

**American Enka Company, a Division of Akzona Incorporated and Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC,<sup>1</sup> Petitioner.** Case 11-RC-4097

September 14, 1977

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND MURPHY

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 11 of the National Labor Relations Board, on November 12, 1975, an election by secret ballot was conducted on December 22 and 23, 1975, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 989 eligible voters 928 cast valid ballots, of which 516 were cast for the Union and 387 were cast against the Union. There were 4 void and 25 challenged ballots. The challenged ballots are not sufficient in number to affect the results of the election. On December 30, 1975, the Employer filed timely objections to the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation of the objections and, thereafter, on March 25, 1976, issued and served on the parties his Report on Objections, Direction, and Notice of Hearing, recommending that Objection 1-2, 1-6(a), 1-6(b), 1-8, 1-10, 1-14, 1-15, 1-17, 1-19, through 1-21, and 1-23 through 1-28; Objection 2; Objection 3-2 and 3-4, and Objection 4 be overruled and ordering that a hearing be held with respect to Objection 1-1, 1-3, 1-4, 1-5, 1-7, 1-9, 1-11, 1-12, 1-16, 1-18, 1-22, 1-29 and 1-30 and Objection 3-1 and 3-3.

Thereafter, on April 9, 1976, the Employer filed timely exceptions to the Regional Director's Report on Objections, Direction, and Notice of Hearing and a brief in support of its exceptions. On April 14, 1976, the Regional Director issued an order postponing the hearing indefinitely.

On May 28, 1976, the Board issued a Decision and Order<sup>2</sup> reversing the Regional Director's findings, conclusions, and recommendations with respect to Objection 1-2, 1-13, 1-14, 1-17, 1-19, 1-21, and 1-23. Accordingly, the Board expanded the scope of the hearing recommended by the Regional Director

<sup>1</sup> The Hearing Officer granted Petitioner's motion to amend its petition to change the name from Textile Workers Union of America, AFL-CIO-

to include those sections of Objection 1. The Board sustained the Regional Director's findings with respect to Objection 1-6(a), 1-6(b), 1-8, 1-10, 1-15, 1-20, and 1-24 through 1-28; Objection 2; and Objection 3-2 and 3-4. The Board further ordered that the matter be returned to the Regional Director for Region 11 for the purpose of conducting a hearing pursuant to his Report on Objections, Direction, and Notice of Hearing, dated March 25, 1976, and directed the Regional Director to amend the notice of hearing accordingly.

Pursuant to the Board's Order a hearing was held before Hearing Officer Charles T. Corn on July 6, 7, and 8, 1976. All parties were present and participated in the hearing; they were afforded full opportunity to be heard, to examine and cross-examine the witnesses, and to present evidence bearing on the issues. On October 12, 1976, the Hearing Officer issued and served on the parties his report wherein he recommended that the objections be overruled. Thereafter, the Employer filed exceptions to the Hearing Officer's report, together with a supporting brief. The Petitioner filed an answering brief in opposition to the Employer's 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.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

All production and maintenance employees, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that

CLC, to Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC.

<sup>2</sup> Not reported in bound volumes of Board Decisions.

no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Hearing Officer's report, pertinent portions of which are attached hereto as an appendix, the Employer's exceptions and brief, the Petitioner's answering brief, and the entire record in this case, and hereby adopts the Hearing Officer's findings,<sup>3</sup> conclusions, and recommendations.

The petition was filed in the name of the Textile Workers Union of America, AFL-CIO-CLC, herein called Textile. On June 2, 1976, Textile merged with Amalgamated Clothing Workers of America, AFL-CIO, herein called Amalgamated, changing the name of both Unions to the Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, herein called ACTWU. Because of this name change, Petitioner moved at the outset of the hearing to amend the petition to change the name of the Petitioner. After receiving evidence concerning the merger, the Hearing Officer found that it satisfied pertinent standards and granted the motion to change Petitioner's name to Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC.

The Employer does not challenge the validity of the merger of the two International Unions but excepts to the Hearing Officer's ruling granting the name change on the grounds that ACTWU is not a successor Union to Textile and that American Enka employees did not participate in or ratify the merger of Amalgamated and Textile.

Under the terms of the merger agreement, neither of the constituent Unions has been dissolved or terminated. The merged ACTWU is a combination and continuation of both Amalgamated and Textile. ACTWU is governed by four general officers; two from Amalgamated and two from Textile. The former president and secretary-treasurer of Amalgamated became president and secretary-treasurer of ACTWU, respectively. The former president and secretary-treasurer of Textile became senior executive vice president and executive vice president, respectively. There are 46 vice presidents; 26 from Amalgamated and 20 from Textile. All of these vice presidents maintain the duties they possessed prior to the merger. The existing locals and joint boards of Amalgamated and Textile did not merge as a result of the merger. All members of the two constituent organizations continue to deal with the same representatives with whom they dealt prior to the merger.

The merger agreement provides that all properties owned by either of the constituent Unions shall, on the effective date of the merger, be transferred to and vested in ACTWU. ACTWU has assumed and agreed to be responsible for all debts, liabilities, and

obligations of Amalgamated and Textile. All employees of Amalgamated and Textile, on the effective date of the merger, were deemed to be employees of ACTWU with no interruption of their employment. Each chartered local and joint board of the constituent Unions retained its charter as of the original date of issue and became a chartered local or joint board of the merged organization. The agreement further provides that the merger would not affect any collective-bargaining agreement or certification and that all duties, rights, privileges, and responsibilities were automatically vested in ACTWU. All members of both Amalgamated and Textile automatically became members of the merged organization. Their memberships were deemed to have begun as of the date of their original memberships in their respective constituent Union.

In *National CarJon Company, a Division of Union CarJide and Carbon Corporation (Edgewater Works)*, 116 NLRB 488 (1956), the Board relied on comparable factors in finding the consolidated union to be a continuation of each of the constituent unions. The Board noted that in the consolidation of the United Gas, Coal, and Chemical Workers of America and the Oil Workers International Union into the Oil, Chemical and Atomic Workers International Union (OCAW) earnest efforts were made "to maintain the continuity of the constituent unions"; "[p]rovision was made for transferring all assets and liabilities, and for preserving representative status and contractual obligations"; "OCAW assumed the contractual and other responsibilities of the constituent unions"; OCAW was "responsible for all the debts, liabilities, obligations, and duties of the constituent unions"; and after the consolidation "all the assets and liabilities of the constituent unions were merged into single accounts in the name of OCAW, and the deeds of all property owned by the constituent unions and their locals were changed to the new name." In these circumstances, the Board found "that OCAW is acting as the *alter ego* of the constituent unions not only in acquiring their assets and bargaining rights, but also in assuming their liabilities and the responsibility for carrying out their contractual obligations" (116 NLRB at 500-501); "that the consolidated organization was a continuance of the certified unions"; and that OCAW "has succeeded to the status of that organization [the Gas Workers] as the duly designated bargaining representative of the Respondent's employees." (116 NLRB at 502.)

Since the foregoing factors relied upon in the *National CarJon* case are present here, the same result should follow. In *Lloyd A. Fry Roofing Company*, 118 NLRB 587 (1957), which involved a

considered, the statements and conduct did not have a tendency to interfere with, coerce, or restrain the employees.

<sup>3</sup> In finding that the allegedly objectionable statements or conduct did not interfere with the election, we rely upon the fact that, objectively

merger of the United Paperworkers of America (UPA) and the International Brotherhood of Papermakers (IBPM) into the United Papermakers and Paperworkers (UPP), the Board pointed to virtually identical aspects of the merger, noted specially "that the IBPM, and not a local, was certified to represent the employees," and concluded "that the UPP (the consolidated group) was intended to function as a continuation of the IBPM and UPA, its two constituent unions, and the consolidation would therefore not impair any of their certifications."

In deciding whether ACTWU, as the continuation of Textile, retained the latter's representation rights, it is also significant that the merger effected no substantial change in the representation of Respondent's employees. *Pearl Bookbinding Company, Inc.*, 206 NLRB 834 (1973); *Ocean Systems, Inc.*, 223 NLRB 857 (1976). In the merger, a Textile Division of ACTWU was established and the president of Textile became director of the Textile Division with virtually the same authority he enjoyed as president of Textile. Textile's field structure was maintained intact. Textile's regions became regions of the Textile Division. Industry divisions became divisions of the Textile Division. Every joint board in Textile retained the identical jurisdiction in the Textile Division. Every local union retained its charter as a member of the Textile Division. Moreover, there were to be no involuntary mergers of any subordinate bodies for 12 years. This preserved the identity of locals and their relationship to their joint boards, to their industry divisions, and to the Textile Division.

The same personnel who had responsibilities for servicing locals and joint boards continued to have the same responsibilities. The same organizing personnel employed by Textile are now employed in the Textile Division. Thus, the representation of the Employer's employees remains unchanged in all meaningful respects. They are within the jurisdiction of the Textile Division's Central North Carolina Joint Board, the same joint board that had jurisdiction prior to the merger. All their rights and privileges are unaffected. They will elect their officers and negotiating committee, negotiate, and ratify their collective-bargaining agreement just as if no merger had occurred.

Since ACTWU is the continuation of Textile and therefore has succeeded to its representation rights, particularly since the merger effected no change in the day-to-day representation of the Employer's employees, the Hearing Officer was clearly correct in granting Petitioner's motion to change its name to ACTWU. The Employer contends, however, that the change in name was improper because its employees did not participate in or ratify the merger. For the

reasons previously recounted, such participation or ratification is not required. Nevertheless, the Employer's employees participated to the extent to which circumstances permitted.

The representation election was held on December 22 and 23, 1975, more than 5 months before the merged ACTWU came into existence on June 2, 1976. Nevertheless, when the Employer's employees voted in favor of Petitioner as their collective-bargaining representative, they were aware of the prospective merger and presumably took this possibility into account when they cast their ballots. During the organizational campaign, employees in the plant were advised of the merger proceedings on many occasions. The merger was discussed prior to the election with committees of employees, at union meetings, and at Saturday mass meetings. The employees voted for Textile as their representative and Textile, of course, was represented in the merger proceedings. No local representatives of the Employer's employees were represented at the merger convention because a charter for a local union had not yet been issued. This was because their bargaining representative had not yet been certified. Under Textile's constitution, representation at the convention required the existence of a local union.

Shortly after the merger became effective, however, Petitioner desired to provide an opportunity for the Employer's employees to consider the merger and requested the Employer to furnish it with a current list of the names and addresses of the bargaining unit employees. After this request was ignored, Petitioner prepared a leaflet for distribution to all employees in the unit. The leaflet was accompanied by a special edition of "Textile Labor," a union publication, which contained all merger documents. The leaflet described the merger and announced two meetings on June 29 to provide all employees in the unit an opportunity to attend, to ask questions about and discuss the merger, and to vote their approval or disapproval. Distribution of the leaflet and "Textile Labor" commenced on June 22 and continued on June 23 and 24 to make certain they were received by employees on all shifts. As previously noted, the merger of the two International Unions did not affect representation at the local level and comparatively few unit employees attended the meetings. Those who did attend voted unanimously by secret ballot in favor of the merger. We therefore find without merit Employer's exception to Petitioner's change of name to ACTWU based on the contention that its employees did not participate in or ratify the merger.

## CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of valid ballots have been cast for Textile Workers Union of America, AFL-CIO-CLC, now known as Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, said Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All production and maintenance employees, including laboratory and plant clerical employees at the Employer's Whitakers, North Carolina, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

## APPENDIX

### REPORT ON OBJECTIONS

Pursuant to the Regional Director's Amended Notice of Hearing and Notice Rescheduling Hearing, a hearing was held on July 6, 7 and 8, 1976, at the Commissioner's Room, County Courthouse, Nashville, North Carolina, before the undersigned Hearing Officer, duly designated for that purpose. All parties were present and participated in the hearing; they were afforded full opportunity to be heard, to examine and cross-examine the witnesses, to present any and all evidence bearing on the issues.<sup>3</sup>

Upon the entire record of the case and from the observation of the witnesses, the undersigned makes the following:<sup>4</sup>

The Employer's Objections are as outlined below:

*Objection 1-1:* On or about December 18-20, Lorenzo Battle, a maintenance employee, and Petitioner agent, approached an employee who was wearing a "Vote No" sticker. Battle allegedly told the employee, "You don't know what you are doing." When the employee replied that she had made up her mind, Battle allegedly made a fist, shook it at the employee and said, "What hospital do you want to be carried to?"

*Objection 1-2:* During the week of the election, Wendell Sanders, an employee and member of Petitioner's in-plant organizing committee, told an employee that she had better take off her "Vote No" sticker and throw it away.

*Objection 1-3:* During the week preceding the election a pro-Petitioner employee with alleged violent propensities, allegedly told another employee: "You are not going to work with me and wear that 'Vote No' sticker."

<sup>3</sup> Both parties filed briefs with the Hearing Officer.

<sup>4</sup> In evaluating the credibility of the witnesses, the undersigned has considered their general demeanor, closely observed while testifying under oath, partisan interest, guarded or indirect answers, conclusional and conflicting testimony as distinguished from fact, self-serving answers,

*Objection 1-4:* Several days prior to the election, an unidentified Petitioner organizer, who was passing out handbills at the plant gate, shook his fist in a menacing manner at the witness when the witness refused to stop and take a copy of the Petitioner's handout.

*Objection 1-5:* During the week preceding the election, a pro-Union employee confronted another employee who was wearing a "Vote No" sign around his neck and allegedly said, "You will never know where the devil is. . . . He could step up behind you, grab that sign, and choke you to death."

*Objection 1-7:* Several days before the election, Union Agent James Williams started to rip off the employee's "Vote No" button.

*Objection 1-9:* An Employer witness, who campaigned against Petitioner, asserts that several days before the election his mailbox was blown up at night.

*Objection 1-11:* Several days before the election, an employee allegedly received a phone call from an anonymous male caller who allegedly said she must vote for the Union. The witness further stated that the telephone call "scared her to death."

*Objection 1-12:* Several days before the election, one employee allegedly told another employees that she could not get a ride home in her regular car pool unless she took off her "Vote No" button and that the button "will only cause trouble."

*Objection 1-13:* Evans Hamilton, a Petitioner organizer, and another unknown organizer, visited an employee's home while she was trying to wash dishes. Hamilton allegedly put his hands in the dish water and repeatedly rubbed the employee's hands.

*Objection 1-14:* Employee allegedly asserted that she overheard a union adherent tell another employee, "I'll kick your ass if you don't vote for the Union."

*Objection 1-16:* On December 19, 1975, Employer witness allegedly observed a member of the in-plant organizing committee carrying a gun in his back pocket. The incident was allegedly investigated, but the gun was disposed of before the sheriff arrived.

*Objection 1-17:* Employer witnesses allegedly assert that several days before the election, a member of the in-plant organizing committee (no name given) told an employee that "You better take it (a "Vote No" sticker) off."

*Objection 1-18:* An Employer witness allegedly asserts that on or about October 23, 1975, Johnny Powell, a terminated employee of the Employer, and an employee of the Petitioner, said that he knew that Ann Harris and Bernice Norman were the ones who told on him and got him fired. That he was going to see Bernice.

*Objection 1-19:* Employer witnesses allegedly attest that an employee who campaigned for the Petitioner and visited employees' homes told them that "Anybody who don't vote for the Union will get run off if the Union wins the election."

*Objection 1-21:* Employer witness allegedly relates that Petitioner organizers said that "Any non-union member

leading questions of counsel, attitude and apparent memory and recall for details. Other criteria utilized by the hearing officer, bearing on credibility resolutions, may from time to time hereafter be discussed with respect to individual witnesses. When credibility issues arise, however, the credited version may be indicated without further reference to the standards applied.

will be let go after the Union wins the election, so you might as well join the Union.”

*Objection 1-22:* An Employer witness allegedly states that on or about December 16, 1975, an unknown Petitioner representative came to the house. He allegedly “almost forced or tried to force her to sign the card.”

*Objection 1-23:* An Employer witness allegedly asserts she was visited by Johnny Powell and Evans Hamilton, both alleged agents of the Petitioner, who asked her to sign a card. When she refused, they allegedly told her to put it under her pillow, that someone might come to her during the night and she might want to sign it.

*Objection 1-29:* Employer witness allegedly states that several days before the election, a pro-Petitioner employee attempted to physically tear off a “Vote No” sticker from her chest in the employees’ cafeteria.

*Objection 1-30:* An Employer witness allegedly relates that several days before the election, he was threatened for wearing a “Vote No” sticker.

*Objection 3-1:* An Employer witness allegedly attests that on or about December 1, 1975, she was visited at her home by Petitioner organizers John Kissack, Jesse Pryor, and Jesse Rudd. Kissack allegedly asked her why she had not attended a union meeting or signed a card. The witness allegedly replied that she was not interested in the Union. Kissack then allegedly asked her if the company had threatened her, to which she allegedly replied no. Kissack then said, according to the witness, that a lot of employees had been brainwashed and had changed their minds about the Union. He then allegedly stated, “It seems like the white niggers in the plant have brainwashed you black people.”

*Objection 3-3:* Employer witnesses will state that at the NLRB representation hearing on November 11, 1975, Evans Hamilton allegedly stated: “Don’t be afraid of the whities — come into the hearing.”

#### FINDINGS OF FACT

*Objection 1-1:* Employer witness Geraldine Taylor testified that one day as she was walking into the cafeteria, employee Lorenzo Battle was walking out. Battle said, “Look at her, she has on a ‘Vote No’ button. She doesn’t even know what it means.” Taylor said, “Yes, I do know what it means. It means that I made my decision and I’m letting everybody know how I feel.” Taylor then said, “Would you like for me to go and get one and put it on so that you will know how everybody feels and it will tell us how you feel?” Battle then said, “Which hospital do you want to go to, Nash General?” Taylor testified that the only person she told about this conversation was her supervisor and she did not take the statement as a threat. Battle was laughing when he made the statement. No date was testified to as to when this event took place.

I fail to see where the conduct complained of is coercive in any way. Taylor did not consider this statement to be threatening. This is at most lively banter between two employees of opposing views. Therefore, it is the opinion of the undersigned that Objection 1-1 does not raise material

or substantial issues which would warrant setting aside the election and I recommend Objection 1-1 be overruled.

*Objection 1-2:* Employer witness Bonnie Wells testified that approximately one day prior to the election,<sup>5</sup> she commenced wearing a “Vote No” sticker on her clothing. As Wells was leaving her work area going on a break, employee Wendell Sanders stopped her and said, “You’d better take that sticker off.” Wells ignored him and proceeded on her break. Sanders had on TWUA tee shirt and a big TWUA button. Wells told her husband, who is supervisor of the electrical department, and employee Zenith Rolley about the conversation. Wells continued to wear the sticker after the incident.

Again, at most this was passing comments between two rank and file employees of opposing views. No evidence was submitted that shows this statement was made in any threatening manner. Therefore, it is the opinion of the undersigned that the conduct complained of does not fall within the category of objectionable conduct which would warrant setting aside of the election and I recommend Objection 1-2 be overruled.

*Objection 1-3:* Employer witness Vertica Richardson testified that in the month or two preceding the election, she had a conversation with employee Jean King while she was wearing a “Vote No” sticker. King said, “Well, pull the sticker off before somebody whips your ass out there. Some of the men are going to whip your ass I hear.” King said, “I’m not going to work back here with you wearing that sticker because the men out there on the floor will whip your ass.” Richardson then removed the “Vote No” sticker. Richardson further testified that one of the male employees, identity unknown, told her to pull her “Vote No” sticker off. In another conversation, with other unknown employees, one said, “Well, everybody that joins the Union, the Union people will keep their jobs and you will be the first one to be laid off.”

The Board has long held that threats of loss of jobs made by one rank and file employee to another is capable of evaluation and cannot be reasonably held to be coercive. Such is the case here. Therefore, I find Objection 1-3 to be without merit and recommend it be overruled.

*Objection 1-4:* Employer witness Evelyn Martin testified that on an unspecified date, as she was leaving the plant, union representatives were passing out leaflets at the gate. When she got abreast of them, one of the representatives offered her a leaflet and she told the representative that she didn’t want to clutter up the car with “that junk.” The representative said, “Well, you’re just as stupid as he is.” Martin identified the representative as being Evans Hamilton. Martin further testified that on another occasion as she was leaving work, a union representative shook his fist at her because she did not take a leaflet. Martin identified this representative as being John Kissack. Representative Kissack testified that he could not recall the incident and that he did not believe he did it.

Even assuming, *arguendo*, the incident occurred as alleged, no evidence was adduced that shows this incident in any way deterred Martin or any other employee in the exercise of their franchise at the polls. Therefore, the

<sup>5</sup> Election held on December 22 and 23, 1975.

conduct complained of is insufficient to set aside the election and I recommend to the Board that Objection 1-4 be overruled.

*Objection 1-5:* Employer witness Jesse Vernon Moseley testified about a week prior to the election, he wore a "Vote No" sign around his neck attached to a cord. About three days prior to the election, employee Jessie Petway came up to him, pointed his finger at the sign and said, "You had better be careful when you go out the door tonight, you might get choked. You never know where the devil is standing." Moseley testified that he did not tell anyone else about this incident. On cross-examination, Moseley testified that he did not know if Petway was for or against the Union and he did not see Petway wearing any union buttons or pins.

No evidence was adduced that shows Petway was a union adherent. In no way can I construe this statement as a threat or in any way coercive. Therefore, Objection 1-5 is without merit and I recommend it be overruled.

*Objection 1-7:* Employer witness Susie Irene McGee testified that approximately one week prior to the election, she started wearing a "Vote No" sticker on her clothing. One day while at work, employee James Williams came up to her and pulled her "Vote No" sticker about halfway off. McGee asked Williams not to, saying, "You wear your own sticker, and I don't bother yours, and so you don't have no reason to pull mine off." Williams was wearing a union pin at that time. Williams didn't say anything else to her and the two continued to work side by side. On cross-examination, McGee testified that she and Williams were friends and that she continued to wear her "Vote No" badge.

The evidence fails to show that this incident was coercive in any manner and in that context, it does not fall in the category of objectionable conduct which would warrant setting aside the election, and, therefore, I recommend to the Board that Objection 1-7 be overruled.

*Objection 1-9:* Employer witness Robert Richardson testified that a couple of weeks prior to the election, he commenced wearing a "Vote No" sticker. During this time, his mailbox, at his house, was blown up. Richardson did not have any information as to how the mailbox got blown up, or who may have been responsible for it.

Inasmuch as no evidence was presented that shows the Petitioner was in any way responsible for the incident, I recommend to the Board that this objection be overruled.

*Objection 1-11:* Employer did not introduce any evidence to support his objection. Therefore, the undersigned recommends to the Board that Objection 1-11 be overruled.

*Objection 1-12:* Employer witness Betty Whitaker testified that prior to the election, another employee, Mabel Whitaker, told her, on one occasion, she would not carry her to work any longer because Mabel had heard that Betty was telling everyone who had signed union cards. Mabel Whitaker told Betty Whitaker that she did not care whether Betty voted for or against the Union. Mabel Whitaker continued to carry Betty to work. Betty Whitaker did not wear a "Vote No" sticker.

I see this kind of incident as nothing more than idle chatter between employees concerning plant gossip. Certainly there is nothing here that remotely suggests conduct on which an election should be set aside. Therefore, I recommend to the Board that Objection 1-12 be overruled.

*Objections 1-13 and 1-23:* Joyce Armstrong testified that during the union campaign, she was visited on several occasions by union supporters and representatives. The first visit was by employee Johnny Powell and another "union" man, name unknown. They talked to her about joining the union. Powell asked Armstrong why she wouldn't vote for the Union and Armstrong told him that she had her reasons. Powell then gave her the card and said, "Put it under your pillow and sleep on it and if you want a union in, sign a card." Armstrong told her supervisor about this meeting and asked him if he could stop them from coming out to her house. She testified that the visit didn't worry her, but she just didn't like these visits.

On another occasion, these two individuals again visited Armstrong along with a "new" man. Armstrong testified that at this time, Powell had been discharged. Armstrong was outside washing clothes when the individuals arrived. One of the men put his hand in the wash water and touched her fingers and said, "The water feels real nice." Armstrong told him to get his hand out of the water and when he did not, she threw water on his trousers. Armstrong told her supervisor about this meeting.

On cross-examination, Armstrong testified that there were pictures all over the plant bulletin boards pertaining to strikes. At no time during Armstrong's testimony did she describe any of the individuals who visited her home as being Union Representative Evans Hamilton. It should also be noted, that during her testimony, Evans Hamilton was in the courtroom and she did not identify him.

There is no misconduct of any kind indicated by the testimony of this witness. Therefore, I recommend that Objections 1-13 and 1-23 be overruled.

*Objection 1-14:* Employer witness Walter Little testified that on or about December 1, 1975, he was in the breakroom and observed employee Edgar Cooper placing some union literature on a table. Cooper asked Little how he felt about the Union. Little said he did not feel too good about it. Cooper asked Little what he meant. Little said, "Because they is taking money away from me and not giving me none." Cooper then said, "Well, anybody I find that don't want to vote for the Union is going to have a whole lot of ass-kicking going on." No other employees heard this conversation. Little did relate this incident to employee Estelle Knight.<sup>6</sup> Little further testified that he observed Cooper passing out handbills at the plant gate and acting as an observer at the election.

On cross-examination, Little testified that Cooper's remark did not frighten him and he did not report this incident to his supervisor until after the election and only then when asked by Counsel.

Again the conduct complained of is nothing more than vigorous campaigning and discussion that normally takes place in an industrial plant during the "heat of battle"

<sup>6</sup> Estelle Knight testified that Little told her about the conversation.

leading up to an election. I don't view this statement as being coercive and no evidence was adduced to show that this statement, in any way, deterred Little or any other employee from casting a ballot in the election or in any way affected their choice.

Therefore, I recommend to the Board that Objection 1-14 be overruled.

*Objection 1-16:* Employer witness Tommy Connor, supervisor of the dye department, testified that on or about December 19, 1975, about 10:00 p. m., one of his employees, Jane Richardson,<sup>7</sup> told him she had seen a gun in employee Willie B. Evans' back pocket. Connor called his supervisor, Mike Davis, and told him what had been reported. Davis told Connor to take a look for himself and be sure that Evans had a gun. Connor went to his office and Evans was sitting on the desk. Connor observed something in Evans' left back pocket. It was a gun wrapped in a handkerchief. Connor then called Davis again. Davis told Connor to call Supervisors Stewart and Harmon. After calling Stewart and Harmon, Connor went back to his office to see if Evans still had the gun in his pocket. Connor alleges that Evans did. Evans then went into the warehouse and started to work. There was an empty box sitting beside the door and Connor was looking out the window when Evans walked over to the box. Evans had two cardboard separators in his hand. He put one of the separators down in the box and held the other separator between himself and Connor. Evans took something out of his pocket and put it in the box. Evans then took the other separator, put it in the box, and then sat another empty box on top of the first one. Evans then returned to the office. In the meantime, Connor went upstairs so he could see the box more plainly without Evans seeing him, and as he was looking at the box, one of his other employees walked up to the box and looked inside. She looked at still another employee and smiled. This third employee walked over to the box, got a broom and started sweeping the floor. Connor then called Quality Control Supervisor Davis again, told him what happened, and Davis instructed Connor to get Evans in the office, stating that he would be there shortly with a sheriff to search Evans. Connor called Evans into the office and the two sat and talked until Davis and the sheriff's deputy arrived. Upon the arrival of Davis and the deputy, Connor told Evans that it had been reported to him that Evans had a gun in his pocket. The deputy asked Evans if he had one and Evans replied no. The deputy then asked Evans if he could search him. The deputy searched Evans and found only a large knife. Upon instructions from Davis, Connor checked the boxes previously alluded to but found no weapon.

On cross-examination, Connor admitted that neither he nor the sheriff's deputy found a gun and testified that what he actually saw was a butt of a gun in Evans' back pocket. Connor admitted the deputy did not arrest Evans nor did the company discipline him for the alleged incident.

The incident complained of in this objection is obviously unrelated to the organizing campaign and there is no evidence that this incident, in any way, affected the results

<sup>7</sup> Jane Richardson testified that while in the office with Willie B. Evans, she saw what she believed to be a pistol handle in Evans' back pocket. She reported this to Supervisor Tommy Connor.

of the election. Therefore, I recommend to the Board that Objection 1-16 be overruled.

*Objection 1-17:* Employer witness Evelyn Harvey testified that approximately one month prior to the election, she began wearing a "Vote No" button. One day while she was standing near her work station waiting for the bell to ring for work to start, a man came by and said, "You'd better take that 'Vote No' button off." Harvey turned and said, "What?" The man said, "You'd better take that 'Vote No' button off." Harvey asked, "Why?" The man said, "Because you might get a brick upside your head or in your car." This individual kept on walking. Harvey turned to employee David O'Neal, who was standing beside her, and asked O'Neal if the man was joking. O'Neal allegedly said, "I don't think so." The only other person Harvey told about this was her supervisor. Harvey did not know whether this individual was wearing a union button or tag. After this incident, Harvey ceased to wear her "Vote No" pin. Harvey could not identify this individual.

It is unfortunate that this type of a statement is made in the heat of an organizational campaign by misguided and overzealous individuals. However, in this case there is no evidence that the individual making the statement was in any way connected with the Petitioner and no evidence that the statement was communicated to other employees. The undersigned is of the opinion that this threat by one rank and file employee to another is insufficient to set aside the election, and, therefore, recommends to the Board that Objection 1-17 be overruled.

*Objection 1-18:* Employer witness Ethel Mae Powell testified that she was visited at her home by union adherent Johnny Powell after his discharge<sup>8</sup> on three different occasions. On one of the visits, Johnny asked Ethel, "What did Bernice Norman say?" and Ethel said, "I don't know what she said." Johnny then said to tell Norman that she got him fired and that he was glad because he was working for the Union, and they would get his job back.

The testimony given by this witness does not indicate any threats or coercion. Therefore, it is insufficient as a basis to set aside the election and I recommend to the Board that Objection 1-18 be overruled.

*Objection 1-19:* Employer witness Ellen Tofton testified that sometime in November or December 1975, she had a conversation with employee James Wilkins. Wilkins said, "The Union was coming in there, that if I didn't vote for it, the Union would eventually get rid of me." Wilkins was not wearing a union button when this statement was made nor had she ever seen him wear any buttons. Wilkins did not tell Tofton that he was working for the Union.

On cross-examination, Tofton testified that she had received a letter from the Employer or saw a letter on the Employer's bulletin board to all employees stating all employees would receive the same privileges, and would be treated the same whether they were for or against the Union.

Employer witness Norma Carol Crawley testified she had a conversation with Ellen Tofton concerning Tofton's conversation with employee James Wilkins. Tofton stated that Wilkins had told her that she should sign a union card

<sup>8</sup> The record reflects that Powell was discharged on October 20, 1975.

because if she didn't, she would lose her job and when they got in, they would do away with her.

This type of comment between rank and file employees can be evaluated by the individuals and in this case, assurances were given that all employees would be treated equally. Therefore, I recommend to the Board that Objection 1-19 be overruled.

*Objection 1-21:* Employer witness Vertica Richardson testified that in group conversations, with other employees, she was told that the Union was coming in and that she might as well vote for it. She was also told, "Well, everybody that joins the Union, the Union people keeps their jobs and you will be the first one to get laid off." Richardson couldn't recall which employee made this statement, as there were several people in the group. She was able to recall one or two names but could not identify these two people as the one making the alleged statement. She did say some of these people wore union buttons.

Again these types of statements can be evaluated and in light of Employer's assurance that all employees would be treated equally, I am of the opinion that these comments are insufficient to set aside the election and I recommend to the Board that Objection 1-21 be overruled.

*Objection 1-22:* The Employer presented no evidence to sustain this objection. Therefore, it is without merit and I recommend to the Board it be overruled.

*Objection 1-29:* Employer witness Amber Hasty testified that during the union campaign, she wore a "Vote No" sticker on her clothing. A male employee asked, "What did I think that I was doing wearing a 'Vote No' sticker," and I told him "that it was because of what I thought, and the way I felt, that he had a right to his opinion, and that I had a right to mine." The man then asked Hasty, "How did I feel about him trying to take it off," and I told him that "I didn't think that he ought to try." The man reached for her but she stepped back and walked on back to her work station. The man didn't say anything further to her and she did not identify him. This occurred about a week prior to the election. Hasty continued to wear her "Vote No" sticker.

There is no evidence that this remark, in any way, interfered with or coerced Hasty inasmuch as she continued to wear her "Vote No" sticker. Therefore, the undersigned is of the opinion that this remark is insufficient to set aside the election and recommends to the Board that Objection 1-29 be overruled.

*Objection 1-30:* Employer introduced no evidence to sustain this objection. Therefore, Objection 1-30 is without merit and I recommend to the Board it be overruled.

*Objection 3-1:* Employer witness Patricia Phillips testified that during the campaign, she was visited, on two different occasions, by individuals on behalf of the Union. The first time it was a man by himself, whom she could not identify. On the second visit, three people appeared at her home. The three were black and two of them were employees, Jesse Rudd and Jesse Pryor. Rudd told her they wanted to sit down, talk for awhile and explain things to her. They wanted to know why she hadn't been to the meetings and stated they had tried to talk to her at the plant but she wouldn't talk to them so they felt that they could talk to her better at her home. They gave her some

literature and Jesse Pryor asked her how long she had been at the plant and she told him she had just been promoted to a new job and the three said that the only reason she got promoted was because the company didn't want the union in. The company had given her the job so she wouldn't vote for the Union. Jesse Pryor said there had been several promotions given to blacks and it was because the majority were black and if the Union could get the blacks to vote for the Union, then of course the Union would win. Pryor further said that the only reason the promotions were given was so that the blacks would be "white folks' niggers" or something like that. Phillips testified this racial slur was used several times by both Pryor and Rudd, but she could not recall whether the third man used the term or not. The third black man said that he was working with the Union. On cross-examination, Phillips testified that both Pryor and Rudd were rank-and-file employees and had been employed by the Employer long before the union campaign started. Phillips admitted having conversations with both Pryor and Rudd in the plant prior to the union campaign and testified that one of them was a neighbor. She further admitted that she heard the term "white folks' nigger" used before.

I note here there were other references to the words "white folks' nigger" and "whities" in the record. I further note that the record reveals that a majority of the employees are black. What is in issue here is not the use of the terms *per se* but whether or not an appeal to racial prejudice was injected into the campaign. On the basis of the evidence before me, I think not.

There is no evidence that the Petitioner interjected into the campaign propaganda designed to inflame racial prejudice. If that was the case, the rationale of the Board in *Sewell Manufacturing Co.*, 138 NLRB 66, would apply and would be grounds for setting aside the election. I view these statements as being isolated and on the basis of the entire record, I am of the opinion that the conduct complained of is not sufficient to set aside the election. Therefore, I recommend to the Board that Objection 3-1 be overruled.

*Objection 3-3:* Employer witness Production Manager Phil McBride testified that on the morning of the representation case hearing, he arrived at the site of the hearing, the National Guard Armory, early. Some other cars were there. About this time, Union Representatives Hamilton and Kissack came up and went inside for a few minutes. Representative Hamilton then came out the door and waved at somebody. McBride looked around. Hamilton must have been waving at some people that were coming to the hearing and Hamilton said something to the effect, "Don't worry about the license plates out here." and motioned something else and came up a little closer to where he was sitting in the car with Personnel Manager Horne and Winding Department Supervisor Snellgrove. McBride couldn't hear exactly what Hamilton said, but as Hamilton got closer, Hamilton said something to the effect, "Come on in, don't let these 'whities' scare you." Hamilton then walked on by the three, sitting in the car, and went on back to where the other cars were parked. Hamilton said something else but McBride could not make out what was said. McBride testified they were parked in about the second or third parking space before you walked up to the

front of the Armory and Hamilton had to walk between his car and another car to get to where the employees were parking. He and the other two were sitting in the car with the windows rolled down. Hamilton was no more than 10 or 15 feet away when he made the statement about the license plates and "whities."

On cross-examination, McBride testified Hamilton was on his way back out the front door, waving his arms, "Come on" to the folks in the parking lot. McBride did not recall any whites being in the group that Hamilton was waving toward. McBride denied that Hamilton said, "Don't be afraid of the wheels." McBride admitted that there were blacks, Indians and at least one white employee present at the R case hearing.

Representative Hamilton testified upon arriving at the Armory for the Representation Case Hearing, there were a couple of cars of people already there. Hamilton asked one of the employees who was with him, who the people in the cars were and this individual said, "that's wheels, wheels at the plant." Hamilton proceeded into the building and then went back outside and waved at the employees in the parking lot to come on in. They didn't hear or see Hamilton, so he walked further into the parking lot and said, "Come on down, don't be afraid of the wheels." Hamilton denied using the term "whitie" but testified he refers to most bossmen as being "wheels." Hamilton further denied that he uses racial slurs.

The Employer did not call Personnel Manager Horne or Winding Department Supervisor Snellgrove to corroborate McBride's testimony.

McBride testified that Hamilton said "something to the effect," "Come on in, don't let the 'whities' scare you." From this statement, I conclude that McBride was not certain what Hamilton said. As I said earlier in this Report, there is no evidence that the Petitioner injected or attempted to inject racial prejudice as an issue into the campaign. I find Hamilton's version of what was said to be the more plausible one in light of no corroboration of witnesses who were present and available to the Employer.

Therefore, the evidence submitted is not sufficient to set aside the election and I recommend to the Board that Objection 3-3 be overruled.

The Employer advanced the theory that the active union supporters and more particularly, the In-Plant Organizing Committee members, were agents of the Petitioner, and, therefore, the Petitioner is responsible for their actions. Under the facts of this case, I do not agree. No evidence

was presented or adduced that would tend to show that the Petitioner either authorized or condoned the acts alleged. The Board was held that even where an employee is the prime mover and principal organizer for the Union, the Union would not be held responsible for threats made by those adherents. *Bufkor-Pelzner Division, Inc.*, 197 NLRB 950; *Bronze Alloys Company*, 120 NLRB 682; and *Dixon Distributing Co., Inc.*, 204 NLRB 1155.

The Employer also advanced the theory of "fear and confusion" that was created by the acts of the union adherents and "agents" and argued that the evidence presented was sufficient to show that the "laboratory conditions" were destroyed, and, therefore, a new election should be directed.

For conduct to warrant setting aside of an election, not only must that conduct be coercive, but it must be so related to the election as to have had a probable effect upon the employees' actions at the polls.<sup>9</sup>

The Board, while attempting to establish ideal election conditions insofar as possible, acknowledges that actual facts must be considered in light of realistic standards of human conduct, and that elections must be appraised realistically and practically,<sup>10</sup> and should not be judged against theoretically ideal, but nevertheless, artificial standards of human conduct. It is not unkindful of the fact that the "laboratory" for election purposes is usually in industrial plants where vigorous campaigning and discussion normally takes place, and where isolated deviations from desired standards will sometimes arise notwithstanding the best directed efforts to prevent their occurrence.<sup>11</sup>

Accordingly, the Board has not overturned the results of elections where it was found that irregularities were not of such nature as would have tended to make a free election improbable.

## CONCLUSIONS AND RECOMMENDATIONS

Having made findings of fact and conclusions based upon all the credible evidence presented during the hearing, I conclude and find that Employer's Objections 1-1, 1-2, 1-3, 1-4, 1-5, 1-7, 1-9, 1-11, 1-12, 1-13, 1-14, 1-16, 1-17, 1-18, 1-19, 1-21, 1-22, 1-23, 1-29, 1-30 and Employer's Objections 3-1 and 3-3, are insufficient to raise material or substantial issues affecting the results of the election and recommend to the Board that said objections be overruled and a Certification of Representative issue.

<sup>9</sup> *The Great Atlantic & Pacific Tea Company*, 177 NLRB 942.

<sup>10</sup> *The Lijeral Market, Inc.*, 108 NLRB 1481, 1482.

<sup>11</sup> *Morganton Full Fashioned Hosiery Co., etc.*, 107 NLRB 1534, 1538.