

Harvard Coated Products Co., Division of Colonial Tanning Company, Inc., Subsidiary of Allied Kid Company and United Shoe Workers of America, AFL-CIO

Harvard Coated Products Co., Division of Colonial Tanning Company, Inc., Subsidiary of Allied Kid Company and United Shoe Workers of America, AFL-CIO, Petitioner. *Cases Nos. 1-CA-4683, 1-CA-4731, and 1-RC-7985. December 17, 1965*

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On June 17, 1965, Trial Examiner Eugene E. Dixon issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in certain unfair labor practices alleged in the complaint and recommending that it cease and desist therefrom and take certain affirmative action. The Trial Examiner further found that the Respondent did not engage in certain other unfair labor practices alleged in the complaint. In addition, the Trial Examiner found that the Respondent had engaged in objectionable conduct prior to the election held in Case No. 1-RC-7985, and recommended that the said election be set aside, all as set forth in the attached Trial Examiner's Decision. The Respondent filed exceptions to those portions of the Trial Examiner's Decision in which violations of the Act and objectionable conduct were found and a brief in support thereof. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Members Brown, Jenkins, and Zagoria].

The Board 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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations as modified herein.

We agree with the Trial Examiner that Respondent violated Section 8(a)(1) of the Act by Plant Superintendent Scourtas' threat to employee Kochiliaris that, if the Union came in, the Company would lose an important customer, and by a similar statement to employee LeRoy with a promise of a supervisory position to LeRoy conditioned upon the Union's loss of the election.¹ However, in the circumstances of this case, including the prompt action taken by Respondent's offi-

¹ Although the matter is not free from doubt, we believe the evidence to be insufficient to support a finding that the bonus of July 28, 1964, was designed to influence the employees in violation of Section 8(a)(1) of the Act.

cials in agreeing to an election upon receiving the Union's request for recognition and a copy of its representation petition, the absence of unfair labor practices thereafter, and the fact that Scourtas engaged in the prior conduct described above after having been directed by General Manager Corwin not to talk about the Union in the plant, we do not regard Scourtas' conduct, for which, of course, Respondent must be held responsible under Section 8(a)(1) of the Act, as sufficient to warrant a finding of bad faith on Respondent's part in seeking to resolve the Union's representation claim by an election.² Accordingly, we will dismiss that portion of the complaint which alleges that Respondent has violated Section 8(a)(5) of the Act.

We find, however, that the unlawful conduct attributable to Respondent interfered with the election in Case No. 1-RC-7985 and warrants setting aside that election and the direction of a new one. We shall so order.

[The Board adopted the Trial Examiner's Recommended Order with the following modifications: (1) Delete paragraphs 1(a) and 2(a) and reletter the subsequent paragraphs consecutively; and (2) delete the first indented paragraph of the Appendix³ including the appropriate unit.]

[The Board dismissed the complaint insofar as it alleges violations of the Act not found herein.]

[The Board set aside the election in Case No. 1-RC-7985.]

[Text of Direction of Second Election omitted from publication.]

² *Hammond & Irving, Incorporated*, 154 NLRB 1071.

³ The telephone number for Region 1, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: Telephone No. 223-3358.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard before Trial Examiner Eugene E. Dixon at Newburyport, Massachusetts, on January 25 and 26, 1965, pursuant to due notice, with all parties represented by counsel. The consolidated complaint¹ issued on November 18, 1964, by the Regional Director for Region 1, Boston, Massachusetts, on behalf of the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board (based upon charges filed July 27, 1964, in Case No. 1-CA-4683 and on September 9, 1964, in Case No. 1-CA-4731), alleged that Harvard Coated Products Co., Division of Colonial Tanning Company, Inc., Subsidiary of Allied Kid Company, herein called the Respondent, had engaged in unfair labor practices proscribed by Section 8(a)(1) and (5) of the Act. The substance of the allegations was that Respondent had interfered with, restrained, and coerced its employees in the exercise of rights guar-

¹ Besides the unfair labor practice matters, a hearing was ordered on the question of whether or not Respondent had interfered with the freedom of choice of the employees at a representation election conducted by the Board on August 12, 1964, in Case No. 1-RC-7985.

anted by Section 7 of the Act by various specified conduct and had refused to bargain with the Union as the representative of a majority of Respondent's employees in an appropriate unit.

In its duly filed answer Respondent denied any violation of the Act.

The case was efficiently and competently tried and excellent briefs were filed by Respondent and the General Counsel.

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

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS

At all times material herein Respondent has been a division of Colonial Tanning Company, Inc., a corporation duly organized under and existing by virtue of the laws of the Commonwealth of Massachusetts and has maintained its principal office and place of business at Newburyport, Massachusetts, where it has been continuously engaged in the fabrication, lamination, and coating of textiles for footwear and the sale and distribution of such products. In the course and conduct of its business operations Respondent annually purchases, transfers, and has delivered to its Newburyport plant sponge rubber, textiles, and other goods and materials valued in excess of \$50,000 which goods are transported to said plant in interstate commerce directly from States of the United States other than the Commonwealth of Massachusetts. Respondent also, in the course and conduct of its business operations, manufactures, sells, and distributes at its Newburyport plant, fabricated, laminated, and coated textiles valued in excess of \$50,000 which are shipped from said plant directly to States of the United States other than the Commonwealth of Massachusetts. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

United Shoe Workers of America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The General Counsel's Evidence

On July 28, 1964, Respondent received the following letter from the Union:

This is to advise that a majority of your production and maintenance employees have signed union authorization cards with the United Shoe Workers of America, AFL-CIO.

In view of the above, we request a meeting for the purpose of negotiating a union contract covering wages, hours and working conditions.

Will you please advise as to the date, place and time that would be convenient to carry out the above-stated purpose and request.

Co-incident with this request, we have today filed with the National Labor Relations Board a petition requesting that agency to conduct a secret ballot election.²

As of this time there were 60 production and maintenance employees on Respondent's rolls who, excluding office clerical employees, professional employees, guards, and all supervisors as defined in the Act, I find constituted an appropriate bargaining unit within the meaning of Section 9(b) of the Act. Also as of this time the Union had obtained 35 authorizations from employees in the unit designating the Union as their collective-bargaining agent. These authorizations had been obtained on various dates ranging from April 29 to July 24, 1964.

On the afternoon that Respondent received the above letter, just before the end of the workday, General Manager Murray Corwin called all of the employees together, at which time they were given bonus checks, together with a copy of the following letter on an Allied Kid Company letterhead:

July 24, 1964

TO THE EMPLOYEES OF HARVARD COATED PRODUCT CO.

It has been an established practice of Allied Kid Company to pay a bonus to its employees at the end of the fiscal year, June 30, whenever profits warrant it.

²The Company also received a copy of the R petition from the Board on July 28.

The enclosed bonus payment is in recognition of your contribution to the Company's success. We thank you for your cooperation.

(S) Julian E. Agoos
JULIAN E. AGOOS

President.

In addition to meeting with the employees on July 28, Corwin also visited that day the Daily News office (a Newburyport newspaper) for the purpose of informing the newspaper that the next Allied Kid Corporation directors' meeting would be held in Newburyport.³ At this time Corwin also discussed in general the matters covered in an article on the Harvard Coated Products Co., which appeared in the paper the following day. That article reads in part:

Since acquiring the Newburyport plant, there has been a general wage increase and establishment of a company-paid medical plan.⁴

More jobs—the local company has already improved some of its machinery and has purchased new equipment for increased production. Future plans call for the Newburyport plant to perform work for some of Allied's other divisions if costs are kept in line with similar work now performed at other locations.⁵

In his visit to the newspaper Corwin specifically discussed the bonus, the general wage increase, the paid medical plan, and also the possible expansion of the plant contingent on keeping costs in line.

Walter C. Melvin, a former employee of Respondent who had been made foreman of the takeoff room during the first week in June 1964, testified about a conversation with Plant Superintendent Frank Scourtas on the day that the board of directors' meeting was held as follows:

Yes, and (he) took me for a little walk around the grounds outside the shipping room, etc. He talked a little bit about well, he's the first one that gave me the information that the Company wasn't going to fight the election, that they were going to have the election without the company lawyer fighting it, but he told me not to tell anybody, which I didn't. He also said that the Company's going to expand and put a lot of new machines in and they're going to use the other factory, but they have to beat the Union first, and he said to me, he said, "I know that you know that anybody that voted for the Union or would vote for the Union or had signed cards because I knew that you was active in it . . . I know that you are active in the Union, and you know who signed the cards," and I says,

³ The practice of the parent company was to rotate its stockholders meetings at the sites of its various plants, emphasizing New England in the summertime.

⁴ Respondent had granted several benefits to the employees in the spring of 1964, as reflected in this communication to the employees by letter on April 10, 1964:

After consultation with the officers of Allied Kid Company and their full approval, we have decided to put into effect the following employees' benefits:

I. Effective May 1, 1964, we have arranged with the Massachusetts Blue Cross-Blue Shield to provide for all employees—entirely at the Company's expense—certain hospital and surgical benefits. The full details of these benefits will be explained to you in the printed forms which the Blue Cross will provide. Basically, however, the plan calls for full payment of all hospital expenses plus most surgical costs in a semi-private room at a hospital chosen by the employee.

The above benefits apply only to the employee; if in addition, you want protection for your family—including all children under 19—this can be obtained at a cost of \$10.48 per month to be paid by you.

II. Effective the week ending April 13, 1964 and payable in the check you receive on April 24, 1964, the pay of all hourly employees will be increased 7¢ per hour.

III. All employees with the Company one year will receive a paid vacation of one week; employees with five years or more service will receive two weeks. (Employment with the former Harvard Coated Products Co., Inc. will be included.)

The Company officials take this opportunity to thank you for your loyalty and cooperation.

⁵ The Newburyport plant was acquired by Allied Kid on January 1, 1964, and as stated in the article elsewhere was being "operated as a division of the Colonial Tanning Company which is a subsidiary of the parent Allied Kid Company."

"Yes, I know they got a more of a majority," and he also says that, "I want you foremen," he says, "We're going to put a lot of new machinery in here and we're going to give raises," and then he asked me if my men were getting machine operator's pay, I said no, they weren't. And he said, "After the election if everything goes all right remind me that they all get a raise." I never said a word to the men of . . . he wanted me to see what I could do about having it not get in . . . he says, "We can't get the Union in. See if you can talk. You know it by the signed cards. You know everybody's for the Union. You know everybody's signed cards. You know everybody's for the Union. You know everybody's signed cards. You know everybody's for the Union."

On cross-examination Melvin admitted that in an interview with Respondent's counsel on August 20, 1964, he had told him that he had not "interfered with the Union in any way" and also that Scourtas had given him and the other foremen "specific instructions" not to interfere with union activities in any way.⁶ Notwithstanding these instructions, according to his testimony, a couple of days before the union election he told one man to vote against the Union or he would lose his job because of his junior status. The man's name, Melvin believed, was Robert Hartnett. Melvin testified that he never told anyone about this remark to Hartnett, including the union or Board representatives. Notwithstanding his testimony that Scourtas had told him not to interfere with the Union, he further maintained that Scourtas "also told him to" do so.

Robert J. Woodbury, another witness called by the General Counsel, testified that 2 days before the election, on an occasion when he was not feeling well, Scourtas approached him and recommended some medicine. At this time Scourtas also told him that Respondent "was considering expansion of the plant but it all depended upon the outcome of this week." On cross-examination, when asked if any company representative had "made any promises" to him or "threatened" him in any way, he answered, "no."

Peter Kochilaris, another ex-employee called by the General Counsel, also testified about a conversation with Scourtas a day or two before the election as follows:

Well, he asked me how my leg was, you know, and I told him it was getting much better, and he started to tell me that things were getting a little bit too expensive in the factory, that it was costing them a lot of money to combine material there, and if the Union would get in it would cost them a lot more money to combine material. They can have their stuff sent out and have it combined cheaper than what Harvard Coated could do it . . . he said in time probably Clemtex would pull out and have it done another place . . . he said if the Union got in it would cost a lot more money to combine them.

On cross-examination Kochilaris testified:

Well, Mr. Scourtas said that at the moment it was costing him a lot of money to combine material, and if the Union got in it would cost them much more. Then in time Clemtex would pull out. They wouldn't have it done in that factory . . . he said it cost him less money to have material combined in other places other than Harvard. It cost them less to have material combined other places. If he sent it out it would be cheaper for him to have it combined than doing it himself.

Robert Edward LeRoy, a current employee called by the General Counsel, testified about three conversations he had with Scourtas. The first one was 3 or 4 months' before the election. It took place at the timeclock where Scourtas spoke of the proposed expansion of the plant and told LeRoy that he "would become a foreman provided that the Union did not get in." The second conversation took place 2 days before the election in Scourtas' office. Once again he talked about the expansion of the plant and the promotion of LeRoy to foreman "if the Union didn't get in." He also said "that certain benefits such as Bluecross-Blueshield would be eliminated and that Clemtex Manufacturing Company would pull out if the Union was to get in." The third conversation took place the next day as follows:

At that particular time Frank wanted to transfer me into the shipping room, and he wanted me to learn the job, learn the materials and what not, and learn it well, because he said that he and the Company or the Company had intentions of expanding the shipping room. Now, he based this on the shipping room.

⁶ Not only did he admit telling Respondent's counsel this, he also testified to the truth of the admission.

He said that there would possibly be two shipping rooms. What he meant by that I don't really know, and once again he brought up the foreman's position referring to me and this again based if the Union did not get in.

On cross-examination when asked what Scourtas had said on the occasion of the first conversation, LeRoy testified:

Well, he mentioned as before expansion, and that they would bring in new machines into the old building what is referred to as the old building, and that also a foreman's position was in mind for myself, and that it would take place in approximately 2 to 4 months after this conversation.

When asked if anything further was said at that time, he answered, "No, sir."

Respondent's Evidence

General Manager Corwin's testimony was as follows: He had been the top executive in charge of the Company under its former owner. In 1963, the Union had also tried to organize the plant. In a Board-conducted election which had been held on July 27, 1963, the Union failed to gain a majority. This was not a consent election and the Company was represented by counsel at this time.

Sometime prior to the current election, no date being specified, Corwin had seen a union pamphlet which contained the following paragraphs:

There is only *one way* to get rid of the WORRY OF LOW WAGES and that is to JOIN THE UNION.

Many of your fellow workers know this and have sent in their authorization cards. In fact, we already have the legal number to have an election; however, this time we want to be sure of winning and we are not going to seek an election until we are positively sure we will win.

On the same day or the day after receiving the Union's request for recognition and the copy of the representation petition, he and Plant Superintendent Scourtas went to Boston and conferred with Julian Agoos, president of Allied Kid. At this time Respondent was not represented by counsel. The three of them then went to the Board office and conferred with Board Agent Harris. As they were "without counsel" Harris explained to them about the consent-election procedure and asked whether they would want a hearing on the matter. They agreed to a consent election and Harris immediately contacted the Union and set a pre-election conference for August 4, with the election being set at that time for August 12. Harris also told them that they "didn't have to do anything else until the pre-election hearing."⁷

As for why the announcement of the bonus was made to the employees on July 28, Corwin testified:

Well, we had planned to distribute them with their paychecks on July 24, Friday, but there wasn't enough time to get both the payroll checks ready and the bonus checks ready, and naturally the payroll checks had to be done first, and then the bonus checks, the bonus checks weren't ready. I believe they worked on them over the weekend and the bonus checks were ready for distribution on Monday, but I wasn't there Monday afternoon so it had to be done on Tuesday. That was the next day.

On cross-examination Corwin admitted that one of the reasons Respondent did not reply to the Union's request for recognition was because of its having filed the representation petition. Both on direct and cross-examination Corwin repeatedly professed a good-faith doubt regarding the majority. He further testified that he had no actual knowledge of the Union's status regarding majority and took no steps to determine it. When it was suggested to him "that there was not too much thought given by (him) or anybody else as to whether or not the Union in fact had a majority of the employees, but that the motivating factor for (his) course of action was to either dispose of this as soon as (he) could through a consent election in view of the fact that the petition had been filed," he replied, "Well, I wouldn't quite put it that way."

Corwin also admitted on cross-examination that supervisors would report to him on various employees' union sympathies, some being for and some being against

⁷ In connection with an objection on the part of the General Counsel to Harris' alleged comments, Respondent stated that the testimony was "offered to show (a) course of action taken by this Respondent who was acting as a layman without counsel and who was advised to go to Mr. Harris to get advice."

the Union. He placed no stock in these reports—"none whatsoever." He further testified that he instructed his supervisors not to bring these reports in to him.

In explaining the reason why he doubted the Union's majority status, he testified:

The basis of my opinion was this, that 1 year previously under the old owners wages were considerably lower, there was no Bluecross-Blueshield, they had no bonus—well, I don't know. Well, the bonus came later, but I knew about it, and various other things that we had done for the employees.⁸

Corwin further testified on cross-examination that he was not informed by the parent company of its bonus system until the second week of July. Then "it came up in a telephone conversation from Mr. Agoos." Agoos gave the formula for computing the bonus over the telephone and said that he would confirm it by letter. Corwin did not inform the employees immediately about the coming bonus because he "wanted the bonus payment to be a complete surprise." He also testified that he had discussed with Scourtas "the method of passing out the bonuses." On the day that they were passed out, he told Scourtas that "this is the day that the bonuses would be passed out."

Corwin also testified that he believed that after 3 months of campaigning, the Union had enough signatures to petition for an election but that they did not have a majority. In this connection he testified that Union Organizers DiPietro and Magnum, in a visit to his office on July 24, had told him that "they had enough signatures to file a petition for a vote." In fact they claimed that they had already filed the petition but the record shows it was not filed until the 27th.

Allied Kid President Agoos testified that he made the appointment with Board Agent Harris "to discuss the procedure, the mechanics of dealing with the matter. It was just for my information." He also testified that he had had experience with this type of matter "in Wilmington many years ago" but that he "had not been personally involved . . . in the arrangement with the NLRB."

At the Board office, Harris told them that the election date could be decided on mutually between the Union and the Company. Agoos explained:

And this is pretty much what I had come to find out about, . . . I wanted to know whether it would happen in a short time or a long time, and I felt leaving the office that it would be a short time off, and that's really why I went over to see him.

On direct examination Scourtas corroborated Corwin's testimony that DiPietro in the July 24 meeting at the plant had stated that the Union had enough cards to file an R petition.

He also testified that Corwin had told him "not to talk about union in the plant and to advise all foremen and supervisors in the plant not to talk about union." Accordingly, in early June, he "advised all (the) foremen not to engage themselves in any union activity at all or talk about the Union at all."⁹

Scourtas denied in his testimony all of the 8(1) statements attributed to him by the General Counsel's evidence. He admitted that the union campaign was a "fairly common topic in the plant." Nevertheless he denied talking to any of the employees at any time during the campaign about the Union. Indeed, his testimony was, when employees came to tell him "certain things about the Union," he would refuse to talk to them, telling them he could not engage in any conversations about the Union.

Scourtas admitted in his testimony that he did talk to the employees regarding plant expansion. This was when they would ask him for raises or better jobs. He would then tell them that if they improved their work they might get a chance at the better jobs "that were going to be available." He also testified that the Clemtex work had started in June. At this time Respondent was experimenting on its orders "trying to get the quality up and the production out for them" while maintaining costs. Having had complaints from Clemtex that Respondent's work was poor and that it was not getting the production out, he discussed these things with numerous employees, stressing the need for improvement in order to hold the Clemtex work.

⁸In addition to the wage increase and other benefits announced by Respondent on April 10, 1964, for the first time in Corwin's 15 years with the Company, to his knowledge, a holiday falling on Saturday was paid for. This involved May 30, Memorial Day, which was announced to the employees by a letter dated May 15, 1964.

⁹On cross-examination he testified that this occurred late in June at a general purpose meeting of supervisors. He brought the subject of the Union up at this time because "some of the fellows were telling (him) that the union men were going down to their homes . . . for them to sign cards."

As for promising LeRoy a promotion, Scourtas testified as follows: LeRoy was continually after him to get a better job. Scourtas told him that he could not do anything for him until he proved himself. If he proved his capabilities and improved his work and absenteeism and his tardiness, Scourtas could do something for him later.¹⁰ At one point LeRoy demanded a raise saying that he would have to leave if he could not get it. Scourtas told him that he could not give him a raise because his record was not clean and that the only way he could do something for him was for him to improve. Thereafter, for the first 2 weeks in September, LeRoy's record was perfect. On this basis Respondent granted him a raise.

Scourtas testified that there was no foreman in the shipping room; that the work there was handled by three people under a leadman known as the shipper; and that the shipping department was directly under Scourtas' own supervision. He admitted talking to Woodbury about training him for work in the shipping department but denied coupling his remarks with any comments about the Union.

The General Counsel's Rebuttal Testimony

In rebuttal for the General Counsel, Union Official Marty Magnun (a member of the Chemical Workers Union currently employed by the Industrial Union Department of the AFL-CIO and assigned to assist the Shoe Workers in their organizing effort in Newburyport) testified that it was he who brought up the question of the union cards. This was after he and DiPietro had been discussing the reinstatement of a discharged employee, one Clark. That meeting had broken up and DiPietro had left the plant but Magnun had stayed on to make further effort in Clark's behalf. At this time Magnun had threatened to file a charge regarding Clark and had added "that there was no question in (his) mind that the Shoe Workers Union would come right in behind (him) and . . . file a petition, because they had more than a majority."

Resolutions and Conclusions

8(a)(1)

Notwithstanding that Scourtas instructed the foremen, including Melvin, that they were not to interfere with or talk about the union activities of the employees in any manner, I feel that the protestations of his own neutrality were so extreme as to raise about the Union at any time during the campaign is belied by his explanation of why he ordered the foremen to abstain from any such discussion with the employees. He did so, he claimed, because of reports he had received from "some of the fellows" about being solicited at their homes to sign union cards. Normally supervisors considerable skepticism about them. His denial of talking to any of the employees are not the targets of such solicitation and it would appear that his information came directly from the employees themselves. Furthermore, his explanation does not jibe with other of his or Respondent's testimony. Elsewhere it appears that his order to the foremen in this connection was the result of a directive from Corwin. Moreover, he testified that at no time did he and Corwin ever discuss the Union except in an offhand manner like "I see the union organizers are outside again today," or some such innocuous and passing remark. I do not believe this testimony.

Accordingly, I am inclined to and do credit the foregoing testimony of Woodbury, LeRoy,¹¹ and Kochiliaris as against Scourtas' denials. This resolution is consistent

¹⁰ Respondent introduced from its records evidence covering about 3 months of LeRoy's employment at this time, showing considerable tardiness and absenteeism. In this connection, Scourtas admitted that there were others besides LeRoy who had tardiness records.

¹¹ I credit LeRoy as pertains to the second and third conversations he had with Scourtas. His testimony on cross-examination leads me to believe that nothing was mentioned to him about the Union in the first conversation concerning a promotion to the shipping department. This does not preclude the Union's having been mentioned in that connection in the later conversations. Respondent maintains that the evidence shows that LeRoy was not the kind of an employee who would have been considered for promotion. Possibly; but his shortcomings were duplicated by other employees. And the fact that a 2-week period of rectitude on his part served to wipe out his bad record and be grounds for a wage increase to him would indicate some kind of special status for him. Also it would seem that if Respondent had been anticipating an overall expansion in the plant, it would be reflected in the workload of the shipping room. Such being the case, a logical place to put a supervisor would be in the shipping room thus relieving the plant superintendent of direct supervision of that department.

with Scourtas' remarks (undenied) to Melvin about the plant expansion being conditioned upon defeating the union effort.¹²

Of the foregoing evidence I find only the following to have been coercive within the meaning of Section 8(a)(1) of the Act:¹³ (1) Scourtas' remarks to Kochilaris that if the Union got in, it would cost more to combine materials and in time, for that reason, Clemtex would "pull out"; (2) Scourtas' remarks to LeRoy 2 days before the election that if the Union got in, employee benefits would be eliminated and the Clemtex work would be lost; and (3) Scourtas' further remarks the following day conditioning a promotion of LeRoy to foreman on the Union's defeat in the coming election.

In addition to the foregoing, I find that by granting the bonus to the employees on July 28, Respondent further violated Section 8(a)(1) of the Act.¹⁴ *N.L.R.B. v. Exchange Parts Company*, 375 U.S. 405; *Tinley Park Dairy Co., d/b/a Country Lane Food Store*, 142 NLRB 683, 694. I am convinced by the circumstances of the bonus grant, particularly its timing, that it was put into effect for the purpose of influencing the employees in the then pending election. Moreover, I make this finding notwithstanding that it would appear that the bonus had been decided on prior to receipt of the request for recognition and the representation petition. As I view the evidence, this is what happened: When Corwin was informed by the union officials on July 24 that the Union was about to file an R petition, he immediately called Allied Kid President Agoos in Boston with the information. In an effort to beat the filing of the petition and to influence the employees in their union support, Agoos instructed Corwin to announce the grant of a bonus to the employees giving him the formula over the telephone (as testified by Corwin) and saying he would confirm it by letter.¹⁵

8(a)(5)

The Respondent's defense to the refusal-to-bargain charge is based upon two contentions: (1) When the demand for recognition was made, Respondent entertained a good-faith doubt that a majority of the employees had designated the Union as their bargaining agent; and (2) if the Union had a majority at this time, the signatures had been obtained through misrepresentation which vitiated the authorizations.

The Validity of the Authorizations

Although there was some insubstantial evidence regarding talk of an election in connection with the solicitation of authorization cards, there was no specific evidence that a direct misrepresentation was made in this connection. Moreover, the cards were unequivocal in their import, saying simply that "I hereby authorize the United Shoenworkers of America, AFL-CIO to represent me in collective bargaining with my employer." In these circumstances I find the authorizations here to have been valid designations of the Union as the collective-bargaining agent of those who had signed them. *Winn-Dixie Stores, Inc., and Winn-Dixie Louisville, Inc.*, 143 NLRB 848.

The Good-Faith Doubt of Majority

In the *Joy Silk Mills, Inc.*, case,¹⁶ the Board stated:

We have previously held that an employer may in good faith insist on a Board election as proof of the Union's majority but that it "unlawfully refuses to bargain if its insistence on such an election is motivated, not by any *bona fide* doubt as to the union's majority, but rather by a rejection of the collective bar-

¹²This is the only part of Melvin's testimony upon which I rely. Melvin had been discharged by Respondent apparently in derogation of his seniority. Besides some inconsistencies in his testimony, the conflicting orders he claims Scourtas had given him regarding interference with the union activity of the employees seems inherently incredible.

¹³Woodbury's testimony that Respondent "was considering expansion of the plant but it all depended upon the outcome of this week," is too equivocal and subject to diverse interpretations to find it to have been a promise of work expansion conditioned upon defeat of the Union.

¹⁴Although this action was not alleged in the complaint as an unfair labor practice, since it was fully litigated, I make this finding.

¹⁵No such letter was produced in evidence but it is interesting to note that the letter to the employees from Allied Kid announcing the bonus is dated July 24. The failure to produce the confirming letter undercuts Corwin's testimony that he learned about the bonus in the second week of July.

¹⁶85 NLRB 1263, 1264, *enfd.* 185 F. 2d 732 (C.A.D.C.); cert. denied 341 U.S. 914.

gaining principle or by a desire to gain time within which to undermine the union." In cases of this type the question of whether an employer is acting in good or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including [all] unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct.

It seems to me that whatever evidence there is in this record which might otherwise support Respondent's claim of good faith,¹⁷ it is effectively nullified by Scourtas' 8(a)(1) actions and by the granting of the bonus on July 28. In my opinion this conduct clearly demonstrates Respondent's "rejection of the collective bargaining principle" and in the context of the circumstances here makes it liable under Section 8(a)(5) for its failure to honor the Union's request for recognition. *Joy Silk Mills, Inc., supra; Bernel Foam Products Co., Inc., 146 NLRB 1277.*

The Objections to the Election

It is clear from the foregoing that there is sufficient merit in the Charging Party's objections to the election so that the election should be set aside. I so recommend. However, in view of my finding of a refusal to bargain under Section 8(a)(5) and my Recommended Order in that connection, I do not recommend that a new election be held.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, 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.

V. THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (5) of the Act, I will recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent refused to bargain with the Union which represented a majority of the employees in an appropriate unit. Accordingly, I shall recommend that, upon request, Respondent be ordered to bargain with the Union as the exclusive representative of the employees in the appropriate unit.

In view of the foregoing findings of fact, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. At all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.
2. At all times material herein, Respondent has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. All production and maintenance employees of Respondent employed at its Newburyport plant, exclusive of office clerical employees, professional employees, guards, and all 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.
4. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.
5. By refusing to bargain with the Union from July 28, 1964, as the representative of the employees in the above unit, Respondent has engaged in and is engaging in unfair labor practices proscribed by Sections 8(a)(5) and (1) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in the case and the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as

¹⁷In this connection I credit Union Organizer Magnun's testimony that he told Corwin on July 24 that the Union "had more than a majority" at that time. The record shows that this was the fact and I do not see why Magnun would have downgraded the Union's strength when the usual approach would be to do just the opposite under any circumstances.

amended, I recommend that Respondent, Harvard Coated Products Co., Division of Colonial Tanning Company, Inc., subsidiary of Allied Kid Company, Newburyport, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with United Shoe Workers of America, AFL-CIO, as the exclusive representative of its employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) Threatening its employees with economic reprisals or promising them economic benefits for the purposes of influencing their union activities or sympathies.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right is affected by the provisions of Section 8(a)(3) of the Act, as amended.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Shoe Workers of America, AFL-CIO, as the exclusive representative of all its production and maintenance employees, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, 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.

(b) Post at its plant in Newburyport, Massachusetts, copies of the attached notice marked "Appendix."¹⁸ Copies of said notice, to be furnished by the Regional Director for Region 1, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 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 such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith.¹⁹

¹⁸ 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."

¹⁹ In the event that this Recommended Order is 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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain, upon request, with United Shoe Workers of America, AFL-CIO, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment, and, if an understanding is reached, embody it in a signed agreement.

All of our production and maintenance employees, excluding all office clerical employees, professional employees, guards, and all supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT threaten employees with economic reprisals or promise them economic benefits for the purpose of influencing their union activities or sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist United Shoe Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by the provisions of Section (a) (3) of the Act, as amended.

HARVARD COATED PRODUCTS CO., DIVISION OF COLONIAL TANNING
COMPANY, INC., SUBSIDIARY OF ALLIED KID COMPANY,

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Boston Five Cents Savings Bank Building, 24 School Street, Boston, Massachusetts, Telephone No. 523-8100.

Iron Workers Local No. 155, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO and Valley Foundry & Machine Works, Inc. and District Lodge 87, International Association of Machinists and Aerospace Workers, AFL-CIO. Cases Nos. 20-CD-154 and 20-CD-171. December 17, 1965

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges in Case No. 20-CD-154, on November 4, 1964, by Valley Foundry & Machine Works, Inc., herein called Valley Foundry or the Employer. Thereafter, charges in Case No. 20-CD-171 were filed by the Employer on June 25, 1965, and subsequently amended on September 2 and 23, 1965. The charges as amended allege that Iron Workers Local No. 155, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called the Iron Workers, and Carpenters Local Union No. 701, International Association of Carpenters and Joiners of America, AFL-CIO,¹ violated Section 8(b) (4) (i) and (ii) (D) of the Act. On September 3, 1965, the Acting Regional Director for Region 20 issued a notice of hearing, which was later amended on September 22 and October 8, 1965. The hearing was held in Fresno, California, before Hearing Officer John B. Salazar on Octo-

¹ On October 28, 1965, after the hearing herein, the Regional Director for Region 20, approved an informal settlement agreement signed by Carpenters Local 701 and Valley Foundry. Accordingly, this leaves for consideration a dispute which concerns Iron Workers Local No. 155 alone. However, the evidence adduced at the hearing which involves the Carpenters is hereinafter set forth in order to present a more complete picture of the dispute before us.