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 NOT unlawfully interrogate employees about their union membership and activities in violation of Section 8(a)(1) of the Act.

WE WILL NOT condition employees' recall to work upon their promises not to vote for the Union in any subsequent Board elections.

WE WILL NOT discourage membership in any union by discriminatorily refusing to reinstate employees to substantially equivalent positions because of their union membership and activities.

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

WE WILL offer Onelia Valdez, Isabel Vivanco Garcia, Dolores Vivanco, and Violetta Sosa full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, and make them whole for any loss of pay they may have suffered by reason of the discriminatory refusal to reinstate them, together with interest at the rate of 6 percent.

All our employees are free to become or remain members of any labor organization.

PLAYBOY OF MIAMI,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—Notify Onelia Valdez, Isabel Vivanco Garcia, Dolores Vivanco, and Violetta Sosa if serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act, and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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, Room 826, Federal Office Building, 51 SW. First Avenue, Miami, Florida 33130, Telephone 350-5391.

Indianapolis Plant, Jones & Laughlin Steel Warehouse Division, Jones & Laughlin Steel Corporation *and* United Steelworkers of America, AFL-CIO, Petitioner

Indianapolis Plant, Jones & Laughlin Steel Warehouse Division, Jones & Laughlin Steel Corporation, Employer-Petitioner *and* United Steelworkers of America, AFL-CIO, Union. *Cases 25-RC-3033 and 25-RM-191. October 6, 1966*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election executed on October 20, 1965, an election by secret ballot was con-

ducted on October 26, 1965, under the direction and supervision of the Regional Director for Region 25 among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 139 eligible voters, 134 cast ballots, of which 65 were for, and 68 against, the Petitioner, 1 ballot was void, and none were challenged. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with National Labor Relations Board Rules and Regulations, the Acting Regional Director conducted an investigation and, on December 30, 1965, issued and duly served on the parties his report on objections and recommendations to the Board, in which he recommended that the objections be overruled. Thereafter, the Petitioner filed timely exceptions to the Acting Regional Director's report, and the Employer filed a statement in opposition to the Petitioner's exceptions.

Upon the entire record in this case, the National Labor Relations Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act, as amended, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

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

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

> All hourly paid production and maintenance employees in the warehouse and industrial supply department at the Employer's Indianapolis, Indiana, warehouse, including plant clerical employees, pick-up driver, and leaders; but excluding all salaried employees, office employees, office clerical employees, sales trainees, truckdrivers, foremen, superintendents, and all guards, professional employees, and supervisors, as defined in the Act.

5. In its objections, the Petitioner alleges, *inter alia*, that the Employer, in letters and speeches to, and conversations with, employees, threatened loss of overtime benefits if the Union were selected as collective-bargaining representative.

The Regional Director's investigation revealed that the Employer communicated with its employees concerning the organizational cam-

paign and election through letters dated October 13, 19, 21, and 22, 1965, and through speeches to, and question-and-answer sessions with, two separate employee assemblages on October 22. The October 21 letter, to which the Petitioner specifically objects, states in pertinent part:

> With respect to the page in the flip chart on Higher Annual Income, I would like to quote you what I said in our meeting in March 1964. "We are presently working a 45-hour week. Some of you are being paid a slightly lower hourly rate than if you held the same job in our Chicago or Hammond Warehouses, which are working a 40-hour week. I understand, however, you prefer the 45-hour schedule because each of you enjoys substantially higher weekly, monthly, and yearly income.
>
> Unless the level of operations at this plant changes substantially or until you indicate that you want a change, we have no plans for changing our 45-hour week. . . ."
>
> Every one of our organized warehouses, as well as the basic steel plants have contracted provisions which define the normal work week as 40 hours.

Attached to the letter were a flip chart outlining current employee benefits, a list of "Questions Frequently Asked in Union Organizing Campaigns and My Answers to Them," and a comparison of earnings between the Indianapolis and Chicago warehouse employees. The attachments, as did the covering letter, emphasized that the normal 45-hour workweek at Indianapolis provided 5 hours of overtime with premium pay, while the 40-hour workweek at the Employer's unionized warehouses did not.

On October 22, Plant Manager Hale addressed the morning and afternoon shifts, reiterating the Employer's position with respect to the Union and reemphasizing employment benefits provided without a union, including overtime benefits accruing under the 45-hour work schedule. Following the morning speech, Hale conducted a question-and-answer session, during the course of which the following colloquy occurred:

> Q. You keep telling us in your letters and in these meetings that the union contract calls for 40-hour weeks, and that Chicago works a scheduled 40-hour week. Does this mean men in union plants can't work over 40 hours in a week?
>
> A. No, it doesn't, no more than our 45-hour scheduled week prohibits your working more than 45 hours if this is necessary.

During the afternoon session the following exchange occurred:

> Q. You tell us we all earn more than the men in Chicago. I have here figures that tell me this is not so. Last year a Chicago employee in my job class earned over $8,000 and this is considerably more than I earned and I am told there are many other similar examples.
>
> A. I do not have figures on Chicago employees annual income. They expanded their warehouse last year, and I assume this necessitated an annual amount of overtime for some employees. If you work a straight 45-hour week, and an employee in Chicago a straight 40-hour week, it is plain as shown in the typical examples sent to your homes, that you earn considerably more, even if you are at the minimum of the rate range. Excessive overtime hours for a Chicago employee could change this result, but I believe this is an unusual circumstance. Remember, in past months and years when Chicago employees have worked a minimum number of overtime hours and you have been on a 45-hour week.

In addition to its objections concerning the October 21 letter and the October 22 speech, the Petitioner objected to threats to eliminate overtime, alleged to have been made during the course of a conversation among employees and a supervisor, occurring 2 weeks before the election. The Acting Regional Director's investigation, based on interviews with persons whose names were submitted by Petitioner, revealed that, during the reported conversation, the supervisor, in response to an employee query concerning the possible effect of unionization on job classifications, stated that "it would have to be up to the Union contract . . . and . . . that different locals have different ways of doing things." He further assured the employee that payrates would not decrease; they would remain the same or would increase. Following this statement, an employee remarked that a union adherent had informed him that the workweek would be reduced if the Union came in. Reportedly, no comment to this observation was offered by the supervisor. While discussing the amount of work an employee could expect to perform if the Union were elected, the supervisor commented that whether the plant switched to a tonnage basis, as was the situation in some of the unionized plants, "would depend on the local [union]." In response to a query as to whether overtime would be reduced, the supervisor stated that, while such had been the case at the Employer's unionized plants, he was not certain that the same result would obtain at Indianapolis. He went on to say that whether a change was made "would be between the Union and the

Company" and that, although the current schedule called for a 45-hour week, he "had heard the Union was negotiating for a 40-hour week."

The Acting Regional Director found the Employer's conduct not to be objectionable and recommended that the Petitioner's objections thereto be overruled in their entirety. Having considered the Employer's letters and attachments, speeches and conversations, in the entire context in which the Employer's views and arguments were presented, we agree with the Acting Regional Director that the alleged objectionable conduct did not transcend the permissible bounds of campaign propaganda. In our view, the Employer's writings and utterances concerning the 45-hour workweek and the attendant overtime benefits constituted a presentation of relevant economic considerations that could be objectively and rationally evaluated by the employees. Contrary to our dissenting colleagues, we do not find that by calling the attention of the employees to the fact that the normal workweek at the Employer's unionized warehouses had been reduced from 45 to 40 hours per week, pursuant to provisions in the collective-bargaining contracts covering the respective plants, the Employer attempted to instill in the minds of the employees the fear that selection of the Union as bargaining representative would result in unilateral employer action that would adversely affect overtime benefits at Indianapolis.

The record is entirely devoid of any evidence establishing an overt threat on the part of the Employer to effect changes in the scheduled workweek, and to view the Employer's letters and statements concerning overtime as subtle, veiled threats of reprisals for selection of the Union, requires a strained interpretation of the various communications which we do not find warranted. Certainly no overt threat is contained in the letter of October 22 since the Employer made clear its intention not to modify the workweek unless modification were dictated by economic necessities or by employee dissatisfaction with the existing overtime policy. Any doubts concerning the implications of the Employer's campaign which might have been created by information contained in the attachments to the letter should have been dispelled by Plant Manager Hale's assurances, following his October 22 speech, that a contractual provision defining the normal workweek as 40 hours would not prohibit overtime. In any event, the employees were not being told that such a provision was the unavoidable consequence of unionization. Moreover, the evidence adduced with respect to the alleged supervisory threats does not establish the presence of a widebased effort of the Employer to create among the employees a

pervasive fear that election of the Union would work adverse economic results. If anything, such evidence indicates that the employees and supervisor involved considered a change in the existing work schedule to be a subject upon which the Union intended to negotiate.

In view of the above, we do not find that the election atmosphere was such that the employees were precluded from exercising a rational choice concerning their representation by the Petitioner. Accordingly, we shall overrule the objections and certify the results of the election.

[The Board certified that a majority of the valid votes was not cast for United Steelworkers of America, AFL–CIO, and said organization is not the exclusive representative of the Employer's employees in the unit heretofore found appropriate.]

Members Brown and Zagoria, dissenting:

We disagree with our colleagues' finding that the Employer's letter of October 21, 1965, with attachments, and his speech and answers to employees' questions on October 22, did not warrant direction of a new election. In our view, these communications contained threats that if employees selected the Union, the Employer would retaliate by abrogating its existing overtime policy and thereby eliminate economic benefits.

The existing 45-hour weekwork schedule, providing 5 hours of overtime with premium pay, was listed in Plant Manager Hale's letter, dated October 21, as one of the employee benefits accorded by the Employer. In an attachment to this letter the Employer set forth a series of purported employee questions alleged to have been most frequently asked of it and its answers thereto, both of which were clearly designed as a stratagem to present the message of its antiunion campaign. Using this device, the Employer emphasized to employees that the National Labor Relations Board would not protect existing employee benefits and that the same overtime policy as that now existing at this facility was in effect at its Hammond warehouse prior to unionization, but after a union was elected the workweek was reduced to 40 hours.[1] Also attached was a comparison of earnings which represented Indianapolis employees as working a 45-hour week and earning more than did their counterparts at the unionized Chicago warehouse on a 40-hour "normal" workweek, omitting any reference to compensation received by Chicago employees for overtime worked on an irregular schedule.

[1] An example of the questions posed and the answer supplied is the following:

Q. How many hours will we work per week if the union gets in?

A. The Hammond warehouse went from 45 hours to 40 hours per week eleven years ago. Our present Steelworkers Warehouse agreements provide for a normal 8-hour day, and 5-day week, but do not guarantee either.

Thereafter, in its campaign to defeat the Union, the Employer persisted in referring to the elimination of scheduled overtime in its organized warehouse, inferring that such loss was caused by the selection of the Union. Thus, in the question and answer period following the October 22 speech, the following exchange occurred:

> Q. . . . . Are you telling us that if we go union we will go to 40 hours?
>
> A. No, I am not telling you that. If I were to tell you that the NLRB may constitute it as a threat, which would, of course, be an unfair labor practice. I can tell you what is a matter of record, and that is that at Hammond eleven years ago *when the union was voted in*, they went from a 45-hour week to a 40-hour week, and *promptly*. [Emphasis supplied.]

In the total context, Hale's statement, in the earlier October 21 letter, that the Employer contemplated no change in the existing workweek unless the employees indicated otherwise, clearly implied the threat that selection of the Union would induce the Employer to make that change. Moreover, while the Employer was in no way reluctant to inform the employees that it would retain the regularly scheduled 45-hour workweek if there were no union selected, it withheld from them any assurance that if they chose representation by the Union it would provide the same work opportunity to the extent economically justifiable and would maintain the same work schedule until such time as the basic workweek should be redefined by collective bargaining.

On the basis of the foregoing, we would set the election aside and direct a second election.

Looney Sheet Metal Construction Co., Inc., d/b/a Tulsa Sheet Metal Fabricating Co. *and* United Steelworkers of America, AFL–CIO. *Case 16–CA–2453. October 7, 1966*

DECISION AND ORDER

On May 19, 1966, Trial Examiner Samuel M. Singer issued his Decision 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 Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the General Counsel filed exceptions to the Decision and a supporting brief, Respondent filed no exceptions.