APPENDIX B

NOTICE

Pursuant to a Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT threaten physical injury to, or in any other manner restrain or coerce, Fred Caldwell, or any other employee of Blue Diamond Coal Company or any other employer, as defined in the Act, within the geographical limits of the jurisdiction of District 30, United Mine Workers of America, in the exercise of rights guaranteed in Section 7 of the Act, except to the extent that such rights 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 National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

DISTRICT 30, UNITED MINE WORKERS OF AMERICA,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

UNITED MINE WORKERS OF AMERICA,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Transit Building, Fourth and Vine Streets, Cincinnati, Ohio, 45202, Telephone No. Dunbar 1-1420, if they have any question concerning this notice or compliance with its provisions

---

Elliott-Williams Co., Inc. ***and*** **Sheet Metal Workers' International Association, Local 503, AFL-CIO.** *Case No. 25-CA-1657. July 24, 1963*

DECISION AND ORDER

On April 16, 1963, Henry S. Sahm issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case,

and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER

The Board adopts the Recommended Order of the Trial Examiner.

[1] We do not adopt the Trial Examiner's statements referring to an asserted conversation between James Elliott, president of Respondent Company, and one Conrad, an employee, in which Elliott purportedly said he would give the employees 24 hours to choose between representation by the Union or by their own organization. There is no evidence of record to support these statements of the Trial Examiner.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge filed on October 5, 1962, by Sheet Metal Workers' International Association, Local 503, AFL–CIO, herein called the Union, against Elliott-Williams Co., Inc., herein called both the Respondent and the Company, the Regional Director, acting for the General Counsel, issued a complaint on November 16, 1962. The complaint alleges the commission of unfair labor practices by the Respondent Employer within the meaning of Section 8(a)(1) and 8(a)(5) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 135, as amended, herein called the Act.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Respondent has refused to bargain, and threatened, interrogated, polled, promised economic benefits to its employees, and offered to bargain directly with them, if they refrained from union activities on behalf of the Charging Union.

Copies of the complaint and notice were served upon the parties. The answer of Respondent denies the commission of any unfair labor practices. Pursuant to notice, a hearing was held in Indianapolis, Indiana, on January 28, 29, and 30, 1963, before Trial Examiner Henry S. Sahm. All parties were represented by counsel and were afforded full opportunity to participate in the hearing and to introduce relevant evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Briefs were filed by the parties on February 20, 1963, which have been fully considered.

Upon the entire record in the case, and from observation of the demeanor of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Indiana corporation, maintains its place of business in Indianapolis, where it is engaged in producing and installing walk-in refrigerators. Respondent, during the past year, which period is representative of all times material herein, manufactured, sold, and shipped from its plant finished products valued in excess of $50,000 to points outside the State of Indiana It is found, therefore, that Respondent Company is engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers' International Association, Local 503, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

Resolutions of Credibility

The witnesses for the General Counsel and Respondent are in sharp conflict as to the salient issues in this case. Nevertheless, after observing the witnesses, and analyzing the record and inferences to be drawn therefrom, this conflict in testimony is resolved in favor of the versions told by the General Counsel's witnesses. Adams', Young's, Scott's, Howson's, and Spurrier's demeanor while testifying and their forthright manner in answering questions impressed the trier of these facts. This impression that they were testifying truthfully became a conviction when their stories were found to be both consistent with the attendant circumstances in this case and not substantially shaken by able counsel for the Respondent who vigorously and thoroughly cross-examined them.

Considerable credence also has been placed upon the testimony of those witnesses who were in the employ of Respondent at the time they testified. As such, they depended on their jobs for their livelihood and they understood that after testifying they would continue in the employ of Respondent. Moreover, the trier of these facts is not unmindful of the predicament of an employee who testifies adversely to his employer's interests, being apprehensive and fearful, with some measure of justification, as to the future possibility of retaliatory action. These practical considerations coupled with the normal workings of human nature have led the Trial Examiner to credit the testimony of Hobbs, Eldridge, Westfall, and Allen who are presently employed by Respondent, as it is believed they were impelled to tell the truth regardless of what consequences might eventuate.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Sometime around the first of August 1962, the Union began an organizational campaign among the Respondent's employees. At a union meeting on August 9, approximately 20 of the 24 employees in the appropriate unit signed union authorization cards. On August 13, 1962, the Union claimed it represented a majority of Respondent's employees and requested Respondent Company president, James H. Elliott, to recognize the Union and bargain with it for these employees. Elliott replied that since this was the first he had heard of it, he would prefer the Union to file a representation petition with the Board requesting an election, which the Union did on the same day. On direct examination, Elliott testified that the union officials asked him if he wished to see the union authorization cards signed by his employees and "[he] said no, I do not." Respondent received notice of the Union filing its petition the following day. Shortly thereafter, the Board ordered an election to be held on October 25, 1962, to ascertain whether the employees desired to be represented by the Union. When the Union filed a charge on October 5, the Regional Director withdrew this order on October 17, 1962, and dismissed the petition on October 18, 1962.

The day after the Union asked for recognition, August 14, Scott, an employee, testified that Robert Henry, a supervisor,[1] spoke to employees Thomas, White, Boller, Spurrier, Howson, and himself as follows:

> So you guys want a union. . . He says, well, there is no use lying about it now, the union men were here yesterday. And he says I don't object to a union, if it is for the men. But if it is Sheet Metal Union, he says, they will require Journeymen to do sheet metal work and all of you guys will be out of a job. Because I don't think any of you can qualify. He said, it will take at least 4 years of apprenticeship for a journeyman
>
> * * * * * * *
>
> He said that he thought the shop union would be all right. He said he would be all for that himself He said he would even vote for that himself if it was just for a shop union.

On or about August 14, Mrs James Elliott, wife of the company president and herself vice president, spoke to Roy Young at his workbench in the plant and asked "what was going on . . about this union" She chided Young for not coming to the plant officials first rather than going to "strangers" She then asked Young what the employees wanted. Young testified that "she went on to explain that certain jobs pay a certain amount of money and if [the employees] didn't do it for that, they would get somebody else that would." She then asked Young if he and a group of the employees would be agreeable to talking about this matter with her husband. Young told her he would see and let her know after he had discussed this matter with his fellow employees

The next day Young advised Mrs. Elliott that the men were unwilling to discuss the matter. The same day, August 15, Mrs. Elliott called Young to the office and "insisted" that the employees discuss the union matter with her husband

Thereupon Young selected four other employees besides himself[2] and they went as a group to Elliott's office. Elliott wanted to know why they had gone to the Union rather than seeing him first. Elliott told this group of employees that he would prefer to deal with them rather than Sheet Metal Workers' Union. When the employees explained to Elliott that they needed a union to represent them, he replied that a union "would be a waste of money" as he would have to hire a lawyer and the employees would have to pay union dues It was elicited on cross-

[1] The General Counsel contends Henry is a supervisor which Respondent denies See page 816 *infra*, where it is found Henry is a supervisor

[2] Preidt, Hobbs, Eldridge, and Westfall

examination that Elliott told the employees he thought they should be represented by an "independent" union rather than Sheet Metal Workers' Union as he believed the employees would get just as much if they had their own union. When the employees asked Elliott what the procedure was for dropping Sheet Metal Workers' Union, he suggested to the employees that they could tell the union officials they no longer wanted the Union to represent them.

Elliott requested the employee group to draw up a list of their demands and submit it to him and he would look them over and see if he could agree to it. The employees advised Elliott they would discuss it with the other employees and let him know whereupon Elliott suggested that they hold a meeting of the employees in order to determine what they wished to do.

That same day, August 15, 1962, an announcement was made over the plant's loudspeaker system that the employees should assemble in a particular part of the plant.[3] After the employees were assembled, the employees' group, who had previously discussed union matters with Elliott at the meeting in his office, then proceeded to tell the other employees what had transpired in their meeting with Elliott. They decided to hold a secret vote as to whether they preferred to be represented by Sheet Metal Workers' Union or an independent union of their own. When the votes were tabulated, it was found that all the employees, except one, voted for Sheet Metal Workers' Union.

Shortly thereafter, Henry, a supervisor who was in charge of the metal shop, approached different employees at various times and showed them a sheet of paper on which he had written certain proposals with respect to wages, vacations, seniority, overtime, and other working conditions. He told these employees that if they dropped the Union, he was reasonably certain that Elliott would agree to go along with these proposals.[4] Henry also told Van Hobbs, who is presently employed by the Respondent Company, that: "He thought we [the employees] could get a 10¢ raise and later, after the Union was dropped, we could negotiate a better contract." Hobbs testified that immediately after this conversation with Henry, he saw Henry go to Elliott's office and speak with him and his wife.

Around the first week in September, Henry spoke to Young in the plant during working hours and asked him "if we would go for an independent union, a shop union. And he wanted to know if we would take a vote on it."

Young was agreeable so Henry assembled the employees during working hours (as on the first "election") and the employees voted by secret ballot as to whether they preferred Sheet Metal Workers' Union or an independent union. All the employees voted for the Sheet Metal Workers' Union, except two.[5]

At approximately the same time that this second "election" was held, Henry told Edward R. Adams, an employee, that if Sheet Metal Workers' Union were successful in its efforts to represent the employees the Company would abolish vacation pay and Christmas bonuses. William Allen, who is presently employed by Respondent, testified that Henry told him, "If we voted the Union in, that the Company would close the doors." Westfall testified that Henry said to him that "Mr. Elliott wouldn't sign the [charging] union contract."

On or about October 2, Henry told Scott, an employee, that if the employees "vote this union in, all you're voting is a strike. He said what you ought to do is get a few of the guys to go and drop this thing." Scott also testified that upon orders from Henry, he went around the plant and the employees again were polled as to which union they preferred. Scott also testified that Henry instructed him to tell the employees that if they would agree to drop the Sheet Metal Workers' Union, they would have restored to them their overtime, which had been abolished, and that they would receive raises in pay and other benefits. When Scott expressed apprehension that the employees might be discharged because of their union activities, Henry said: "If they don't believe you, tell them I'll give them my personal guarantee they are not going to lose their jobs."

In the early part of October, some of the employees feared that the poll of the employees as to their union sentiments which had been taken by Scott, at the request of Henry, the supervisor, might jeopardize their jobs. Being fearful of what might eventuate from this, three employees, Eldridge, Westfall, and Conrad, expressed their feelings in this regard to Denkins, another employee. Denkins suggested that they talk to Elliott, president of the Company, but they demurred. Denkins, unknown

---

[3] The announcement was made by Denkins, an employee, who first received permission from Respondent to do so. Elliott admits he heard the announcement.

[4] When Young, an employee, accused Henry of doing this on orders from Elliott, he denied it, stating that these proposals were his own.

[5] Henry voted in this "election."

to these three employees, and on his own initiative, evidently saw Elliott, whereupon Denkins told the three employees that Elliott wanted to see them in his office. On cross-examination, Westfall, who is presently employed by Respondent, testified that the reason they wanted to talk to Elliott was to ascertain what Elliott would agree to grant them in the way of working conditions and wages if the employees were to drop the Union.[6]

During the course of this meeting, Elliott informed this group of three employees that he was granting a 10-cent-an-hour wage increase to all the employees. However, Elliott stated he would prefer the employees to organize a committee and "have a contract of [their] own and have [their] own committee." In this way, Eldridge, a member of the employees' committee, testified, Elliott said: "When we wanted to talk over something with him, we could come directly and talk to him—the committee could come and talk to him—the elected committee." When the discussion turned to dropping the Sheet Metal Workers' Union, the employees told Elliott that they did no know how to go about it. At that point Elliott telephoned his lawyer and in a four-way conversation (each of the three employees speaking on an extension), the lawyer advised them how they could go about dropping the Union.

After receiving this advice, the employees told Elliott they had no money to hire a lawyer whereupon Mrs. Elliott spoke up and suggested to her hubsand that he give the employees the money to pay for a lawyer. Elliott stated that this was against the law "but he said he could let [the employees] have the money to buy a new truck. And whatever we done with it was up to us. And he could arrange a way for us to pay him back." The meeting then came to a close.

The next day Elliott saw Conrad, one of the three conferees, and asked him whether they had come to a decision. Conrad replied in the negative. Elliott then said he would give them 24 hours to make up their minds.

The following day, in early October,[7] Mrs. Elliott, vice president of the Company, came to Westfall's workbench (one of the three conferees) and called him a liar. According to Westfall she said: "You lied to me in the office. You made us believe you were dropping [the Union] and you weren't going to go ahead and push it any further." A few days later Mrs. Elliott again came to Westfall's workbench and asked him if he had anything to say "about this union deal."

On October 15, Mrs. Elliott spoke again to Westfall in the plant. The following is Westfall's testimony:

> Well, she confronted me out there. She said, Ronnie, this has come down just between me and you; me and you are the only ones that can stop it. She said yes, you are the one. And I said no, I am not the one. She said it just comes down between me and you, we are the only ones to straighten this thing out. I said I wasn't, again. And she said I have seen you around the shop, the way you are with men. All the guys that got any problem they come to you and talk it over with you. And I said no.
>
> She said that she would like for me to help her out and stop this thing before it went any further. I said I couldn't do that. She said I know you can. You have got a lot of power with the men. And I still said no. She said I was just like a little boy. She would like to do me like she did her son Mike, turn me over and spank me and take a stick to my legs. And I said I looked like I am a little bigger than a boy. She said you are a little boy, you just haven't been around as long as me and Jim [her husband]. You don't understand these things. You should think it over and try to understand things and help us out. I said I couldn't.
>
> She said well, couldn't you just go around and talk to the men and find out what they think about it. And I said what if they told me something and I went and told you and it ended up being a lie. She said, well, I would believe you no matter what you said. If you told me something to tell them and I found out later it was a lie and everybody would be mad at me. I couldn't go ahead and do this thing, because I have to work with all of the guys. And she said, well, I want you to think it over and I'll see you later about it. So, that was in the evening.
>
> And the next morning, around 9:00 o'clock, she came back in and wanted to know my answer on this. And I told her I couldn't do it. She said okay, Ronnie, you are the doctor now, you can take the medicine and walked away.

---

[6] Elliott testified that these three employees "were interested in seeing if they could get an independent organization."

[7] The charge was served on Respondent on October 6, 1962.

The question of whether the Act has been violated requires not only an appraisal of the particular circumstances which have been described above, but also a determination of whether the Respondent is liable, as the General Counsel contends, for the activities and statements of Henry who Respondent denies is a supervisor within the meaning of Section 2(11) of the Act.[8] For the reasons hereinafter explicated, it is found that Henry is a supervisor so as to render the Respondent liable for Henry's conduct. The Board and the courts have held in interpreting this section of the Act that it must be viewed disjunctively; any one of the indicia set out in Section 2(11) is sufficient for supervisory status.[9]

The evidence reveals that Henry instructed, reprimanded, responsibly directed the work of employees, organized and assigned work to personnel; gave employees time off, shifted employees from one job to another, and acted as intermediary between the employees in his shop and the front office.[10] He had a desk, identical to those of company officials, which was located in an area partitioned off from the other employees. He effectively recommended the hiring and firing[11] of employees and was described by employees as being the "metal shop foreman," "supervisor in the metal shop," and "in charge of the metal shop."

Perhaps the most significant indicium of Henry's supervisory status is the fact that he received $2.80 an hour. Contrasted to this cogent fact are the hourly wages of other employees, most of whom were paid between $1.50 and $1.70, with a few receiving $2 an hour.[12]

Moreover, Henry had the attributes of a representative of management and was reasonably regarded as such by the employees.[13] Accordingly, it is found that Henry was a supervisor within the meaning of Section 2(11) of the Act.

Conclusions

The uncontradicted evidence demonstrates that by August 13, 1962, the Union had signed up a majority of the employees, in the appropriate unit, at the Respondent Company's plant. Thereupon, by virtue of the provisions of Section 9(a) of the Act,[14] the Union became the exclusive representative of all the employees in the bargaining unit.[15] Section 8(a)(5) provides that an employer who refuses to bargain with the representative chosen by his employees is guilty of an unfair labor practice.

---

[8] Section 2(11) provides:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, 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.

[9] *Ohio Power Company* v. *N L R B.*, 176 F. 2d 385, 387 (C.A. 6); *N L.R.B* v. *Edward G. Budd Manufacturing Co*, 169 F. 2d 571, 576 (C A. 6).

[10] On one occasion Henry told employee Scott that he was to take orders from no one but him

[11] When Howson was fired, he asked Ross, a company official, for another chance and Ross told him he must abide by Henry's recommendation

[12] Following held to be supervisors: *Manhattan Coil Corporation, etc*, 98 NLRB 1246, 1249, footnote 6, where "lead man" spent 75 percent of his time doing work similar to that of other employees but received 35 cents an hour more; *United States Gypsum Company*, 124 NLRB 416, 417, hourly paid employee received more compensation than highest paid employee in his department; *Badenhausen Corporation*, 113 NLRB 867, 871, employee earned 25 percent to 30 percent more than other employees

[13] *International Association of Machinists* v. *N.L.R.B.* (*Serrick Corp*), 311 U.S. 72, 79–81; *Red Arrow Freight Lines, Inc*, 77 NLRB 859, 860, enfd. 180 F 2d 585 (C A. 5); *E. B Law and Son*, 92 NLRB 826, enfd. 192 F. 2d 236 (C.A. 10); *Samuel Flatau, d/b/a Yale Filing Supply Co*, 91 NLRB 1490; *N.L R.B.* v. *Ed Friedrich, Inc.*, 116 F. 2d 888, 890–891 (C A 5).

[14] Section 9(a) provides:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

[15] The Company admits that the bargaining unit involved in this case was appropriate.

It is well settled that an employer's duty to bargain is not contingent solely upon an election and Board certification. The Act requires no specific form of authority to bargain collectively. It is only necessary that the union's authorization be manifested in some manner capable of proof.[16] Thus, a union's representative status may be established by designation cards, or applications for membership, or employee petitions.[17] The Act, however, does not condition an employer's obligation to bargain upon an antecedent certification by the Board, where, as here, a union's majority designation is clearly established otherwise, so that the employer acts at his peril in refusing to recognize a duly selected bargaining agent.[18] By Respondent's failure to learn the facts as to the Union's majority and by engaging in unlawful conduct designed to undermine the Union's support, Respondent elected to take "the chance of what [the facts] might be."[19] When the Union offered to show Elliott the authorization cards, he refused the tender.

Although it is settled that an employer's duty to bargain arises immediately upon receipt of an unequivocal request such as the circumstances in this case reveal, the president of the Respondent Company insisted upon the Union filing a representation petition. Shortly after it had compelled the Union to file a representation petition, the Company betrayed its fundamental opposition to the entire principle of collective bargaining by resorting immediately to coercive activities. By interfering with the rights of its employees immediately following the Union's request for recognition, Respondent itself provided a reliable index for measuring whether it had a good-faith doubt of the Union's claim that it represented a majority of Respondent's employees.

While an employer may, of course, refuse to recognize a union when motivated by a good-faith doubt concerning its majority status, it is settled, as stated in *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 185 F. 2d 732, 741 (C.A.D.C.), cert. denied 341 U.S. 914, that when—

> . . . such refusal is due to a desire to gain time and to take action to dissipate the union's majority, the refusal is no longer justifiable and constitutes a violation of the duty to bargain set forth in section 8(a)(5) of the Act. [Citing cases.] The Act provides for election proceedings in order to provide a mechanism whereby an employer acting in good faith may secure a determination of whether or not the union does in fact have a majority and is therefore the appropriate agent with which to bargain. Another purpose is to insure that the employees may freely register their individual choices concerning representation. Certainly it is not one of the purposes of the election provisions to supply an employer with a procedural device by which he may secure the time necessary to defeat efforts toward organization being made by a union.

Furthermore, any attempt to evaluate whether Elliott, the Respondent's president, when he insisted upon a Board election, did so in good faith, requires that due consideration be given to Respondent's conduct and activities detailed above.[20] It is clear that based upon Respondent's words and deeds, it revealed a determination to deprive its employees of their basic organizational rights guaranteed by the Act. Even more fundamentally, however, the very circumstance that Elliott, Respondent's president, declined the Union's offer to show him the signed authorization cards of his employees or that the Respondent made no inquiry of the Union as to the appropriateness of the unit it requested, confirms that Respondent entertained no concern on either score.[21]

Shortly after the Company was requested to recognize and bargain with the Union, it immediately embarked on an antiunion campaign by unlawfully polling and interrogating employees, threatening reprisals and the abolishment of certain benefits and privileges previously enjoyed by the employees, as well as promising economic benefits and also bargaining directly with individual employees. This unlawful conduct was intended to discourage union adherence, win employees' allegiance from

---

[16] *Lebanon Steel Foundry* v. *N.L.R.B.*, 130 F. 2d 404, 407–408 (C.A.D.C.), cert. denied 317 U.S. 659.

[17] See *N.L.R.B.* v. *Bradford Dyeing Association*, 310 U.S. 318, 338–340; *N.L.R.B.* v. *Louisville Refining Co.*, 102 F. 2d 678, 680 (C.A. 6), cert. denied 308 U.S. 568; *N.L.R.B.* v. *Fiss Corporation*, 136 F. 2d 990 (C.A. 3), enfg. 43 NLRB 125, 143, 144

[18] *N.L.R.B.* v. *Piqua Munising Wood Products Co.*, 109 F. 2d 552, 556, (C.A. 6)

[19] *N.L.R.B.* v. *Remington Rand, Inc.*, 94 F. 2d 862, 869 (C.A. 2), cert. denied 304 U.S. 576 and 585.

[20] See *N.L.R.B.* v. *Marion G. Denton, et al. d/b/a Marden Mfg. Co.*, 217 F. 2d 567, 570 (C.A. 5), cert. denied 348 U.S. 981.

[21] It was stipulated that the cards which the Union had were authentic and were in fact signed by employees of the Company.

the Union, and thus dissipate the Union's majority. The pattern of conduct was all part of a scheme to undermine the Union's representative status and to destroy its standing by bypassing it in order to avoid its duty to bargain and thus indicating to its employees that it was not necessary to belong to a union to obtain satisfactory employment terms.[22]

Respondent, however, as shown above, almost immediately after the union officials requested recognition, threatened, interrogated, and engaged in other proscribed and coercive conduct. This conduct is inconsistent with Respondent's holding a good-faith doubt as to the Union's majority representative status. Accordingly, it is found that Respondent's insistence on a Board election was not made in good faith but rather for the purpose of gaining time to undermine the Union's majority. The Board and courts have agreed that in situations like this, where an employer resorts to illegal activities, it can reasonably be inferred that the employer's initial refusal to bargain was as ill-intentioned as his other actions.[23] Moreover, it is equally clear that when an employer has no bona fide reason for challenging the union's claim that it is the majority representative of his employees, his duty to bargain may arise in the absence of certification.[24]

Accordingly, it is found that the Respondent refused to bargain collectively on August 13, 1962, and since, with the Union as the exclusive representative of its employees in an appropriate unit and thereby deprived its employees not only of the rights guaranteed by Section 7 of the Act, but also violated Section 8(a)(5) of the Act.

The Alleged Violations of Section 8(a)(1)

The complaint alleges that since August 15, 1962, and on various dates thereafter, Respondent interrogated, threatened, and polled its employees as well as bargained with them directly, and promised them economic benefits.

It is found that Respondent violated Section 8(a)(1):

(1) When Ruby Elliott interrogated and threatened Roy Young on August 14, 1962.

(2) When James Elliott offered, on August 15, 1962, to bargain directly with his employees.

(3) When the employees were polled on August 15 and September 6, 1962, as to their preference between the Sheet Metal Workers' Union and an independent union.

(4) When Robert Henry, a supervisor, threatened employees by warning them that if the Union were selected by them, they would lose their jobs as they did not have the requisite experience, which the Union required, to be journeymen.

(5) When Robert Henry, a supervisor, offered to bargain directly with employees by submitting for their consideration certain proposals regarding wages and working conditions.

(6) When Robert Henry threatened employee Edward R. Adams that if the Union were selected by the employees, they would lose their vacation pay and Christmas bonus.

(7) When Supervisor Robert Henry instructed Scott to poll the employees and to promise them that if they dropped the Union, they would receive wage increases and other benefits.

(8) When James Elliott, Respondent's president, granted the employees a wage increase of 10 cents an hour.

(9) When James Elliott offered the employees money to hire a lawyer in order to drop the Union and establish an independent union.

(10) Ruby Elliott interrogating and threatening employee Westfall on October 13, 14, and 15, 1962.

It is found that the 10 incidents delineated above were intended to have the effect of interfering with the rights guaranteed to employees by Section 7 of the Act and thus constituted interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

All authorities cited by Respondent in his brief have been carefully considered and it is not believed that holdings in those cases require a finding contrary to the conclusions reached herein. Moreover, the Trial Examiner finds no occasion for lengthening this report by citing or distinguishing them, because it is believed that the controlling reasons for this decision have been sufficiently discussed. Moreover, the Respondent's contentions are based, in great part, on an interpretation of the facts in this proceeding which are materially different from the Trial Examiner's and since

---

[22] See *May Department Stores* v. *N.L.R.B.*, 326 U.S. 376, 385.

[23] *Joy Silk Mills, Inc.* v. *N.L.R.B.*, 185 F. 2d 732 at 742 (C.A.D.C.); *N.L.R.B.* v. *Samuel J. Kobritz, d/b/a Star Beef Company*, 193 F. 2d 8, 14 (C.A. 1).

[24] *Iob, et al.* v. *Los Angeles Brewing Co.*, 183 F. 2d 398, 405 (C.A. 9).

the applicability of precedent necessarily depends on one's view of the facts, no purpose would be served by discussing all the cases cited by Respondent's counsel.

IV. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

It having been found that from August 13, 1962, and thereafter, Respondent has refused to bargain collectively with the Union herein as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent bargain collectively with said Union, upon request, as the statutory representative of the employees in that unit, and if an understanding is reached, embody such understanding in a signed agreement.

It having been found that the Respondent has engaged in certain acts of interference, restraint, and coercion, within the meaning of Section 8(a)(1), it will be recommended that the Respondent cease therefrom.

It has been found that the Respondent has engaged in a variety of unlawful acts which interfered with the free choice by its employees of their bargaining representative, and that such acts were resorted to for the deliberate purpose of enabling it to evade its obligation to bargain collectively with such representative. Because of the Respondent's unlawful conduct and its underlying purposes, the Trial Examiner is persuaded that the unfair labor practices found are related to other unfair labor practices proscribed by the Act, and that the danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past. The preventive purpose of the Act would be thwarted unless the remedial order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thus to effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed by Section 7 of the Act [25]

Upon the basis of the foregoing facts and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Sheet Metal Workers' International Association, Local 503, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees of the Employer at its Indianapolis, Indiana, plant, including plant clerical employees and field assemblers and service employees, but excluding all office clerical employees, draftsmen, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. At all times since August 13, 1962, the said Union has been and now is the representative of a majority of the employees of the Respondent in the unit above described, for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on or about August 13, 1962, and at all times thereafter, to bargain collectively with the said Union as the exclusive representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the 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 by the following:

(a) Threatening its employees if they engaged in union activities; (b) coercively interrogating employees about their union activities; (c) granting wage increases and other economic benefits for proscribed reasons; (d) threatening the elimination of benefits and privileges including bonuses; (e) offering to bargain directly with its employees; and (f) polling its employees as to their preference between the Union herein and other labor organizations.

---

[25] *N L R B.* v. *Express Publishing Company,* 312 U S. 426, 437; *N L R B.* v. *Southern Wood Preserving Company,* 135 F. 2d 606, 607–608 (C.A. 5); *N.L R B.* v. *Entwistle Mfg. Co,* 120 F. 2d 532, 536 (C.A. 4).

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

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, it is recommended that Elliott-Williams Co., Inc., and its officers, agents, successors, and assign, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Sheet Metal Workers' International Association, Local 503, AFL–CIO, as the exclusive representative of all its employees in the unit heretofore found appropriate with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by the conduct enumerated above in paragraph 5 of the section entitled "Conclusions of Law."

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

2 Take the following affirmative action which it is found will effectuate the policies of the Act·

(a) Upon request, bargain collectively with Sheet Metal Workers' International Association, Local 503, AFL–CIO, as the exclusive representative of the employees in the above-described appropriate unit, and if an agreement is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Indianapolis, Indiana, copies of the attached notice marked, "Appendix."[26] Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by the Respondent Employer's authorized representative, be posted by the Respondent Employer immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that the said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twenty-fifth Region, in writing, within 20 day from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.[27]

It is further recommended that unless on or before 20 days from the receipt of this Intermediate Report and Recommended Order, Respondent notifies said Regional Director, in writing, that it will comply with the above recommendations, the National Labor Relations Board issue an order requiring it to take such action.

---

[26] In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

[27] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

> WE WILL bargain collectively, upon request, with Sheet Metal Workers' International Association, Local 503, AFL–CIO, as the exclusive representative of all the employees in the appropriate bargaining unit described below with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at our plant in Indianapolis, Indiana, including plant clerical employees and field assemblers and service employees, but excluding all office clerical employees, draftsmen, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT threaten our employees with reprisals or question them about their union activities, poll our employees as to which union they prefer, or bargain individually with them.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

ELLIOTT-WILLIAMS CO., INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, 46204, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

Sweetlake Land and Oil Company, Inc. ***and*** **Rice Workers Local 300, Amalgamated Meat Cutters and Butcher Workmen of N.A., AFL-CIO.** *Case No. 15-CA-2190. July 24, 1963*

DECISION AND ORDER

On May 7, 1963, Trial Examiner James T. Barker issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a memorandum in support of its exception; the General Counsel filed a brief in support of the Intermediate Report.

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 McCulloch and Members Leedom and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and memorandum, the General Counsel's brief in support, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.