character of the jobs and the functions of the employees in the contract unit does not remove a contract as a bar, a precondition is that the relocation must be accompanied by the transfer of a considerable proportion of the employees from the old to the new plant.[4] In the present case, the number of former employees at the Newburgh unit who have transferred permanently to Montville is insignificant. Under these circumstances, we find that the Newburgh contract is not a bar to these proceedings.[5]

Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within Sections 9 (c) (1) and 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at the Employer's warehouse in Montville, New Jersey, excluding office clerical employees, guards, warehousemen, professionals, and supervisors as defined in the Act.[6]

[Text of Direction of Election omitted from publication.] [7]

[4] *General Extrusion Company, Inc.*, 121 NLRB 1165, 1167–1168.

[5] In determining whether a relocation has been accompanied by the transfer of a considerable portion of employees from the old to the new plant, the Board has considered the number of these transferees at the time of the hearing as the relevant factor. See *Arrow Company*, 147 NLRB 829; *Edward Aaron Corp.*, 125 NLRB 840; *Bowman Dairies*, 123 NLRB 707.

[6] The unit found appropriate herein is stipulated as such by all the parties to the case.

[7] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 22 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

Mallory Plastics Company, a division of P. R. Mallory & Co., Inc. *and* Textile Workers Union of America. *Cases Nos. 13–CA–6032 and 13–RC–9739. May 18, 1966*

ORDER GRANTING MOTION AND CERTIFICATION OF RESULTS OF ELECTION

On December 11, 1964, the Board issued its Decision, Order, and Direction of Second Election in these cases,[1] finding that the Respondent had violated Section 8(a) (1) of the Act. The Board further found that the Respondent had not engaged in certain other

[1] 149 NLRB 1649.

unfair labor practices, and dismissed those allegations of the complaint. The Board ordered the Respondent to cease and desist from the unfair labor practices found, and to take certain affirmative action necessary to effectuate the purposes of the Act. As the same conduct found violative of the Act had been the basis of an objection to conduct alleged to have affected the results of an election held on December 12, 1963, the Board further ordered that the election be set aside, and directed that a second election be held on a date to be determined by the Regional Director for Region 13. No second election has yet been held.

On January 11, 1966, the United States Court of Appeals for the Seventh Circuit issued its decision [2] rejecting the Board's finding that the Respondent had violated Section 8(a)(1) of the Act, and therefore denying the Board's petition for enforcement of its Order.[3] Thereafter, on March 3, 1966, the Respondent filed with the Board a "Motion to Vacate Order Directing Second Election and to Certify Results of First Election," and the Textile Workers, on March 18, 1966, filed its "Opposition to Motion to Vacate Order Directing Second Election."

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 [Chairman McCulloch and Members Fanning and Jenkins].

The Textile Workers urges the Board to deny the Respondent's motion and proceed with the second election, relying on the Board's long-established rule that conduct may be deemed to invalidate an election even though it may not constitute an unfair labor practice (*General Shoe Corporation*, 77 NLRB 124).

The conduct in question involved remarks made by three of the Respondent's supervisors to seven of its employees. Employees were quizzed regarding their union sympathies and were asked to remove union insignia; two of the supervisors also expressed the opinion that the Union could not do anything for the employees, and might harm them financially. There was no question that the remarks in question were made. The Board adopted the Trial Examiner's finding that the remarks were coercive, and hence, "*a fortiori*, conduct which interferes with the exercise of a free and untrammeled choice in an election." However, the court found these remarks to be noncoercive, devoid of threats of reprisal, and no more than expressions of views or opinion.

We have decided to grant the Respondent's motion to vacate our direction of second election and certify the results of the first elec-

[2] *N.L.R.B. v. Mallory Plastics Company, a division of P. R. Mallory & Co., Inc.*, 355 F. 2d 509.

[3] The court did not have the representation proceeding before it.

tion. Our decision to set aside the first election was based entirely on our adoption of the Trial Examiner's finding that the remarks in question were coercive. The court having found, in effect, that those remarks were innocuous, we are now constrained to hold that there is no warrant, on the record before us, to proceed to a second election.[4] Accordingly, the Respondent's motion is hereby granted, and,

IT IS HEREBY ORDERED that the Board's Order to set aside the December 12, 1963, election, and its Direction of Second Election, issued on December 11, 1964, and they hereby are vacated.

As the tally of ballots shows that Textile Workers Union of America did not receive a majority of the valid votes cast in the election held on December 12, 1963, we shall certify the results of that election.

[The Board certified that a majority of the valid votes was not cast for Textile Workers Union of America, and that the said labor organization is not the exclusive representative of the employees in the appropriate unit.]

Members Brown and Zagoria took no part in the above motion and certification.

[4] In the circumstances of this case, we do not view our action here as a rejection of the principle established in *General Shoe Corporation, supra.*

Electric Boat Division, General Dynamics Corporation *and* A. L. Schroeder, Petitioner and Professional, Technical and Office Employes Union, Local No. 11, affiliated with Office and Professional Employes International Union, AFL–CIO. *Case No. 19–RD–322. May 18, 1966*

DECISION ON REVIEW AND ORDER

On November 23, 1965, the Regional Director for Region 19 issued a Decision and Direction of Election in the above-entitled proceeding in a unit of office clerical employees then represented by the Union.[1]

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended,

[1] Local 288 of the same International Union was certified as the bargaining representative of the Employer's employees involved herein following an election conducted on June 9, 1964. Local 288 and the Employer thereafter entered into a collective-bargaining contract effective from November 5, 1964, to November 5, 1965. On about August 8, 1965, Local 288 amalgamated into Local No. 11 and the Employer was so notified. The Regional Director found that Local No. 11 lawfully succeeded to the contract rights of Local 288 and is the successor of Local 288. No exception was taken to those findings and they are hereby adopted *pro forma.*