long Island to go out of business. Vitrano said Local 107 was not going to be paying Willow's employees, he was. Carr indicated doubt that he had done the right thing when he signed an authorization card. Vitrano told Carr to ask Local 107 to return his card if he did not mean what he said when he signed it.

A day or two later Carr went to Gene Vitrano's office again to complain about John Avino. The problem on

was right when he testified that he first talked to Carr on February 18. Carr's and Vitrano's versions of what they said to each other are, of course, diametrically opposed.

Carr's mind grew out of a dispute he had had with Avino over their respective duties and was unrelated to Carr's pronoun or Avino's antiunion stance. As Carr was leaving the office, Vitrano asked him if he was still with Local 107. Carr did not reply.

Sometime during the week of February 23 (i.e., the week following the one in which February 17 fell), Milton McKnight, another cardsigner, went to the office to borrow money from Gene Vitrano. In the course of their conversation Vitrano told McKnight substantially the same thing he had told Carr about Local 107's record on Long Island. He cited, as an example, a shop which Sagristano's father had owned which had been forced out of business by Local 107's excessive demands. Vitrano said Local 107 was not interested in Willow's employees, only in the \$6 a month in dues it would get from each one. He said he knew the pronoun employees were wearing their ILGWU buttons at Local 107's behest to aggravate him because Local 107 hoped he would fire them. He said he was not going to fire them, he would just wait for them to quit. He said it would take a little time but the employees could have the same benefits Local 107 could get for them without having Local 107 represent them. He said employees had voted Local 107 out of the shop some 15 years ago and Local 107 was just trying to get back in. (There is nothing in the record to indicate whether or not this remark had any basis in historical fact.) McKnight got his loan.

Around this same time McKnight had a conversation with Robert Pallateri, the foreman, in which Pallateri brought up the question of whether Willow's employees needed a union to represent them. Pallateri pointed out to McKnight that he had already gotten \$10 extra holiday pay for Washington's Birthday (see the section below entitled "Holiday pay"). He added that McKnight would soon be promoted to spreader which would mean a raise for him as well as an end to such menial duties as emptying barrels, sweeping the floor, and tying cut goods.

Sometime in early March, Gene and Anthony Vitrano summoned Anthony Serino, another cardsigner, to the office. (Anthony Vitrano knew Serino as a worker in the garment industry from a relationship which predated Serino's employment by Willow.) Anthony Vitrano asked Serino why he had gone with Local 107, adding the employees should have come to him and asked for what they wanted instead of going to Local 107. Serino said Anthony Vitrano had a reputation for not giving too many benefits, adding that, although Vitrano might be right in saying the employees had made a mistake when they went to Local 107, what was done was done. Anthony Vitrano said the industry was in bad shape and, if Local 107 did get in, the shop might not be able to make any money because of higher expenses and might have to close. Serino said both the Company and the employees might have made a mistake, the Vitranos by not treating the employees better and the employees by going to Local 107.

2. Analysis and conclusions

It is obvious, and I find, that Respondent Willow committed the following independent violations of Section 8(a)(1) of the Act:

Interrogation of employees about their union activities and sympathies when Gene Vitrano talked to Louis Carr and when Gene and Anthony Vitrano talked to Anthony Serino.

Solicitation of employees to retrieve the authorization cards they had given to a union when Gene Vitrano talked to Carr.

Promise of benefits if employees refrained from union activities when Gene Vitrano and Robert Pallateri talked, on separate occasions, to Milton McKnight.

There remain for consideration two issues raised by the complaint. Is Willow responsible for John Avino's statements to employees? Did Gene and Anthony Vitrano threaten to close the plant if Local 107 came in?

The allegations with respect to John Vitrano were added to the complaint in Case 29-CA-4928 in the amendments of July 16. Why the General Counsel elected to single out John and ignore his brother, Joseph, as well as Greg Giardano, all three of whom talked about the plant closing, is unexplained. In any event, the testimony of General Counsel's witnesses on this point does not establish that Gene Vitrano told John Avino he would close the plant for it is hearsay in that respect. Rather, for the General Counsel to prevail on this issue, he must first establish that John Avino was acting as Respondents' agent when he told pronoun employees Gene Vitrano had said he would close the plant rather than go union. General Counsel's brief argues for such a finding on two grounds, thus:

Employees were also interrogated and threatened with plant closure by John Avino as illustrated by the testimony of Frank Romano, Milton McKnight and Louis Wilchynski. The General Counsel contends that Avino was a special agent of Respondent for this purpose. See *Teledyne Dental Products*, 210 NLRB 435. These threats were ratified and condoned by Respondent as the testimony of Frank Romano indicates. It is particularly disturbing that Gene Vitrano did not reassure Romano and tell him he would not close but rather told him he could not answer the question repeatedly.

My failure to credit Romano, coupled with the fact that Gene Vitrano, Sagristano, and Pallateri were out of earshot when antiunion employees were spreading plant closure rumors, negates any finding of agency on a ratification/condonation theory. As to the contention that John Avino was explicitly commissioned to spread such a rumor, *Teledyne* is distinguishable from the situation here. There Plant Manager Opotow "*had his secretary try to find out why the employees wanted a union*. She succeeded in having the employees list their demands for presentation to Opotow. She carried this list into Opotow's office and later returned to inform the employees that the demands had been 'okayed,' and for them to sign the list." (Emphasis supplied.) Here there is no evidence on which to base a finding Respondent Willow had antiunion employees, including John Avino, do anything. I find, therefore, Respondent Willow did not violate Section 8(a)(1) when John Avino interrogated employees and told them Gene

Vitrano had said he would close the plant rather than go union.

As to the Vitranos' comments about the effect of unionization on the plant's future, it is clear that they couched their remarks in economic terms. Whether the employee to whom they were talking was Louis Carr, Milton McKnight, or Anthony Serino, their theme was that Local 107 had a history of forcing employers in the area out of business by raising their costs to unacceptable levels. There is no evidence that this theme was anything other than a figment of the Vitranos' imagination. As such, it was more than a reasonable prediction of results of unionization over which Respondent Willow had no control and became a prediction of reprisal against employees' union activities. I find, therefore, Respondent Willow did violate Section 8(a)(1) when Gene and Anthony Vitrano impliedly threatened employees with plant closure in the event Local 107 became their bargaining representative.

D. *The 8(a)(3) Issues*

1. Holiday pay

In 1976 Washington's Birthday was celebrated on Monday, February 16, the day before Local 107 demanded recognition. Prior to February 17, Willow's policy with respect to holiday pay was as follows: Employees on the payroll for more than 3 months received a lump sum according to their job classifications for New Year's Day, Washington's Birthday, Memorial Day, Labor Day, and Thanksgiving Day. Cutters #1 received \$25, cutters #2 \$20, and all other employees, including spreaders, received \$10. A few days after February 17, Willow changed its policy so that all cutters now receive \$25, spreaders receive \$20, and all other employees (characterized now as "packers" on the "Contract" on the plant bulletin board which sets forth Willow's policy with respect to holiday and vacation pay) receive \$10. The change was made retroactive to cover Washington's Birthday. As a result, when employees were given holiday pay for Washington's Birthday, John Avino, John Spampinato, and Anthony Jackson received \$25 instead of \$20, while Alex Ippolito, Frank Romano, and Milton McKnight received \$20 instead of \$10.

In discrediting Gene Vitrano generally, I perforce discredit him specifically as to his explanation for these events. He said that he authorized promotions from cutter #2 to cutter #1 for Avino and Spampinato on Pallateri's recommendation and that everything else which occurred, including, especially, the handwritten alterations on the bulletin board contract which announced the change in policy, was a mistake by his underlings of which he was unaware until charges were filed in this matter. Even if I were to credit other portions of Vitrano's testimony, this would be impossible to swallow. The timing in relation to Local 107's demand is too close to admit of any explanation other than an antiunion motive. Even the fact that four of the six employees who benefited immediately from the change in policy (Spampinato, Jackson, Romano, and McKnight) were supporters of Local 107 does not help Willow. It, like Pallateri's remark to McKnight about the extra \$10 he had already received, only reinforces the

conclusion that the motive for liberalizing holiday pay was to induce employees not to bring Local 107 into the plant as their bargaining representative. I find, therefore, Respondent Willow violated Section 8(a)(3) and (1) by granting its employees a benefit, namely, an increase in holiday pay, to induce them to abandon their support for Local 107.

2. Written warnings

This is the one issue added to this proceeding by the complaint in Case 29-CA-5123. As already indicated, Pallateri gave Romano a written warning, the first in Willow's history, on March 9 for failing to return to work after lunch on March 8. It was signed, on behalf of Willow, by both Pallateri and Sagristano. Gene Vitrano's explanation for this change from a system of oral warnings only was as follows:

Q. Did there come a time when you instituted a written reprimand procedure?

A. Yes.

Q. Approximately when was that?

A. I spoke to Bob Pallateri and Cosmo [Sagristano] as the discipline was just atrocious two to three weeks prior to the first time I issued a first warning.

No, it was right after the union recognition, right after that everything broke down in the place.

Q. Wait a second, right after February 17th what broke down, what happened?

A. Discipline just broke down terribly in the place. Q. What do you mean by that?

A. Well, it would happen that you would have two or three guys playing baseball in the back of the building, playing baseball with a tube and a piece of paper.

You would say, "Hey, get back to work" and something like that which is what the usual thing was and you would get answers like "Go to hell, we don't need you and we got people protecting us."

And I would get a little angry with them and they eventually would go back, but those were the kinds of innuendos and name calling going on.

We found guys sleeping between the fabrics.

There was drinking of beer on the premises.

There was smoking of pot which was enormous.

I mean, not that it didn't happen before this, but it happened at a tremendous amount after that.

The answering of anytime Cosmo or Bob Pallateri would tell someone to do something they would say, "The hell with you" and they would walk to the toilet.

They would come out and do it, but there was a tremendous amount of slow down, constantly walking back to the toilet as much as three or four or five people in the toilet at the same time.

The cutters and the spreaders have to work in teams.

There would always be one guy missing and the other guy would have to stand there and wait.

We couldn't, I couldn't get it established because I knew from prior experience myself if I start to do what I want to do is to tell a guy to stay home or he is going to be fired or something like that, that the charges were

going to come flying through so I just wanted to start to document these things, expecting a future problem.

In other words, the employees' union activities triggered a change in their attitude and work habits. This, in turn, triggered a tightening of Willow's disciplinary procedure. It follows that Vitrano's explanation constitutes an admission the change to written warnings was caused by the employees' union activities. I find, therefore, Respondent Willow also violated Section 8(a)(3) and (1) by changing its employee warning procedure from oral to written warning notices because employees were supporting Local 107.

E. The 8(a)(5) Issues

Both in their answer and at the hearing Respondents denied the appropriateness of a unit of Willow's production and maintenance employees with the usual exclusions. Since their brief only notes their continuing dispute without advancing any grounds for their position, I am left at somewhat of a loss. However, I can think of no reason why the usual rule that a single plant production and maintenance unit is presumptively appropriate should not apply here. I find, therefore, that it is.

Local 107's majority status in such a unit as of its demand for recognition on February 17 is undisputed. (Indeed, Gene Vitrano admitted he was aware a majority of the employees wanted Local 107 to represent them. In view of the fact that all 11 cardsigners showed up in his office with Banyai and Sciacca wearing prominent ILG-WU buttons and continued to wear them thereafter for varying lengths of time, he could not credibly have done otherwise.) The first of the numerous unfair labor practices Respondent Willow committed occurred the next day. Whether it also refused to bargain with Local 107 turns on whether those unfair labor practices are sufficiently serious to bring the *Gissel* doctrine into play. I think they are. The lingering effect of Gene and Anthony Vitrano's threats to close the plant in the context of employee fear and concern in which the threats were voiced is alone enough to justify such a result. When it is coupled with the fact that the carrot of increased holiday pay and the stick of a tougher disciplinary system are still part of the working conditions in Willow's plant, the conclusion is overwhelming. I find, therefore, that Respondent Willow has, by its unfair labor practices, rendered the possibility of a fair election so remote that the authorization cards executed by a majority of its employees in an appropriate unit are a better indication of their desires with respect to union representation. By refusing, on and after February 18, to recognize Local 107 as the representative for purposes of collective bargaining of the employees in that unit, Respondent Willow has violated Section 8(a)(5) and (1) of the Act.

Upon the foregoing findings of fact, and upon the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. Willow Mfg. Corp. and Oak Apparel, Inc., are each an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and together constitute a single integrated business enterprise.

2. Local 107, International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees about their union activities and sympathies, by soliciting employees to retrieve authorization cards they had given to a union, by promising employees benefits if they refrained from union activities, and by impliedly threatening employees with plant closure in the event a union became their bargaining representative, Respondent Willow has violated Section 8(a)(1) of the Act.

4. By granting employees a benefit to induce them to abandon their support for a union and by changing its employee warning procedure from oral to written warning notices because employees were supporting a union, Respondent Willow has violated Section 8(a)(3) and (1) of the Act.

5. By refusing, on and after February 18, 1976, to recognize and bargain with Local 107, International Ladies' Garment Workers' Union, AFL-CIO, as the representative for purposes of collective bargaining of its employees in an appropriate unit, Respondent Willow has violated Section 8(a)(5) and (1) of the Act.

6. All production and maintenance employees of Willow Mfg. Corp. at its plant located at 41 East Ranick Drive, Amityville, New York, excluding office clerical employees and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. The allegations of the complaint in Case 29-CA-4928 that Respondent Willow violated Section 8(a)(1) of the Act by the conduct of John Avino and Cosmo Sagristano have not been sustained.

THE REMEDY

All of the unfair labor practices found herein were committed by Respondent Willow at its plant. The unit includes only Respondent Willow's employees. I see no logical reason why, under those circumstances, an order should run against both Willow and Oak. However, I am bound by Board precedent. I am unaware of any change by the Board in the following rule laid down in *Calcasieu Paper Co., Inc., Southern Industries Company*, 99 NLRB 794, 796-797 (1952):

Calcasieu and Southern together constitute a single employer of the employees at their Elizabeth, Louisiana, plants, and . . . they are jointly responsible for the unfair labor practices committed in their plants irrespective of whether such conduct was committed exclusively by the supervisors or officials at only one of their plants and directly involved only the employees at that plant. [Emphasis supplied.]

Therefore, an order requiring both Willow and Oak to cease and desist from the unfair labor practices found, remedy them, and post a notice is necessary to effectuate

the purposes of the Act. This includes posting of the notice in both plants and bargaining by both employers jointly with Local 107 about the wages, hours, and conditions of Willow's employees. The requirement that Respondents cease and desist from granting benefits to induce employees to abandon their support for a union shall not be interpreted as requiring the taking away of any benefits presently enjoyed by employees.

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

ORDER³

Willow Mfg. Corp. and Oak Apparel, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union activities and sympathies.

(b) Soliciting employees to retrieve authorization cards they have given to a union.

(c) Promising employees benefits if they refrain from union activities.

(d) Threatening employees with plant closure in the event a union becomes their bargaining representative.

(e) Granting employees benefits to induce them to abandon their support for a union.

(f) Utilizing a system of written rather than oral employee warning notices because employees support a union.

(g) Refusing to recognize and bargain with Local 107, International Ladies' Garment Workers' Union, AFL-CIO, as the representative for purposes of collective bargaining of Willow Mfg. Corp.'s production and maintenance employees.

³ 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.

(h) In any other manner interfering with or attempting to restrain or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(a) Expunge from its personnel records any and all employee warning notices issued on or after March 9, 1976.

(b) Upon request, bargain collectively with Local 107, International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive representative of Willow Mfg. Corp.'s employees in a unit of all production and maintenance employees at Willow Mfg. Corp.'s plant located at 41 East Ranick Drive, Amityville, New York, excluding office clerical employees and supervisors as defined in Section 2(11) of the Act, and, if an understanding is reached, embody such understanding in a signed contract.

(c) Post at their respective plants in Amityville and Copiague, New York, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges Respondent Willow violated Section 8(a)(1) of the Act by the conduct of John Avino and Cosmo Sagristano.

⁴ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice marked "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."