

them that "it has been necessary for me to fill your job with a permanent replacement," and that they should call at the plant to pick up their personal belongings. All but two of the strikers responded by removing their tools from the plant.

As of May 31, 1952, the Employer's payroll showed that the jobs in question were filled by a complement of 12 employees. Testimony presented by the Employer, which was uncontroverted, indicated that (a) employees hired in the jobs of the strikers were intended as permanent replacements, and were so informed, (b) there were no vacancies in any of these jobs, and (c) the currently reduced payroll of only 12 employees merely reflected the extent of the Employer's business.

The Union filed unfair labor practice charges with the Board on June 25, 1951, which were dismissed by the Regional Director; and it again filed charges on May 1, 1952, which were dismissed by the Regional Director and are now pending before the General Counsel on appeal by the Union.² As no complaint has been issued by the General Counsel, we must find that employees participating in the strike are economic strikers.³ They are therefore ineligible to vote as it appears on the basis of the present record that they have been permanently replaced and that vacancies in their jobs do not exist.⁴

[Text of Direction of Election omitted from publication in this volume]

² The Union's motion to dismiss pending disposition of the appeal is denied.

³ *Times Square Stores Corporation*, 79 NLRB 361; *Big Run Coal & Clay Company*, 93 NLRB 1351.

⁴ See, e. g., *E. J. Kelley Company*, 98 NLRB 486; *Hamilton Foundry & Machine Company*, 94 NLRB 51.

CORNING GLASS WORKS and FEDERATION OF GLASS, CERAMIC & SILICA SAND WORKERS OF AMERICA, CIO AND AMERICAN FLINT GLASS WORKERS' UNION OF NORTH AMERICA, AFL, AND ITS LOCAL No. 1007, PARTIES TO THE CONTRACT. *Case No. 1-CA-977. August 5, 1952*

Decision and Order

On December 29, 1951, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practice alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the CIO filed exceptions; the General Counsel also filed a supporting brief. The Respondent and the AFL filed briefs in support of the Intermediate Report.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby rejects the findings, conclusions, and recommendations of the Trial Examiner except to the extent that they are consistent with our Decision and Order herein.

1. The record reveals, as the Trial Examiner has found, that the Respondent was well aware of the CIO's organizing campaign when the intensive AFL drive began in the plant on Saturday, June 16, 1951. The Trial Examiner has also properly found that group leader Wilbrod Richard played an active role in the AFL's organizing effort.² However, the Trial Examiner concluded that Richard was not a supervisor within the meaning of the Act, nor did his position so identify him with management that employees looked to him for guidance regarding the Respondent's policies. Accordingly, the Trial Examiner found that Richard's conduct could not be attributed to the Respondent. We cannot agree.

Section 2 (11) of the Act provides :

The term "supervisor" means any individual having authority, in the interest of the employer, to . . . transfer . . . assign, reward, or discipline other employees, or responsibly to direct them . . . if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Witnesses Morrissey and Mollis testified, without contradiction, that Richard transferred employees from one machine to another; Mollis further testified, also without contradiction, that on occasion when Richard discovered that employees were not working fast enough picking bulbs off a continuous belt, Richard reported this fact to Foreman John Tait, and Tait and Richard cut the employees' relief period from 10 to 5 minutes. According to the witness, on one occasion when the backlog was clearing, Richard told the employees picking up bulbs, "We'll give you ten minutes." The record contains further undenied testimony that Richard replaces Tait when the latter is ill, or out of the plant for several days.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel. [Chairman Herzog and Members Houston and Murdock.]

² Henry Joseph Morrissey testified, without contradiction, that at about 5 p. m on Saturday, June 16, 1951, he saw Richard bring another employee over to replace Robert Simoneau, an inspector in the A. B. inspection department. Thereafter, Richard gave Simoneau a supply of blank AFL membership cards, and Simoneau spent the remainder of his working time, until 11 p. m., signing up employees in the AFL. Witness Morrissey further testified, also without contradiction, that on the night of June 16, he overheard a conversation between Richard and Osowski, an ardent AFL solicitor. Richard asked Osowski how many employees she had signed up and when she told him, he remarked "We're in."

James L. Knapp, the Respondent's plant manager, testified that Richard does not possess supervisory authority, and that all supervisors are paid a salary, while group leaders are paid on an hourly basis like rank-and-file employees. Knapp conceded, however, that Richard normally does physical work only when he is filling in for a production worker, and that most of his time is spent passing on to the production employees the directives and orders from Foreman Tait. Knapp's testimony further reveals, corroborating the testimony of Morrissey and Mollis, that Richard, under the general direction of Tait, can effect job transfers. Thus, it appears that if Tait tells Richard to transfer 10 employees from one job to another, Richard normally makes the individual selections and accomplishes the transfers. As the Respondent's wage rates are based upon the particular job an employee is performing, the job transfers which Richard makes can alter the wages of the employees affected.

In view of the foregoing we find, contrary to the Trial Examiner, that Richard was a supervisor within the meaning of the Act in June 1951, and that his active support of the AFL in its organizing campaign is attributable to the Respondent. It follows, therefore, that the Respondent has furnished unlawful assistance to the AFL in violation of Section 8 (a) (2) of the Act.

Our finding that Richard's conduct is attributable to the Respondent would be the same even if we were not convinced of his supervisory status. For the record clearly demonstrates, contrary to the Trial Examiner's finding, that Richard occupied a position which identified him with management in such a way as to cause employees to look to him for guidance regarding the Respondent's policies. In cases similar to this one, the Board has uniformly held employers responsible for the conduct of group leaders who actively participate in organizational activity.³

³ *Harrison Sheet Steel Co.*, 94 NLRB 81, enfd. 194 F. 2d 407 (C. A. 7); *Union Twist Drill Co.*, 88 NLRB 1361; *The Ann Arbor Press*, 85 NLRB 946; *Sioux City Brewing Company*, 82 NLRB 1061. See also *International Association of Machinists, Tool and Die Makers Lodge No. 35 et al. v. N. L. R. B.*, 311 U. S. 72 in which the Court said:

The Employer, however, may be held to have assisted the formation of a Union, even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of *respondet superior*. We are dealing here not with private rights (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261) nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible. Thus, where employees would have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates.⁵

⁵ See *Consumers Power Co. v. N. L. R. B.*, 113 F. 2d 38, 44. Cf. *Swift & Co. v. N. L. R. B.*, 106 F. 2d 87, 93.

2. We further disagree with the Trial Examiner's finding that there is no proof in this case of disparate treatment by the Respondent of the two competing labor organizations. The Trial Examiner has apparently concluded that an employer, without violating Section 8 (a) (2) of the Act, may actively champion the cause of one of two competing unions so long as he makes no overt promise of benefit to employees who join the favored union, or no overt threat against employees who join the union the employer opposes. We cannot accept this conclusion.

The Board has consistently held that an employer must maintain strict neutrality when his employees are simultaneously being organized by two or more labor organizations.⁴ In such cases conduct showing favoritism for one of the competing unions defeats the congressional purpose of affording employees complete freedom in the selection of their bargaining representative.

The record before us is replete with testimony that *admitted* supervisors did not remain neutral. Thus, it appears from undenied testimony that Foremen Hultzman and Tait questioned a number of employees in the plant during working hours concerning their union sympathies;⁵ Hultzman and Tait pointed out to employees the advantages of the AFL and the disadvantages of the CIO; and when individual employees, after such conversations, indicated that they favored the AFL, they were congratulated by the foremen, and it was suggested that they "pass it along" to their friends. Further, employee Mollis testified, without contradiction, that during the AFL's intensive drive in the plant, he was approached by Richard and Tait, and Tait said, "There's girls going around with AFL cards, and it would be advisable if you signed one." When Mollis asked why he should sign an AFL card, either Tait or Richard replied: "Well, there's some CIO workers in there, and they're trying to get the CIO in, and we don't want that. We're trying to get around that."

Under some circumstances expression of preference by supervisors may be privileged under Section 8 (c) of the Act as may be simple expressions of preference by an employer. In the context of the whole case, including the Employer's hasty recognition of the AFL on a card showing with rival organizing going on, however, the activities of these supervisors obviously reflect employer intent and action to aid one of two competing labor organizations, which is not protected by Section 8 (c). We find that the statements of Hultzman,

⁴ See *Sunbeam Corporation*, 99 NLRB 546, and the cases cited therein.

⁵ Interrogation by an employer concerning the union sympathies of his employees is uniformly held to constitute a violation of Section 8 (a) (1) of the Act. *Standard-Coosp-Thatcher Company*, 85 NLRB 1358; *N. L. R. B. v. Chauitauqua Hardware Corporation*, 192 F. 2d 492 (C. A. 2). However, as the complaint herein does not allege that the interrogation by Hultzman and Tait constituted an independent violation of Section 8 (a) (1), we make no finding on this score.

Tait, and Richard constituted more than mere expressions of opinion. Instead, we find that they amounted to verbal pressure upon the employees to join the AFL; as such, the statements of the supervisors can no more be disregarded than pressure exerted in other ways.⁶

3. To all intents and purposes the AFL's organizational efforts did not begin in the plant until about 3 p. m. on Saturday, June 16, 1951, the day after the Respondent agreed to meet with the AFL and recognize it upon proof of majority representation. Between 3 p. m. on Saturday, June 16, and about 2:30 p. m. Monday, June 18, at least 6 employees openly devoted a great deal, if not most of their working time, to soliciting signatures for the AFL. At 2:30 p. m. on Monday, or only 48 hours after the intensive AFL campaign began, the Respondent's representatives sat down with the AFL representatives and started to negotiate a contract while AFL cards were checked against the payroll. By 6:15 p. m. the same afternoon the committee checking the cards reported that the AFL had established a majority, and a 55-page contract between the AFL and the Respondent was executed covering approximately 860 employees.

Absent any evidence of assistance to the AFL, the Respondent's hasty acceptance of the AFL's majority showing, and the drafting of a complete 55-page contract in less than 3 hours, alone, in the face of knowledge of the rival CIO activity and the possibility of duplication of cards, was improper.⁷ When these factors are viewed together with the concrete evidence of widespread assistance to the AFL by the Respondent's supervisors, we are compelled to conclude that the Respondent did not preserve the required neutral position, but instead rendered active support to the AFL in violation of Section 8 (a) (1) (2) of the Act.

The Effect of the Unfair Labor Practices Upon Commerce

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

The Remedy

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

⁶ *N. L. R. B. v. Kropp Forge Co.*, 178 F. 2d 822 (C. A. 7).

⁷ *Sunbeam Corporation*, *supra*.

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

CONCLUSIONS OF LAW

1. By assisting American Flint Glass Workers' Union of North America, AFI., and its Local No. 1007, and by according continuing effect to its contract with said labor organizations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

2. In the foregoing manner by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Respondent, Corning Glass Works, Central Falls, Rhode Island, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing American Flint Glass Workers' Union of North America, AFL, and its Local No. 1007, as the bargaining representative of any of its employees employed at its Central Falls, Rhode Island, plant, for the purpose of collective bargaining with it in respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, unless and until said labor organizations shall have been certified by the National Labor Relations Board.

(b) Performing and giving effect to its agreement of June 18, 1951, with American Flint Glass Workers' Union of North America, AFL, and its Local No. 1007, or to any modification, extension, supplement, or renewal thereof, or to any superseding agreement with said labor organizations, unless and until said organizations shall have been certified by the National Labor Relations Board.⁸

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organiza-

⁸ However, nothing herein shall be construed to require that the Respondent vary or abandon the terms or conditions of employment established in said agreement of June 18, 1951, or any modification, extension, supplement, or renewal thereof, or any superseding agreement, or to prejudice the assertion by the employees of any rights they may have thereunder.

tion, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from American Flint Glass Workers' Union of North America, AFL, and its Local No. 1007, as the representative of any of its employees employed at its Central Falls, Rhode Island, plant, for the purposes of collective bargaining with it in respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said organizations have been certified by the National Labor Relations Board.

(b) Post at its plant at Central Falls, Rhode Island, copies of notice attached hereto and marked "Appendix A."⁹ Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the First Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT recognize AMERICAN FLINT GLASS WORKERS' UNION OF NORTH AMERICA, AFL, AND ITS LOCAL No. 1007, as the representative of any of our employees employed in the Central Falls, Rhode Island, plant, for the purpose of collective bargaining with us in respect to grievances, labor disputes, wages, rate of

⁹ In the event that this Order is enforced by a Decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

A hearing was held before me at Providence, Rhode Island, on November 19 and 20, 1951. Pursuant to leave granted to all parties, briefs were thereafter filed by General Counsel, the Company, and the AFL. The Company has submitted proposed findings of fact and conclusions of law; these are accepted to the extent that they are consistent with the findings and conclusions herein.

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

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATIONS INVOLVED

It was admitted and stipulated and I find that the Company, a New York corporation with its principal office at Corning, New York, does business in various States of the United States, including New York, West Virginia, Pennsylvania, Oklahoma, Michigan, and Rhode Island; that at its Central Falls, Rhode Island, plant, it manufactures glass products valued at more than \$1,000,000 annually, more than 50 percent of which is shipped out of Rhode Island, and its annual purchases exceed \$1,000,000, more than half of which amount represents purchases made outside of Rhode Island; and that the Company is engaged in commerce within the meaning of the Act.

It was admitted and I find that Federation of Glass, Ceramic & Silica Sand Workers of America, CIO, American Flint Glass Workers' Union of North America, AFL, and its Local No. 1007, severally, are labor organizations and admit to membership employees of the Company.

II. THE UNFAIR LABOR PRACTICES

General Counsel declared at the opening of the hearing that he had no evidence of domination or interference with the formation of the AFL. Attention is therefore to be directed to the question of unlawful assistance to and support of that Union by the Company.

References hereinafter made to the evidence, not ascribed to named witnesses, represent uncontradicted testimony, or findings where conflicts have been resolved; findings are made herein on the basis of reliable, probative, and substantial evidence on the record considered as a whole and the preponderance of the evidence taken.

The CIO started to organize the plant about the middle of May 1951. It met with employees in a local CIO office, and otherwise appears to have proceeded covertly and slowly with its preliminary organizing efforts. (The evidence suggests that there was more CIO activity after June 18 than before.)

In the meantime, by letter dated June 11, 1951, the AFL made a claim of majority representation and requested a meeting with the Company to negotiate a collective bargaining contract. Under date of June 16,¹ the Company agreed to meet and to recognize the AFL after proof of majority representation.² On June 17, the AFL by telegram confirmed the appointment to meet at the plant on the afternoon of June 18.

AFL cards were brought into the plant on the afternoon of June 16. From that time until the meeting 2 days later, some half dozen employees devoted a great deal if not most of their time to soliciting signatures for the AFL. Much of this was on working time, but the employees so engaged were paid for that time.

¹ Because considerable testimony was taken on this point, I note the finding that this letter was actually sent on June 15. (The addressee had it on Sunday, June 17.)

² Testimony that a supervisor spoke of an election to be held suggests that at this time the Company did not know whether the AFL represented a majority and anticipated a contest between the two unions.

When the Company met with the AFL on June 18, a committee was appointed to check the AFL's cards against the company payroll while the terms of an agreement were discussed and copies prepared contingent on proof of majority. Provisions of contracts entered into at other plants of the Company were considered. On the committee's report that the AFL represented a majority of the employees, the agreement was executed.

The agreement was entered into between the Company and American Flint Glass Workers of North America, AFL, "including Local Union No. 1007, Central Falls, Rhode Island." A charter was issued to Local 1007 at about that time, whether before or after the agreement was executed is not clear; local officers were elected on June 29. As noted above, General Counsel does not now claim that the Company improperly assisted in the organization of Local 1007.

Wakefield, the CIO international representative, testified that he was "just about ready" to file a representation petition with the Board when the agreement was entered into between the Company and the AFL. The CIO thereafter prepared and issued pamphlets in connection with its organizational drive. Those pamphlets were dated June 29, 1951. The original charge herein was dated June 26 and filed with the Board on June 28.

According to Wakefield, when the pamphlet was issued, his group wanted an election only. Whatever the CIO's present desire, and the charge may be considered in that connection, the Board is not limited by a party's request for relief. The issues are in the first place framed by the pleadings.

Although it does not in fact appear that the CIO campaign was a matter of "common knowledge" prior to execution of the agreement with the AFL, the undenied discussions between supervisors and various employees indicate that the Company was aware of that campaign. Nevertheless, the CIO made no claim, and there is no evidence that the Company had reason to believe, that it had sufficient interest to warrant an election. Accepting the testimony that the AFL campaign was started later, the additional circumstance that recognition was accorded it on the third day of its intensive membership campaign³ does not warrant a finding of unfair labor practice whatever suspicion may be suggested by the speedy recognition. The AFL submitted proof of majority representation prior to execution of the agreement. There remains to be considered only whether such apparent majority was unlawfully obtained with the support of the Company.

Richard, a group leader, played an active role in the AFL organizing effort. Whether his activities are chargeable to the Company depends on his status. On the one hand, it is urged that he assists John Tait, a shift foreman, and is himself a supervisor; on the other, that he is a production and maintenance rank-and-file employee.

It was testified on behalf of General Counsel that Richard gave people orders to do jobs and replaced them on machines. The Company maintains that he transmits the foreman's directions to other hourly paid employees, and can transfer employees on jobs under the general direction of the foreman. While the foreman directs that employees be transferred from a given group to another job, Richard sometimes selects the individual employees who are to be taken from the group. To this limited extent, if the employees concerned are on a dual rate basis and if the old and new jobs carry different rates, Richard can determine employees' earnings. Knapp, the plant manager, testified that this would not "normally" occur since the foreman would effect the transfer where a change in

³ As noted *supra*, the AFL claimed majority representation before this membership drive got under way. Whether that claim was valid is not the issue, nor whether the AFL was reckless in undertaking to substantiate the claim.

rate is involved. Knapp testified further that, unlike supervisors, Richard is paid at an hourly rate and time and one-half after 40 hours.

On behalf of the General Counsel, it was recalled that on an occasion when certain employees' work was unsatisfactory, Richard told Tait, and the relief period was cut until those employees caught up with their work. This does not prove Richard's authority. Again, during the first half of 1951, when Tait was absent, Richard performed his duties; but this occurred not more than 4 days during that period. Such sporadic relief does not indicate that Richard was a supervisor.⁴ When Tait went on vacation, his place was taken by another foreman.

The number of rank-and-file employees indicated on the organization chart received in evidence does not suggest that Richard, the group leader listed under John D. Tait, was a supervisor. While a finding of lesser but supervisory status might be found where some 60 employees serve under a recognized supervisor, the group leader in this case does not substantially lessen the number of employees under a single direction: Richard's authority, such as it is, extends to more than 50 of the 60, and does not afford closer supervision than that which the foreman exercises. Nor does Richard's position "identify (him) with management in such a way as to cause the employees to look to (him) for guidance regarding the (Company's) policies."⁵ I find that Richard is not a supervisor within the meaning of the Act.

It is clear that in a concentrated and active 3-day campaign, AFL supporters among rank-and-file employees solicited membership on working time⁶ both in the presence of supervisors and for periods of such duration that the Company's knowledge of their activity may be presumed. Unlike the host of cases, however, in which an unfair labor practice is found because one of several rival unions is thus favored, there is no proof here of disparate treatment. When the CIO undertook to get signatures, its representatives were not molested even when they solicited openly on company time and although supervisors were apparently aware of their activity. In fact, the Company undertook to show that "all unions," including some not involved in this proceeding, have been permitted to solicit. Nor is there any evidence that the Company sponsored the AFL's activity.

General Counsel urges that, however impartial, support of all points of view, in this case by permitting discussion and solicitation during working time, is nevertheless "support" and violates the Act. With this argument I must disagree.

Various related propositions are clearly established: With recognized exceptions, distribution of union literature on company premises may be prohibited; likewise, solicitation of membership during working time; such prohibitions are unlawful if applied discriminatorily. But what of the antithetical reaction: Come one, come all, conduct organizing activities, or not! Is this a year-round Christmas spirit of goodwill acceptance, even furtherance, of employees' rights, which the Company exhibits? Or does it constitute unlawful support and interference with those rights?

Keeping in mind that Section 8 of the Act is concerned with the protection of employees' rights and that the Board has held that violation of Section 8 (a) (2) constitutes interference with such rights, it is not interference and therefore no unlawful "support" to open the door wide to all activity: Any support

⁴ *E. W. Scripps Company*, 95 NLRB 227.

⁵ *Harrison Steel Sheet Co.*, 96 NLRB 192. Cf. also *Sioux City Brewing Company*, 82 NLRB 1061.

⁶ Evidence that there was no drop in output does not meet this issue.

derived from such permission cannot interfere with the rights of employees to organize or to refrain from organizing, and is thus not violative of the Act.⁷

The permission given to employees soliciting for the AFL was suspiciously broad. Knapp testified that employees are permitted to solicit on behalf of any union as long as they do not interfere with production, and that an employee might leave his machine for long periods without interfering with its production. While the AFL⁸ took advantage of this attitude, the CIO made no attempt to test it fully. We need not speculate concerning what action the Company might take were other groups (and there might be many) as forward in their efforts as the AFL was here; nor what the effect would be on production. As stated, there is no evidence of discrimination, and the Company offered to prove that it treats all unions alike.

(No suspicion attaches to the fact that Tait knew that Botelho, an employee who solicited for the AFL, had union cards. As reasonable as any other is the conclusion that after that Union made its representation claim, it notified the Company of its proposed campaign.)

In the absence of threat or promise of benefit, the advice or directions given that employees who favored the AFL "spread the word" are no more violative of the Act than are an employer's statements of its own preference.⁹ Nor is reference to trouble with a union at another plant,¹⁰ or a warning that strikes called by a union would result in loss to the employees,¹¹ a threat of reprisal by the Company. In the latter connection, a distinction must be recognized between a threat and a prediction conditioned upon later events.

We need not consider acts such as interrogation of employees concerning their preference and how they would vote since, beyond the question of assistance to the AFL, such acts are not within the issues in this proceeding.¹² In short, there is no proof of such hostility toward the CIO as might make interrogation by a supervisor support of the AFL and a violation of Section 8 (a) (2) of the Act; the interrogation might be interference under Section 8 (a) (1), but that is not here alleged. As for a supervisor's expressions of preference, they are privileged under Section 8 (c).¹³

I find that the Company has not interfered with, restrained, or coerced employees by dominating or interfering with the formation or administration of the AFL or by contributing financial or other support to it.

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

⁷ See *The Electric Auto-Lite Company*, 89 NLRB 1407; *N. L. R. B. v. Brown Company*, 160 F. 2d 449 (C. A. 1). Cf. also *Horton Hubbard Mfg. Co.*, 94 NLRB 920.

⁸ The AFL's apparent majority and the evidence of subsequent increase do not disprove illegal support; had there been such support, the majority might be a reflection of it.

⁹ *Tennessee Coach Company*, 84 NLRB 703.

¹⁰ *Salant & Salant, Inc.*, 88 NLRB 816.

¹¹ Cf. *Dinion Coil Company, Inc.*, 96 NLRB 1435. One employee, Mollis, testified that Tait said that he would "have a better chance of working conditions" if he signed an AFL card. Not only is this no clear promise of benefit, the statement including reference to "less strikes," but it was made at a point when the witness appeared to be otherwise confused.

¹² *Starrett Brothers and Eken, Incorporated*, 92 NLRB 1757.

¹³ While support of the AFL might be found in Supervisor Truchon's alleged threat, made sometime between July and September, that the alternative would be "no union at all," I do not credit the testimony concerning this gratuitous remark. The witness impressed me as "trying to make a case."

As I stated at the hearing, Bessette's affidavit was received on the authority of *Quest-Shon Mark Brassiere Company, Inc.*, 185 F. 2d 285 (C. A. 2), not as establishing fact, but for the limited purpose of impeaching him.

CONCLUSIONS OF LAW

1. The Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Federation of Glass, Ceramic & Silica Sand Workers of America, CIO, American Flint Glass Workers' Union of North America, AFL, and its Local No. 1007, severally, are labor organizations and admit to membership employees of the Company.

3. The Company has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (2) of the Act.

[Recommendations omitted from publication in this volume.]

JAMES THOMPSON & Co., INC. *and* TEXTILE WORKERS UNION OF AMERICA, CIO. *Case No. 2-CA-1762. August 5, 1952*

Decision and Order

On December 12, 1951, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practice alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the charging Union filed exceptions to the Intermediate Report and supporting briefs. The Respondent filed exceptions to certain findings made in the Intermediate Report and to certain rulings made by the Trial Examiner at the hearing, together with a brief in support of the Trial Examiner's ultimate conclusions.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.² The ruling are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in the exceptions of the General Counsel and the Union, and no merit in the Respondent's exceptions.³ Because of

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

² The Respondent contends that the Trial Examiner erred in admitting evidence as to employer solicitation of individual strikers to abandon the strike involved in this case on the ground that such conduct was not pleaded in the complaint or in the General Counsel's bill of particulars. There is no merit in this contention as the issue was fully litigated at the hearing and the Respondent does not show that it was prejudiced in any respect by the absence of such pleadings.

³ The Respondent also filed a motion to strike the Union's exceptions and brief "on the ground that it is a scurrilous document, which without any basis in the record or elsewhere, impugns the motives of the Trial Examiner, and accuses him of deliberate dishonesty." We hereby deny this motion. The Union's exceptions and brief do not exceed the bounds of proper argument.