

**Henry I. Siegel, Inc. and Amalgamated Clothing Workers of America, AFL-CIO.**

**Henry I. Siegel, Inc. and Amalgamated Clothing Workers of America, AFL-CIO, Petitioner. Cases 28-CA-1251 and 28-RC-1326.**

June 16, 1967

**DECISION AND ORDER**

**BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS**

On November 29, 1966, Trial Examiner Wallace E. Royster issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal as to them. The Trial Examiner also found merit in certain objections to the election of July 2, 1965, and recommended that the election be set aside. Thereafter, Respondent and the Charging Party each filed exceptions to the Decision and supporting briefs. The General Counsel filed cross-exceptions and a supporting brief; Respondent filed an answering brief.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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, cross-exceptions, briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified below.

1. We do not adopt the view of the Trial Examiner that the objections to the election filed at the Phoenix, Arizona, Resident Office of Region 28 were not filed "with the Regional Director" within the meaning of the Board Rules.<sup>2</sup> We otherwise agree with the Trial Examiner's findings with respect to the timeliness of the objections filed by the Union<sup>3</sup> and with his view that his ruling as to the Phoenix filing had only an "academic" effect in light of the timely filing at Albuquerque, New Mexico.

2. We adopt the recommendation of the Trial Examiner that the July 2, 1965, election should be set aside because of the conduct found to be objectionable by him. We do not, however, find it necessary to rely upon the speech of July 1, by Respondent President Siegel in finding violations of the Act or as a ground for setting the election aside; we, therefore, do not adopt or pass upon the Trial Examiner's findings as to the contents of that speech.

3. We adopt the findings of the Trial Examiner that Respondent's floorladies, Henrietta Diaz, Lily Rodriguez, Laura Miller, and Virginia Zapata, made threats of reprisal to employees should the Union prevail in the election, thereby violating Section 8(a)(1) of the Act. We also adopt his finding that Respondent's published restriction on eligibility in its insurance plan to "non-union" employees violates Section 8(a)(1) of the Act.

4. The complaint alleges that Respondent further violated Section 8(a)(1) of the Act by failing to disavow statements appearing in a leaflet distributed to its employees and in a newspaper advertisement in the local newspaper. The Trial Examiner concluded that Respondent had not violated Section 8(a)(1) in these respects, as it was not responsible for the conduct or called upon to disavow it. We disagree.

As set out more fully by the Trial Examiner, the community of Eloy, Arizona, has a population of about 5,400. In 1958, local businessmen formed the Eloy Development Corporation, sold stock, purchased 40 acres of land, and constructed a plant. Respondent leased the plant and began operations in the new factory in October 1964. When the Union's organizational activities began at Respondent's plant in the spring of 1965, local residents (principally businessmen, but also a clergyman) engaged in an antiunion campaign directed to employees which featured the argument that the plant would close if employees selected the Union. This community campaign was found by the Trial Examiner to have precluded the holding of a fair election, a finding we have adopted.

William Knapton, who had been prominent in forming the Eloy Development Corporation, formed a committee (Citizens' Committee for a Better Eloy) to engage in antiunion activities. Respondent first became aware of Knapton's committee when Knapton talked to Respondent's plant manager, Greengrass, about Knapton's plans to combat the Union. They testified that Knapton asked Greengrass for information and assistance, and that Greengrass declined to be of assistance. Also, one of Respondent's supervisory employees signed a

<sup>1</sup> The Respondent has requested oral argument. The request is hereby denied as the record and the briefs adequately present the issues and the positions of the parties.

<sup>2</sup> See Sec. 102.69(a) of the National Labor Relations Board

Rules and Regulations and Statements of Procedure, Series 8, as amended

<sup>3</sup> Amalgamated Clothing Workers of America, AFL-CIO, the Charging Party in Case 28-CA-1251 and the Petitioner in Case 28-RC-1326.

document supporting the committee; but as this supervisor apparently never did more, we rely upon her participation to this extent only as serving to establish Respondent's knowledge of the committee's campaign.

Shortly before the election, Knapton had 1,500 handbills distributed in Respondent's parking lot and throughout the community of Eloy. The handbills warned that if the Union won the election it would ask for higher pay and lower quotas, Respondent would not agree, a strike would follow, and the strikers would be replaced. The handbills also made the point that the Respondent would be better off to use its Eloy plant as a warehouse if costs rose above the level of its other plants. Plant Manager Greengrass testified that he found one of the leaflets on his car one evening, thus removing any question as to Respondent's knowledge of the nature of the campaign.

About a week before the election, the Pinal County Enterprise contained an advertisement placed by Knapton's committee. This advertisement warned that Respondent's plant might be converted to a warehouse operation if unionized, and recited violence which had accompanied union activities elsewhere in Arizona.

Like the Trial Examiner, we view the issues raised by the 8(a)(1) allegations based on the leaflets and advertisement as turning upon Respondent's responsibility for the propaganda, for we have no doubt that the content of these documents are otherwise violative of Section 8(a)(1). We find, contrary to the Examiner, that Respondent violated Section 8(a)(1) by its failure to disavow the threats to employee job security contained in the leaflets and advertisement.

We do not quarrel with the Examiner's view that Eloy businessmen sought to advance their own, rather than Respondent's, interests by combating the Union as they did. What existed here was an "overlap of financial interests" which led both Respondent and the community, specifically the committee, to seek the same goal by the same means. Respondent's failure to disavow fixes its responsibility here because of the close relationship between Respondent and community leaders, such as Knapton, Respondent's knowledge of the leaflet distribution and the advertisement, and the fact that the day before the election Respondent specifically took up the "warehouse" theme and repeated this threat to its employees. Respondent's employees would reasonably form the impression that the

committee spoke for Respondent in its similar propaganda.

This case is one of a class where exists "a symbiotic [economic] relationship of town and company"<sup>5</sup> and where both groups engage in parallel antiunion campaigns, the community's being the more flagrant and coercive. Under all of the circumstances here, we find that in this case Respondent had an obligation to disassociate itself clearly from certain aspects of the community's campaign; Respondent's failure to do so, and its use of similar, and sometimes identical, appeals warrants a finding that Respondent adopted and affirmed that campaign and thereby violated the Act.<sup>6</sup>

5. The Trial Examiner found that it is necessary to remedy the violation of Section 8(a)(1) in this case by the issuance of a bargaining order. In this connection, however, the question is not whether a fair election can ever be held in Eloy, Arizona—the Trial Examiner expressed the view that it probably could not—but the more limited question of whether Respondent, by having precluded the holding of a fair election, has rendered it necessary for the Board, in order to effectuate the policies of the Act, to remedy the 8(a)(1) violations by issuance of a bargaining order. We agree with the Trial Examiner that this is an appropriate case for the issuance of an 8(a)(1) bargaining order and adopt his recommendations to that effect.

We also adopt, for the following reasons, the Trial Examiner's finding that the Union had been designated as the bargaining representative by a majority of Respondent's employees at the time of the election. There is no question but that 113 employees in the unit of 182 signed the simple and unequivocal authorization cards involved here.<sup>7</sup> Given this situation, it is settled that a signed card is not invalidated by an employee's misconceptions of its operative effect. Misrepresentations by solicitors that the securing of a Board election was the only purpose of the cards must be established to invalidate such cards.<sup>8</sup> Respondent attacks the majority finding largely upon the ground that the testimony and affidavit of Union Organizer Wilma Robertson, who solicited many of the cards, demonstrates that a Board election was the only goal of the organizing campaign. Respondent here misconceives the test of misrepresentation applicable to such situations, for it may be conceded that the Union's goal was an election, as evidenced by its failure to demand recognition, but that is not

<sup>4</sup> *Amalgamated Clothing Workers of America, AFL-CIO v NLRB*, 371 F.2d 740, (C.A. D.C.), Dec. 15, 1966, enfg. *Hamburg Shirt Corporation*, 156 NLRB 511

<sup>5</sup> *Ibid*

<sup>6</sup> See *Amalgamated Clothing Workers v. NLRB*, *supra*, *The Colson Corp v NLRB*, 347 F.2d 128 (C.A. 8), cert. denied 382 U.S. 904, enfg. 148 NLRB 827

<sup>7</sup> The cards stated, in their entirety, in both English and Spanish, that

I hereby designate the AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, to represent me for the purpose of collective bargaining to get better wages, hours and working conditions in my shop

<sup>8</sup> *Cumberland Shoe Corporation*, 144 NLRB 1268, enf. 351 F.2d 917 (C.A. 6)

evidence that employees were beguiled into believing that the cards were not what they appear to be but were instead only authorizations for an election. Thus, while Robertson clearly communicated to employees the election goal of the organizing campaign, it is equally clear that she also read the cards to solicited employees rather than abandoning or ignoring the unequivocal authorization stated on them. Accordingly, we do not find that Robertson's testimony or affidavit establishes that she represented to employees that the only operative purpose of the authorization cards was to secure a Board election.

Respondent also points to testimony by employees Cortez, Cooper, and Flores as demonstrating that employees signed the authorization cards upon representations that the cards were to be used only to secure an election. We have examined the testimony of Cooper and Cortez and find no support in it for a finding that misrepresentations as to the purpose of the cards were made by Robertson. The testimony of Flores that Robertson told him that the cards would not bind employees can be construed in isolation as a repudiation of the authorization function of the cards. This testimony is unclear,<sup>9</sup> but we shall not include the card of Flores in determining the majority status issue.

We have also examined the testimony of employees Emilia Gaitan, Jane Galiviz, Lupe Gaitan, Mary Galiviz, and Elita Martinez, who between them solicited some 35 other employees to sign authorization cards. Each of these employees testified that she was told by Robertson (or another solicitor) and/or told employees she solicited that the card "was for the Union to represent us" or words to that effect, with the term "represent" involved in each employees' testimony. This testimony renders untenable Respondent's contention that the Union's organization efforts were conducted in such a way as to negate the effect of the employees' signatures upon the authorization cards.

For the above reasons, we find that the Union was the majority representative of Respondent's employees in the appropriate unit at the time of the election.<sup>10</sup>

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Henry I. Siegel, Inc., Eloy, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

IT IS FURTHER ORDERED that the petition for certification in Case 28-RC-1326 be, and it hereby is, dismissed, and that all proceedings held thereunder be, and they hereby are, vacated.

<sup>9</sup> The question of whether Respondent's counsel exceeded permissible limits in interrogating employees was an issue litigated at the hearing. It was in the context of this issue that Flores testified as to what he told Respondent's counsel concerning what Robertson told him. Thus, his testimony on this point is not very clear.

<sup>10</sup> Member Brown concurs in this finding for the reason that in his opinion the signed authorization cards involved herein, including that of Flores, are the best evidence of the signatories' intent, absent a showing of fraud or coercion. See *Dan Howard Mfg Co., et al.*, 158 NLRB 805, Member Brown's position reported at fn. 5 thereof.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

WALLACE E. ROYSTER, Trial Examiner: This matter was tried before me in Phoenix, Arizona, on various dates between February 23 and March 4, 1966.<sup>1</sup> At issue is whether Henry I. Siegel, Inc., herein the Respondent, has unlawfully interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, and has in bad faith refused to recognize and bargain with Amalgamated Clothing Workers of America, AFL-CIO, herein the Union, as the statutory representative of its employees in an appropriate unit. The unfair labor practices are alleged to affect commerce within the meaning of Section 2(6) and (7) of the Act. Objections to the conduct of an election held among Respondent's employees on July 2 are also presented for resolution.

Following the close of the hearing, counsel for the Respondent filed a motion to correct the transcript on 568 instances. Counsel for the General Counsel agreed with almost all of the corrections. The motion of counsel for the Respondent is granted except for those numbered 315, 331, 399, 478, and 479 which are denied.<sup>2</sup>

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New York corporation operating manufacturing plants in Kentucky, Tennessee, and the one here involved in Eloy, Arizona. In respect of the Eloy plant during the 12-month period preceding the issuance of the complaint, the Respondent brought goods, materials, and supplies, a value in excess of \$50,000, to Eloy from points outside the State of Arizona. During the same period the Respondent shipped from its Eloy plant products valued at more than \$50,000 to States other than the State of Arizona. I find, as the Respondent concedes, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>1</sup> Charges filed by the Union on August 2, 1965, and on January 28, 1966. Complaint issued October 29, 1965. Except as noted, all dates are in 1965.

<sup>2</sup> This denial is not based upon any conviction that the transcript as it now remains constitutes an accurate reflection of what was spoken. I am unpersuaded, however, that granting counsel's motion in its entirety would provide a record more closely approaching accuracy.

## II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

Eloy is a community of about 5,400. In 1958 William Knapton, a local businessman, was instrumental in the formation of Eloy Development Corporation, herein EDC. By the selling of stock, about \$55,000 was accumulated and used in part payment of the purchase price of 40 acres in or near Eloy. Thereafter, through the agency of some Arizona State officials, negotiations were undertaken with the Respondent with the result that EDC built a factory building on the 40 acres and leased it to the Respondent. Operations in the new factory began in October 1964. Leo Delgado, a local merchant and one of the officers of EDC, was particularly active in recruiting workers for the Respondent. It appears that applications for employment at the new factory were distributed widely throughout Eloy. Delgado, who seems to have had a wide acquaintance in the area, often contacted applicants to tell them to report for interview by Leo Greengrass, the plant manager, or in some instances, after such an interview, to report for work.

In late March 1965, the Union began a campaign to obtain designation cards from Respondent's employees. Wilma Robertson, a paid agent of the Union, was in charge. Through the efforts of Robertson and of Respondent's employees, Emilia Gaitan, Lupe Gaitan, Jane Galaviz, Mary Galaviz, and Celeste James who constituted an employee organizing committee, 113 authorization cards were obtained.

The Respondent of course became aware of this attempt to interest its employees in the benefits of organization and responded to it. On May 8 Plant Manager Greengrass wrote to all employees informing them that the Union had filed a petition for an election and saying that he thought a union was not necessary at the plant and would not be best either for the employees or the Employer. Greengrass went on to say that no one spoke for him and that the employees should not be misled by rumors that the Union might pass on to them. Greengrass assured them that if their work was satisfactory they need not worry about their jobs, no matter how they voted.

On June 23 Greengrass again wrote to the employees. He described some of the benefits that the Respondent had afforded the employees: an insurance plan, a modern air-conditioned factory, paid vacations and holidays, and seniority rights. He said that the Union was interested in collecting dues, fines, and assessments. Greengrass argued that the organizers could do no more than make promises, and that their promises were irresponsible. He reminded them that only their employer could provide jobs, pay insurance premiums, or make vacations and paid holidays possible. The letter concluded with the admonition: "insure your future, vote no." Finally, on June 29, Greengrass wrote that no one would lose his job no matter how he voted, the Union had nothing to do with establishing the benefits which already existed, the Company alone provided benefits, and the Union could not guarantee anything in that area. Greengrass said that the future of the plant was in the hands of the voters; that with a union might come agitation, discord, strikes, and violence. Again the employees were asked to vote no.

Emilia Gaitan testified that on July 1, the day before the election was held, a floorlady, Lily Rodriguez, came to

Gaitan in the plant and, saying that she had just met with Greengrass, warned that if the Union won, the plant would close.

Nick Flores testified that 2 or 3 days before the election his foreman, Roy Bass, said that if the Union won, he guessed that the Respondent would make the plant into a warehouse.

Lupe Gaitan testified that on July 1, Floorlady Rodriguez said that she had met with Greengrass who said that if the Union won, the plant would become a warehouse. Rodriguez commented that the girls must decide whether they wanted a union or their jobs.

Emilia Gaitan, Jane Galaviz, Lupe Gaitan, and Mary Galaviz testified that a week or two before the election the priest in the local Catholic church warned his congregation that it was too soon to attempt to bring a union into the plant, that the employees should delay such a plan for several years, and that if they persisted the plant would close.

If there was support for the Union among any in the business community of Eloy, no one testified to it. William Knapton, who was prominent in EDC, organized a citizens' committee to combat the Union. Knapton testified that he feared the closing of the plant should the Union succeed in gaining foothold there. Shortly before the election, he caused about 1,500 handbills to be distributed at the parking lot at Respondent's plant and throughout the area of Eloy. The handbills warned that if a Union was selected, it would ask for higher pay and lower production quotas. It predicted that the Respondent would not agree because it was already losing money in Eloy, so a strike would result. It warned that all the strikers would be replaced and would be left without jobs.

On Thursday, June 24, the Pinal County Enterprise, the only newspaper in Eloy, said in an editorial that it would be disastrous for the employees to select a union at this time. The writer alleged that he had checked with the Respondent and had learned that because of high labor turnover and other personnel problems, production was not economical, and that the plant was losing money. Were the Union to succeed, the writer continued, the Company would have good reason to discontinue operations for no one was going to persist in a losing operation. The editorial warned that a vote for a union might result in reducing the number of employees or in the conversion of the plant to a warehouse. In the same issue, the citizens' committee published a two-page advertisement urging the employees to vote against the Union, suggesting that the plant might be reduced to a warehouse operation if the Union won and adverting to violence which allegedly accompanied a strike by the Union in Douglas, Arizona.

In the morning of July 1, Jessie I. Siegel, Respondent's president, spoke to the employees in the plant. Jane Galaviz testified that Siegel urged the employees to vote no in order to secure the future of their children and of the plant. Siegel said that a vote would determine whether the plant continued as it was or became a warehouse. Siegel warned that following union organization, plants were destroyed by violence or bankruptcy. Lupe Gaitan testified that Siegel said the vote would determine whether the plant became a warehouse. Mary Galaviz recalled that Siegel said that he could make the plant into a warehouse, that the Union caused violence, and that the Union could ruin the employees' future. After the speech, according to Galaviz, her floorlady, Laura Miller, asked her how she liked it. Galaviz said she wondered what Siegel meant about the future. Miller replied that the Company could

make a warehouse out of the plant and if the Union came in, it would do so. Suzanna Rodriguez testified that Siegel said a vote for the Union would help make the factory into a warehouse. Elida Martinez testified that at the end of his speech Siegel said that the future of the plant would depend upon the vote, that a vote for the Union would help the plant to become a warehouse.

Shortly after Siegel had spoken, according to Suzanna Rodriguez, her floorlady, Henrietta Diaz, asked Rodriguez to observe that unfinished materials were being shipped from the plant. Diaz said that if the Union came in, the plant would close. Another employee, Elida Martinez, testified that Floorlady Diaz, about the same time, made a similar comment to her.

Throughout the period of the Union's campaign, the business community of Eloy tried to persuade employees that their best interests would be served by voting against the Union. The theme running through all such urgings was that the establishment of a union would almost certainly result in the closing of the plant and the discouragement of any new industry in Eloy. When the votes were counted on July 2, only 48 out of a total of 172 favored the Union.<sup>3</sup>

In the late afternoon of Friday, July 9, counsel for the Union sent a telegram to the Regional Director in Albuquerque, objecting to the election on the ground that the employees had been frightened by employer statements threatening loss of employment and that the businessmen in Eloy through advertisements and oral statements had made the holding of a fair election impossible. This telegram was received by the Regional Director on July 12. I ruled at the hearing that because two Saturdays, two Sundays, and a holiday, July 5, intervened between the holding of the election on July 2 and the receipt of the telegram, on July 12 objections were timely filed. I affirm that ruling now. On July 12, counsel for the Union filed with the Board's Resident Office in Phoenix, Arizona, more detailed objections to the election. The July 12 objections elaborated on the telegram and relied additionally on Siegel's July 1 speech, threats to move fabric from the plant, and activities of floorladies in influencing the votes of employees. I find that the filing at the Resident Office on July 12 was not a timely filing within the meaning of the Board's Rule in that it was not a filing with the Regional Director. The effect of this ruling is, however, academic. Objections to the election had been timely filed by telegram, and evidence available to support those objections or others later discovered affecting the validity of the election may properly be received.<sup>4</sup> In deciding whether the election should be set aside I have considered the statements of William Knapton in advising employees to vote against the Union as contained in the handbills and newspaper advertisement. I have also considered the statements attributed to the Catholic priest and to other leaders in the community. Any employee who gave any weight to what he read and heard from these sources would surely conclude that a vote for the Union was a vote to put him out of a job.

The letters sent out by the Respondent to all employees over the signature of Plant Manager Greengrass were calculated to and perhaps did bring about the same reaction. In the letters of June 23 and that of June 29 the

employees were told that the future of the plant was in their hands. Of course they knew that their Employer wanted them to vote against the Union. The only sensible conclusion for them to draw was that a vote for the Union would place their employment in hazard. This is what the Respondent desired them to believe.

The speech, given by President Siegel on July 1, was tape recorded. Siegel testified that a tape introduced in evidence at the hearing was the tape recording made of the speech as he gave it. An accurate transcription of the tape in evidence contains no reference to turning the plant into a warehouse. The reliability of a tape recording as evidence is no greater than that of the witnesses who testify to its accuracy. Tapes are easily amended and edited without these circumstances being noticeable to the unsophisticated ear. I heard the tape as it was played at the hearing and it sounded genuine enough to me. Siegel, of course, said that it was the actual recording of his talk as did Plant Manager Greengrass and James S. Buckler, the man who operated the tape recorder. The witnesses for the General Counsel who testified that Siegel made the threat in this speech to turn the plant into a warehouse were, to my observation, highly credible. At no time during the appearances of any of them on the stand did I have the feeling that here was a witness unsure of her recollection of this particular matter. Whether Siegel in fact made the remark so attributed to him is not a matter of controlling importance. Even were I to credit Respondent's witnesses, my decision on the merits of the complaint would be unaffected. But here is a question of fact which must be resolved and I do so by giving full credit to witnesses for the General Counsel who testified that the threat was made and that Siegel made it. How it can be that the tape fails to include such a comment is unnecessary for me to decide and I do not undertake to do so.

Apart from the warehouse language, Siegel's speech as received in evidence certainly warns employees that they have been the victims of union deceivers and that if they vote for the Union, the future of the plant and of the community would be clouded. On the other hand, he said that a vote against the Union would prevent the possibility of strikes, violence, and discord and insure the growth of the plant and the community.

The floorladies, Edwarda Murietta, Sara Williams, Henrietta Diaz, Lily Rodriguez, Laura Miller, and Virginia Zapata, all denied that they made any threats to any employee to the effect that the plant might close or become a warehouse, or that unfinished goods were being shipped in anticipation of a union victory, or that any threats were made concerning security of employment to employees. I credit the witnesses called by the General Counsel and find that the Respondent, through the floorladies, made the threats attributed to them.

It is the theory of the General Counsel that the businessmen in Eloy who were active in opposition to the Union were Respondent's agents. Leo Delgado in particular, it is claimed, occupied such status. It is plausible that some in the community who had dealings with Siegel regarding employment would so regard Delgado. He actively assisted Respondent in recruiting individuals for employment and on one occasion, when through inadvertence an employee did not receive her

<sup>3</sup> The election was conducted in a unit conceded to be and here found to be appropriate

All production, maintenance, shipping, and shop clerical employees at the Eloy plant, excluding office clerical

employees, gardeners, guards, watchmen and supervisors as defined in the Act

<sup>4</sup> *Aeronca Manufacturing Corporation*, 121 NLRB 777

vacation paycheck, at the request of Greengrass, advanced the approximate amount of the check to the employee. I have difficulty, however, in reaching the conclusion that the General Counsel seeks. In the first place, it seems highly probable to me that the businessmen, William Knapton, Leo Delgado, Dr. Holmes, and the others, needed no prodding from Siegel to mount and to continue the antiunion campaign. As businessmen, they had their own stake in the prosperity of the community and I have no doubt that many of them shared the fears which later were engendered among the employees that the success of the Union would mean the failure of the plant and the community. Except for Delgado, I do not find this record to establish that the businessmen mentioned were held out by the Respondent as its agents. As to Delgado, there is no evidence that he did more than assist the Respondent in recruiting and on one occasion advanced a small sum of money to an employee at the request of Greengrass. These circumstances do not, in my view, support a conclusion that in voicing opposition to the union he was Respondent's agent. I do not find that the Respondent had any responsibility for what the businessmen said or, in the circumstances of this case, was called upon to disavow their words or actions.

As mentioned earlier, 113 employees signed designation cards prior to the date of election. The cards were, I find, unequivocal designations of the Union as bargaining representative.

On July 13, in the course of an interview by a Board agent, Robert J. Deeney, Wilma N. Robertson, the Union's principal solicitor and the person who represented the Union in dealings with employees throughout the campaign, said:

I signed up about 75% of the employees that eventually signed cards. I told them that the purpose of signing the card was not to make them a Union member but that it was to get an election and the purpose of the card was to show that the people wanted an election. Also I told them that if we won the election, the Amalgamated Clothing Workers would be the bargaining agent. I also read the card to them and told them that the card was confidential. I am sure I read the card to them and I told them that through cards an election could be held.

When called as a witness, Robertson grudgingly admitted that she had made such a statement to Deeney, but insisted that the statement was incomplete, and asserted that in soliciting cards she did not tell employees that the only purpose of the signing was to enable the Union to bring about an election. Robertson was not an impressive witness. Under cross-examination about her statement to Deeney, she was evasive and argumentative. I have no doubt but that in attempting to persuade employees to sign cards, she emphasized the fact that they would be used to support a petition for an election.

There was no reason for any employee or union representative to suppose that the Respondent would be amenable to extending recognition to the Union without an election and any employee who had any interest in the matter must have felt that just signing a card was not going to bring a union into the plant. All expected an election to eventuate as it did. There is no evidence, however, that any signer opposed the Union, and the cards themselves are expressions of union support. My conclusion is that Robertson and the employees thought that they would

have to win an election in order for the Union to obtain bargaining status, and that no thought was given to any possibility of a card check. I do not further conclude, however, that the campaign was conducted as if an election was its goal. Robertson testified, and there is no reason not to credit her testimony, that she held a number of employee meetings during the months preceding the election. It is not believable that these meetings centered about the desirability of having an election. Surely, the advantages of having union representation must have been stressed. Finally, it is unlikely that one opposing the Union would sign a card even in the belief that he was thereby doing no more than making an election possible. Those against the Union could gain nothing from bringing about a test at the polls. Only those who desired such representation could be advantaged by the conduct of an election.

I find that the card signers were not victims of misrepresentations by Robertson and that the cards are genuine and meaningful designations of the Union as bargaining representative. As the Respondent had 182 employees in the bargaining unit on the day of the election, it follows that the Union was the majority representative of Respondent's employees in an appropriate unit. I so find.

The conduct of the Respondent through its floorladies and its president in threatening, frightening, and coercing its employees in an effort to divert support from the Union and to insure a vote against it violated Section 8(a)(1) of the Act and I so find. This conduct, coupled with the community attitudes as expressed through Knapton, Delgado, the Catholic priest, the handbills, the newspaper editorial, and advertisement, insured that a fair election could not be held. The election, not being an expression of the uncoerced desires of the electorate, must be set aside. To direct another election is but to start another turn around a fixed axis of community disapproval; an attitude strengthened and encouraged because of Respondent's hostility to union organization. The fears and anxieties of the business community in Eloy, as expressed in this record, will not easily be quieted and likelihood approaches certainty that the direction of a new election would evoke the same response from the Eloy merchants and professional men as it did in 1965.

The complaint alleges that the Respondent unlawfully refused to bargain with the Union. I think that this allegation is not supported. No request for recognition was ever made in behalf of the Union. Assuming that such a request would have been rejected out of hand, it nonetheless is prerequisite to a finding of a refusal to bargain. In order to fulfill the purposes of the Act, however, it is essential that a bargaining order issue in this matter.<sup>5</sup> The Union conducted its campaign. A majority of the employees decided, as evidenced by the designation cards, that they wanted the representation that the Union would afford them. The possibility that even in a fair and free election, absent the coercive and intimidatory pressures of the Respondent and the community, the Union might not have prevailed is one that cannot finally be answered. There is no way of conducting a fair and free election in Eloy, Arizona, on the question of union representation at the Respondent's plant. The nearest one can come to an evaluation of freely expressed employee sentiment is to accept the conclusion evidenced by the designation cards. I do so.

Before the hearing opened, counsel for the Respondent came to the plant and interviewed a number of employees

<sup>5</sup> *Better Val-U Stores of Mansfield, Inc.*, 161 NLRB 762

in connection with the complaint. By amendment at the hearing, it is asserted that in these interviews counsel went beyond the limits of permissible inquiry and thus violated protected rights of the employees. I find this allegation to be unsupported except by the testimony of Mattie Bird. She recalled that on February 16, Attorney Gruender, in the course of an interview, asked her how she had voted in the election. Attorney Gruender testified that he asked no such question but conceded that Bird did tell him how she cast her vote. I credit Gruender in this matter and conclude that Mattie Bird probably misinterpreted Gruender's questions and is thus mistaken in her belief that she was asked about her ballot.

All employees in the plant after certain waiting periods are covered by life insurance, hospital and surgical expense benefits, and weekly indemnity benefits. The pamphlet which is given to all employees and which describes the coverage of these plans under the caption "Who is Eligible" reads:

All non-union, non-New York employees are eligible to participate in this plan.

Plainly, this publishes a discrimination against individuals who belong to a union. In behalf of the Respondent, it is argued that there was no such discrimination in fact and that the quoted language is to be understood as meaning that all employees are covered except those in New York and those who may have coverage by virtue of a plan negotiated with a bargaining representative. This may indeed be the meaning which the Respondent gives to the language but absent evidence that this was painstakingly explained to every employee who received the group insurance plan pamphlet, the argument is unavailing. I find that by the published discrimination against union members the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.<sup>6</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship 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 the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has engaged in serious unfair labor practices tending to deprive employees of their right to representation by a labor organization and having found that the purpose of the Act will best be served by requiring the Respondent, upon request, to extend recognition to and enter into a bargaining relationship with the Union, a bargaining order will follow to bring about such a result.

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

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By telling employees that the plant might close and become a warehouse or that violence or bankruptcy might result should they choose the Union to represent them and by the apparent restriction of coverage under the insurance plan to nonmembers of a union, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. 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 foregoing findings of fact and conclusions of law and the entire record in the case, it is recommended that Henry I. Siegel, Inc., Eloy, Arizona, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

(a) Threatening employees with closing the plant or changing its character or in any other way affecting work opportunity should they select the Union as bargaining representative.

(b) Using language in describing eligibility in insurance plans, restricting coverage to those who are not members of a union.

(c) In any other manner, interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist Amalgamated Clothing 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.

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees in the herein found appropriate unit in respect to rates of pay, wages, hours of employment, or terms or conditions of employment and if an understanding is reached, embody it in a signed agreement.

(b) Post at its plant in Eloy, Arizona, copies of the attached notice marked "Appendix."<sup>7</sup> Copies of said notice, to be furnished by the Regional Director for Region 28, after being duly signed by the Respondent's representative, shall be posted by it immediately upon receipt thereof, and be 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

the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is 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."

<sup>6</sup> Tom's Monarch Laundry & Cleaning Company, Inc., 161 NLRB 740

<sup>7</sup> In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for

Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.\*

(d) It is finally recommended that the Board dismiss the petition in Case 28-RC-1326 and vacate all proceedings in connection therewith.

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\* 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 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, on request, recognize and bargain with Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive collective-bargaining representative of our employees at the Eloy plant in a unit composed of all production, maintenance, shipping, and shop clerical employees excluding office clerical employees, gardeners, guards, watchmen, and supervisors, as defined in the National Labor Relations Act in respect to matters of wages, hours, and working conditions and, if an

understanding is reached, embody it into a signed contract.

WE WILL NOT threaten to close the plant or to change its operation or in any other respect threaten to deprive you of employment because of your interest in or support of the above-named Union.

WE WILL change the eligibility clause of our insurance plan to remove the reference to nonunion employees.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form any labor organization, to join or assist Amalgamated Clothing Workers of America, AFL-CIO, or any other union, to bargain 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 and all such activities.

HENRY I. SIEGEL, 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Resident Office, Federal Building and United States Courthouse, 230 North First Avenue, Phoenix, Arizona, Telephone 261-3717.