Joslyn Stainless Steels, a Division of Joslyn Mfg. and Supply Co. *and* United Steelworkers of America, AFL–CIO. Case 25–CA–2641[1]

September 8, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

On April 7, 1967, Trial Examiner Stanley N. Ohlbaum issued his Decision and Report on Objection to Election in the above-entitled case, finding that the 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 the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief and 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 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 and briefs, and the entire record in this case, and hereby adopts the findings,[2] conclusions, and recommendations of the Trial Examiner.

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[3] and hereby orders that the Respondent, Joslyn Stainless Steels, a Division of Joslyn Mfg. and Supply Co., Fort Wayne, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

[1] This complaint was originally consolidated by the Regional Director with the related representation proceeding (Case 25–RC–3307) for purposes of taking evidence on common issues Since the election had been conducted pursuant to a consent-election agreement entered into by the parties under Section 102 62(a) of the Rules and Regulations of the National Labor Relations Board, as amended, the Board, after issuance of the Trial Examiner's Decision, issued an Order severing Case 25–RC–3307 from Case 25–CA–2641 and remanding the former to the Regional Director for final determination Consequently the validity of the election in the representation case is not an issue for Board determination in this case

[2] The Trial Examiner found that employee Dorothy Shirley testified that she disseminated to other employees Plant Supervisor Stuntz' threat that there would be a loss of job classifications in the event of a union victory We find nothing in the record to support this finding of dissemination and reverse the Trial Examiner's finding as to this point

[3] With the exception of that portion of the Recommended Order which pertains to the representation proceeding See fn 1, *supra*

Delete from paragraph 2(a) of the Trial Examiner's Recommended Order that part thereof which reads "to be furnished" and substitute therefor "on forms provided "

TRIAL EXAMINER'S DECISION AND REPORT ON OBJECTION TO ELECTION

STANLEY N. OHLBAUM, Trial Examiner: This consolidated case,[1] involving alleged violations of Section 8(a)(1) of the National Labor Relations Act, as amended, 25 U.S.C. Sec. 151, *et seq.* (Act), and Employer conduct said to have affected Board election results, was heard before me in Fort Wayne, Indiana, on February 1, 1967. All parties appeared and participated throughout by counsel, who were afforded full opportunity to present evidence and contentions, file briefs, and propose findings and conclusions. Subsequent to the hearing, briefs were received from General Counsel and Respondent, which have also been carefully considered.

Upon the entire record[2] and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS; LABOR ORGANIZATION INVOLVED; JURISDICTION

At all material times, Respondent has been and is an Illinois corporation, engaged in manufacturing stainless steel products, with a place of business in Fort Wayne, Indiana, where, during the representative 12 months immediately preceding issuance of the complaint, it manufactured, and whence it sold and shipped directly in interstate commerce to points outside of Indiana, such products worth over $50,000. I find that at all said times Respondent was and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] Unless otherwise specified, dates are 1966 throughout.

Procedural historical data· Charge filed by United Steelworkers of America, AFL–CIO (Union), *October 20*, complaint issued by Acting Regional Director, Region 25, *December 8*, Acting Regional Director's Report and Order on Union Objections (timely filed on October 12 to October 5 Board-conducted consent election), and order consolidating representation election case (Case 25–RC–3307) with unfair labor practices case (Case 25–CA–2641), *December 8*. Two of the three October 12 union objections to election were overruled by the Acting Regional Director, who in his consolidation order referred the remaining objection (No II) to the Trial Examiner (and transferred the representation case to the Board), since it involved issues in common with the complaint case, dependent upon credibility resolution The union objection thus referred here states that on or about September 30, 1966 [i.e , 5 days before the election], Respondent through its supervisors threatened elimination of unit jobs if the Union was selected by the employees as their bargaining representative

[2] Hearing transcript corrected by Trial Examiner's March 17, 1967, order on notice, and further corrected in accordance with Respondent's unopposed March 31, 1967, letter application, which is hereby granted.

I find that at all material times the Union was and is a labor organization within the meaning of Section 2(5) of the Act.

I find that assertion of jurisdiction in this case is proper.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Issues

The issues presented in the unfair labor practices case are whether, in violation of Section 8(a)(1) of the Act, Respondent at various times in 1966 interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act through (1) threats and acts of economic detriment for union membership or support[3] and (2) solicitation to employees "to harass" certain other employees who were union adherents.[4] The issue referred in the representation case likewise concerns alleged economic threats, shortly before the election, in the event employees selected the Union as their bargaining agent.

Background

Union organizational activity commenced in July among Respondent's appropriate unit office, plant clerical, and technical employees. The ensuing October 5 Board-conducted representation election, based upon the Union's August 26 petition and the parties' agreement for consent election approved September 15, was lost by the Union by a 35 to 22 vote of 59 eligibles. The alleged unfair labor practices and objectionable preelection conduct by Respondent Employer here for consideration, are said to have occurred from the end of July to October 6.

A. *Alleged Violations of Section 8(a)(1) of the Act: Interference, Restraint, and Coercion*

1. July

Respondent's IBM department keypunch operator Maryann Wyss, a member of the prosposed bargaining unit, testified as General Counsel's witness that on July 25 or 26 her supervisor, Albert Murphy informed her and other employees that the established practices of permitting lunchtime overtime work, sick leave without doctors' certificates, and conversation during other than fixed "break" time were being discontinued.[5]

The testimony of Respondent's Supervisors Murphy (Data Supervisor, Wyss' immediate supervisor) and Hutton (Chief Plant Accountant, Murphy's immediate supervisor) indicates that these more restrictive personnel rules, substantially as described by Wyss,[6] were announced by Murphy, on the date mentioned by Wyss, upon instructions of Hutton after Hutton had learned for the first time earlier that day from Murphy about union organizational activity, perhaps specifically on the part of Wyss. Murhpy also testified that during his meeting with the employees on July 25 when he announced these tightened rules, he was questioned by employees Wyss and Covault about shop practice consequences of unionization, to which he replied noncommittally except that he stated that in the event of any reduction-in-force following unionization there would be transfers rather than discharges.

Further according to Wyss, later that day (July 25 or 26) Murphy told her he was "surprised that [you] would participate in Union activities; and . . . that Mr. [Hutton] told him that he knew who had gone to the Union meeting and who were passing out cards." When, thereupon, Wyss asked Murphy the reason for the changed rules he had announced that morning, Murphy replied, "You're not so dumb that you don't know that the Company doesn't want a Union."[7] Questioned about this episode, Murphy did not appear to testify with unequivocal directness about it; stating, for example, that *Wyss* did not speak to *him* "about the union," that he "know[s] nothing about the conversation," and that, as to whether he spoke to Wyss at all then, "I don't remember. I can't say that I did or didn't."

My observations of Wyss' demeanor as a witness persuade me that her testimony deserves credence. To the extent that her testimony in regard to the July 25 or 26 events is in certain respects inconsistent with that of Hutton[8] and Murphy, upon the basis of demeanor comparsions evaluated within the frame of reference of the record as a whole, I credit Wyss' testimony.

I find that the statements made to Respondent's assembled IBM department employees by its Supervisor Murphy on July 25, timed as they were upon learning of the employees' union organizational activity, and directed as they were to a restrictive tightening of Respondent's existing relaxed personnel rules and practices regarding overtime and other matters[9] of significance to employees, were tied to the employees' exercise of organizational rights guaranteed to them by the Act, and were of coercive impact and effect in interference therewith.

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[3] Complaint pars 5(b), (c), (e), (f), and (g), the last two added through amendment at the hearing

[4] *Id*, par 5(d)

[5] Although these new rules were, I find, undoubtly promulgated substantially as testified by Wyss, it appears that, other than lunchtime overtime proscription during the ensuing month or two, they were not actually enforced According to Respondent's Supervisor Murphy, there was a return to lunchtime overtime about 2 weeks after his July 25 announcement to the contrary.

[6] Although on cross-examination Murphy indicated that the announced proscription of lunchtime overtime was limited by him to lunchtime overtime "[un]approved by the supervisor," if his own additional testimony that such overtime had never been without his authorization is given credence, no reason appears for the announcement, other than his own testimonial explanation that he made it "Because I was instructed, sir, by my supervisor [Hutton]," to whom he had admittedly reported the blossoming union organizational activity earlier that day.

[7] Hutton conceded that he preferred not to see the Union in the plant. Employee Shirley's undisputed testimony establishes that Plant Superintendent Stuntz entertained similar sentiments more strongly expressed.

[8] Including Wyss' account of a July 14 episode with Hutton concerning lunchtime overtime, with regard to which her highly persuasive version on rebuttal was unrebutted by Respondent

[9] Respondent urges that lunchtime overtime was a continuing problem which had been met in the same way on prior occasions Even assuming this to have been true, I find there was no substantial credible evidence that the announcement of the tightening of that policy, timed immediately following Respondent's learning of the employees' union organizational activity, was a routine handling of that "problem," but that it was, within the context of the circumstances shown and upon the entire record, for coercive reasons to discourage the organizational activity. It is noted, in this connection, that there was at the same time an apparently unprecedented accompanying sudden stringent tightening up of other beneficent personnel policies (e.g., easy sick leave and on-the-job conversation) affecting employees

2. August

On August 8, Dorothy E. Shirley, also a member of the proposed bargaining unit, secretary to Respondent's Purchasing Agent James Rinehart, wrote a letter to Plant Superintendent Stuntz, calling to his attention that she had been invited to attend a union organizational meeting, expressing her general disfavor of unionism, and raising questions as to the effects upon her of plant unionization. Although Stuntz did not respond to this letter in writing, he promptly informed Mrs. Shirley on the telephone that he was "pleased" at it. A few days later, in Stuntz' office, to which Mrs. Shirley had gone concerning a company news periodical, Stuntz:

> . . . suggested that I tell the Union advocates to get out of the plant; to tell the Union to get out . . . that I should go over and talk to these people. He named a couple of them [Maryann Wyss and Tom Bell] who were involved in this, and suggested that I talk to them. He said I would probably be called some names, but my comment to that was, that I had been called names before. And that I should actively work on them to get the Union out; that we didn't want this.
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> . . . to go into the I.B.M. or to go to these people and to ask them to tell the Union to get out, to actively just tell them that we just didn't want this, to make sure that they understood that we did not want a Union.

Stuntz added that since Mrs. Shirley "had no friends out there anyhow . . . it would not hurt [your] position to tell them, " specifically naming employees Wyss (in the forefront of the union organizational activity) and Bell to her. Mrs. Shirley later did in fact disseminate this message to employees.

In substantial credible essence, the version of Plant Superintendent Stuntz (who recalled Mrs. Shirley's described visit to his office), responsive to the foregoing testimony of Mrs. Shirley, may be summed up in Stuntz' own testimony:

> For the life of me I cannot remember the contents of this conversation.[10]

Inasmuch as Mrs. Shirley impressed me as a highly credible witness, I credit her account of this conversation with Plant Superintendent Stuntz, as well as her testimony that she disseminated Stuntz' remarks among other employees.

Although it would have been unexceptionable under the Act for Stuntz to indicate to Mrs. Shirley that Respondent did not favor the Union, and even to request her to assist him in lawfully propagating that view among employees, Stuntz went beyond this when he utilized Mrs. Shirley to convey Respondent's message to "tell the Union advocates to get out of the plant." Coming as it did from the responsible head of the plant, this message could mean nothing other to the employees than that the Company did not desire to continue in its employ those employees who wished to exercise their organizational rights under the Act. I find that this was in interference with and in coercion of the employees' free exercise of those guaranteed rights.[11]

3. September

Mrs. Shirley further testified that, upon hearing plant rumors to that effect, toward the end of September—shortly before the October 5 election—she asked Plant Superintendent Stuntz whether "there [would] be a loss of job classifications contingent upon the outcome of the election," to which Stuntz replied, "Yes . . . . It is true" and that "if the Union became the bargaining unit or the representative of the office and technical people, they would lose two classifications . . . . It was based upon work that had recently been coming in from Chicago, that had been transferred from Chicago into the Fort Wayne Office and that work would be sent back . . . this was the work that had been brought down from Chicago that they did not want it being handled by Union people."[12] Such a change of classifications, in the accounting department, according to Mrs. Shirley, could affect her own job. Stuntz also commented to Mrs. Shirley at this time, that:

> . . . no one made you stay and work at Joslyns. You could leave if you didn't like the working conditions or the way things were; that they felt that you could get another job.

With regard to this episode, as with his earlier (August) conversation with Mrs. Shirley, although Plant Superintendent Stuntz recalled the occasion he allegedly could not recall the conversation.[13]

Favorably impressed as I was with the testimonial demeanor of Mrs. Shirley, I also credit her version of this conversation with Plant Superintendent Stuntz, which I find constituted a threat of economic detriment to Respondent's employees in the event of unionization, in interference with and coercion of their organizational rights guaranteed under the Act.

4. August-October

According to further testimony of Mrs. Shirley, from the time she first learned (in late July or early August) of the union organizational activity, up to the October 5 Union election, "frequent" conversations occurred

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[10] In response to leading-type questioning by Respondent's counsel, Stuntz did, however, express a broad argumentative disclaimer of asking Mrs Shirley to "tell people that the Company does not want the Union" since he "would not have told that to anyone " However, he promptly added and reiterated a number of times that he was unable to remember the contents of his conversation with Mrs Shirley

[11] "Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged " Harlan, J , in *N L R B* v *Exchange Parts Company*, 375 U S 405, 409 " it is common experience that the desire of employees to unionize is raised or lowered by the advantages thought to be attained by such action " Reed, J , in *Radio Officers' Union [A. H. Bull Steamship Co.] v. N.L.R.B* , 347 U S 17, 51 "Language may serve to enlighten a hearer, though it also betray the speaker's feelings and desires, but the light it sheds will be in some degree clouded, if the hearer is in his power." Learned Hand, J., in *N L R B.* v *Federbush Company, Inc* , 121 F. 2d 954, 957 (C A 2) It is to be remembered that to the employees here the message emanated from a source with power to make it good. Cf *N L R B* v. *Eastern Die Co* , 340 F 2d 607 (C A 1), cert denied 381 U S 951

[12] Stuntz testified that unionization would *not* have resulted in a loss of job classifications

[13] As with regard to the August conversation, again the argumentative disclaimer was elicited from Stuntz on direct examination that he did not "believe" he "would have told anyone that "

between her supervisor Rinehart and herself regarding "changes that would occur if the Union came in." Some of these discussions were opened up by her, others by Rinehart "volunteer[ing] this information." Speaking of "some of the [existing] unwritten job benefits," Rinehart told her that if the Union came in:

> . . . we would have to go back to having to punch time cards because they would like to have an exact time as to the amount of time we were on the job.
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> . . . the company would want a better assessment of when [i.e., time] we arrived. In some cases now you can be several minutes late and this can be excused; also, that there would be no more personal phone calls at work to be received or to be given. This would be limited because with the Union shop these things always went. You would need a doctor's certificate when you had been out ill because these things were normally required . . . . I would not be able to handle my personal affairs in the office. Previous to this I had been granted time off to go to court to pursue child support; that this would not be easy to arrange; and various other things.[14]

Conceding that he had such discussions with Mrs. Shirley, Rinehart (Respondent's purchasing agent) attempted to portray that these occurred in an atmosphere of noncommittal responses on his part to questions by Mrs. Shirley, such as "I didn't know" to questions about timecards. Asked whether he ever predicted unionization consequences, Rinehart's testimonial response was, "I don't believe so"; asked whether he ever volunteered information on this subject to Mrs. Shirley "on his own," his response was, "Not to my knowledge"; asked whether Mrs. Shirley ever discussed loss of job classifications in the event of unionization, his response was, "I don't remember," and, asked whether Mrs. Shirley ever told him she spoke to Plant Superintendent Stuntz about it, his response was, "I don't recall." While admitting, on cross-examination, familiarity with union matters through previous employment under union conditions, he also testified that when Mrs. Shirley "asked me about the advantages and disadvantages of the Union and I really could not tell her."

Although Rinehart demonstrated improved recollective powers at the hearing over his alleged recollective powers when he executed a pretrial affidavit for a Board agent, it was apparent that those recollective faculties were still substantially deficient at the hearing. As observed, his testimonial performance could not justifiably be preferred to that of Mrs. Shirley, who, as already indicated, impressed me highly favorably as worthy of belief. I accordingly credit Mrs. Shirley's described testimony in this aspect as well, in preference to Rinehart's defective and other recall, and further find that the described statements by Rinehart were in fair contemplation calculated to "chill unionism"[15] or the exercise by employees of organizational rights guaranteed under the Act.

5. September

On September 13, Maryann Wyss asked her supervisor Murphy for the next "day off" in order to attend a Board hearing scheduled for 10 a.m. on September 14. Murphy told her that since she was not due there until 10, she would have to work until 9 or 9:30. Wyss accordingly reported for work on September 14 at her regular 8 a.m. starting time and left between 9 and 9:30 for the hearing. Her normal workday was 8 to 5, with 1 hour for lunch. She had not been subpenaed to the hearing. According to Wyss' testimony, although she had wanted the entire day off, Murphy only gave her permission to attend the hearing itself, without additional time off. Although Murphy only intended to give her the necessary time off to attend the hearing, he conceded that he did not expressly tell her when to return. When the hearing was concluded at 1 p.m., she had not had her lunch, and it would have taken her about 25 minutes to return to the plant. After the hearing she took 2-1/2 hours for lunch and spent the rest of the day at a hotel on union business, without returning to or notifying the plant she would not be back. Only one of the five other employees at the hearing on that shift returned to work that day. Wyss was in no way disciplined, reprimanded, or even spoken to for her described action, and was paid for the full day. However, during the afternoon, Murphy, seeing others back from the hearing, was heard to remark "that he thought they [i.e., Wyss and other unreturned employees] ought to be back by now"; and, later that day, while Murphy was being driven from the plant by keypunch operator Maryann Jellison, the latter asked him, "Could they be fired over this" and Murphy replied, "Well, they could be." At a departmental meeting on January 16, 1967, Murphy admitted to Wyss what he had remarked to Jellison in response to Jellison's question.[16]

It is alleged (complaint, par. 5(g)) that the foregoing episode constituted a threat of discharge by Murphy for union activity or support. I find that it did not. The evidence establishes that Murphy intended merely to give Wyss (and her fellow employees attending the hearing) the necessary time off reasonably required to attend the hearing, but failed expressly to specify when they were to return; that the employees were nevertheless under reasonable notice and implied obligation to return after the hearing, but failed to do so; that Murphy did no more than express the justifiable opinion in a noncoercive manner during the afternoon that it was time to be back, and that he similarly—in response to Jellison's question after work in the car—expressed his bona fide, reasonable opinion in a noncoercive manner, that employees who stayed away from work unjustifiably "could be" subject

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[14] Mrs. Shirley had always been able to place and receive personal telephone calls at the office, no medical certificate had been required in case of illness; and she had taken time off, without loss of pay, to attend court to seek child support.

[15] Harlan, J., in *Textile Workers Union* v. *Darlington Manufacturing Co. et al.*, 380 U.S. 263, 275 Although Mrs Shirley conceded that Rinehart detailed to her the supposed consequences of unionization as "possibilities" or in "a half kidding manner," nevertheless it was brought home to her that "you were aware that these things could happen." It has been pointed out that "executives who threaten in jest run the risk that those subject to their power might take them in earnest and conclude the remarks to be coercive." *A. P. Green Fire Brick Company* v. *N.L.R B*, 326 F 2d 910, 914 (C A. 8). "Even though such statements may be expressive of opinion only, if their reasonable tendency is coercive in effect, they are violative of Section 8(a)(1)." *N.L.R.B.* v. *E. S. Kingsford, d/b/a Kingsford Motor Car Co.*, 313 F.2d 826, 832 (C.A. 6), and cases cited. See also fn. 11, *supra*.

[16] The foregoing is based upon the composite credited testimony of General Counsel witnesses Wyss and Jellison and of Respondent's witness Murphy, all essentially consistent.

to discharge. I find that the substantial credible evidence fails to establish that Murphy's remarks or actions in the described context were coercive of or in interference with employee rights or otherwise unlawful or improper under the Act.

6. October

Respondent's Junior Programmer Roland C. Kerr, a member of the bargaining unit here involved, testified that on October 6, the day after the union election, he plainly heard Plant Accountant and Supervisor Hutton pronounce in a loud voice in the hallway just outside of the open door to Kerr's office, as Respondent's Rolling Mill Superintendent and Supervisor Spittal passed by, that "since the outcome of the election yesterday, 'We are going to do some clean sweeping as soon as this thing is settled.'"

Hutton's contribution to the problem of resolution of the issue of fact created by the foregoing testimony of Kerr, an impressively straightforward witness, was to testify, "I did not say *that* . . . I do not *recall* saying it to anyone at any time . . . I do not *recall* having said *that* to anyone in the last six months of 1966; and I did not say it *to Bob [Spittal] individually*" (emphasis supplied); and admitting on cross-examination that he may at some other time have made such a remark "in reference to politics or many things." Respondent's Rolling Mill Superintendent Spittal, also called as a witness by Respondent, testified he could not "recall" that "to my knowledge" Hutton made the described remark to him in a loud voice. Asked whether he recalled discussing the union election with Hutton the next day, he first testified, "Not necessarily," then "No." Asked thereupon whether he could recall "any" remarks "about anything" by Hutton during the week following the election, his response was, "Right now, no." Subsequently, asked whether Hutton ever made any remark concerning the election being over, or ever discussing the subject with Hutton, his answer was, "I don't believe so . . . I am pretty sure that he did not say anything to me about that . . . I am pretty sure we didn't." According to Spittal's testimony, he was also unable to remember presence at Kerr's door on the day after the election.

The testimony of Hutton and Spittal on this subject impressed me as equivocating or, at best, demonstrating defective recall; whereas I was favorably impressed by the straightforward nature of Kerr's testimony, which rang true. I accordingly credit Kerr's testimony, and further find that the described remark was, as narrated by Kerr, made in a loud enough voice in a public place under circumstances such as to negate any claim that it was confidential in nature between supervisory personnel (i.e., Hutton and Spittal) intended only for supervisory "ears . . . within hearing";[17] and that it was in contemplation coercive in nature, designed and with the effect to serve as a threat to employees of discharge or other reprisals for having engaged in or for continuing to exercise their rights, guaranteed by the Act, to engage in union organizational activity.

B. *Respondent's Contentions*

Respondent urges, with regard to the workrule changes concededly promulgated by Murphy on the same day as he learned of the union organizational activity, that these were not threats since he "merely announced some changes to take effect immediately." (Respondent's brief, p. 4.) The timing and circumstances persuade me otherwise, it being well settled that such "mere announcements" can be, as they were in this case, highly coercive in character.[18]

With regard to the episodes involving Mrs. Shirley and Plant Superintendent Stuntz, Respondent appears to take the view that the circumstance of Mrs. Shirley's having solicited the information upon the basis of impressing Stuntz with her solid antiunion virtue, served to insulate what passed between them from taint of impropriety under the Act. I do not share this view. Merely because an employee asks an employer for his views, such as on the consequences of plant unionization, does not free the employer with impunity to make economic threats and otherwise engage in broad-spectrum violation of the Act. Nor does the fact that an employer believes he is talking into a friendly ear provide license to violate the Act.[19] For one thing, such an argument assumes that Mrs. Shirley's views were immutably fixed, and that she was not at least in part merely subjecting those views to the acid test of her employer's reaction. If anything, those reactions could only have tended to lock her firmly into her professed antiunion views. But what if, as later eventuated, a cloud upon her own job title should develop, stemming from the employer's threats of loss of job classifications in the event of unionization? Would the threat be any the less potent because of her antiunion views? Furthermore, experience teaches that friend as well as foe may be coerced;[20] perhaps, indeed, more readily because more desirous of maintaining friendship or supposed preferential status, or because less suspicious of blandishment or more receptive to the lure.[21]

Nevertheless, as indicated above, it is not Stuntz' expressions of antiunion sentiments, nor even any enlistment by him of Mrs. Shirley to disseminate such a view by lawful persuasion, which were improper here. It was, however, improper for Stuntz (1) to procure Mrs. Shirley to spread Respondent's word that union adherents should

[17] Cf *Wigwam Mills, Inc*, 149 NLRB 1601, 1610, fn. 27, and cases cited, enfd 351 F 2d 591 (C A 7)

[18] If "the danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove" (Harlan, J., in *N.L R B v Exchange Parts Co*, 375 U S. 405, 409), the danger inherent in well-timed removal of benefits is no less and suggests the fist without the velvet glove

[19] There is no substantial credible evidence to support the conclusion that Mrs Shirley engaged in an entrapment scheme *vis-a-vis* either Stuntz or Rinehart Any conclusion to the contrary would not only be purely speculative, but imaginative without relationship to the record

[20] Cf *Morganton Dyeing and Finishing Corporation*, 154 NLRB 404, 411, *Star Cooler Corporation*, 129 NLRB 1075, 1076, fn 3

[21] Nor would it be of consequence that the particular employee to whom the statements were made did not feel coerced thereby, since the offense to the Act is to be measured independently of the actual subjective effect of the words upon the person to whom made Cf. *Zimnox Coal Company*, 140 NLRB 1229, 1234, enfd as modified 336 F.2d 516 (C.A 6); *Eastern Die Company*, 142 NLRB 601, 602, fn. 2, enfd 340 F.2d 607 (C A 1), cert denied 381 U S 951, *Drennon Food Products Co*, 122 NLRB 1353, 1356, *The Rein Company*, 114 NLRB 694, 697–698; *The Dalton Company, Inc*, 109 NLRB 1228, 1229 It is further to be presumed that such statements are passed on and circulated around among employees Cf *Frankel Associates, Inc.*, 146 NLRB 1556, 1557 Indeed, here Mrs. Shirley expressly testified that she did so

leave Respondent's employ, and (2) to state that unionization would result in loss of existing job classifications. It cannot be doubted that when Stuntz expressly acknowledged to Mrs. Shirley (who passed the word on) that unionization would result in loss of job classifications, this was no less than the plant head telling the employees in plain terms that jobs would be lost or jeopardized if they chose the Union as their bargaining representative—a right guaranteed to them, free from such restraint, under the Act. The fact that, as now claimed, the job classifications involved were of such a nature that they could not be filled by union adherents—i.e., jobs in the accounting department, involving access to data concerning plant expansion plans, which could conceivably be "useful" for further union organizational purposes—cannot here be considered determinative, since the jobs were not classified as confidential or as exempted from the bargaining unit, and all sides were apparently content to regard their incumbents as eligible to vote in the Union election. Furthermore, there is no evidence that any such clear delimitation of or explanation regarding the job classifications to be abolished in the event of unionization, was borne home to the employees. Nor am I persuaded, by that substantial credible evidence which is required, that the alleged jobs were really of such a confidential character as is now claimed, it being noted that Stuntz himself testified that the classifications would *not* have been abolished in case of unionization. Moreover, even if they were and even if Respondent could legally have abolished or transferred them from its Fort Wayne plant in the event of unionization, because of their allegedly confidential nature, it was nonetheless coercive to threaten employees so to do as the price they would have to pay for exercising rights guaranteed to them under the Act.

With regard to the statements made by Rinehart to Mrs. Shirley (his secretary, but concededly a member of the bargaining unit), much that has already been said regarding Stuntz is equally applicable thereto. Respondent's suggestion that unit secretaries are fair game for otherwise unlawful interference and coercion, is unpersuasive. My attention has not been called to any provision of the Act or decision construing it, exempting this employee catagory from the Act's protections. In absence of such exemption, it would appear proper to presume at least an equivalent need.

Respondent urges that the words and actions complained of must in any event be regarded as inconsequential and trifling. I am unable to write them off with so temptingly easy a flourish, or to discount their operative efficacy in the contest for the employees' minds. Rather, I incline toward viewing them, because of their direct economic connotations—which of course play strongest and with the most resonant overtones among most employees—as moving the fulcrum of the contest out of fair balance. We are adjured to be mindful in these situations that regardless of the *post facto* inconstancy of the signal which such threats appear to outsiders to have emitted, to employees toward whose economic interests they were beamed they emanated from a source with authority to carry the threats out to the employees' detriment. Cf. *N.L.R B.* v. *Eastern Die Company,* 340 F.2d 607, 608 (C.A. 1). It is, of course, settled that a threat need not actually be carried out in order to be coercive. *Id.,* 142 NLRB 601, 602, fn. 2; *Forest Oil Corporation,* 85 NLRB 85, 86. Although it may be presumed that threats of this type are spread to other employees by the employee to whom made, cf. *Frankel Associates, Inc.,* 146 NLRB 1556, 1557, here Mrs. Shirley's credited testimony expressly establishes that she disseminated at least the worst of the threats; i.e., loss of job classifications in the event of unionization. Surely other employees had every justification to regard Mrs. Shirley, because of her position, as having obtained accurate information and being a reliable conduit from "the boss" himself.[22]

III. REPORT ON OBJECTION TO ELECTION

What has already been said is dispositive of union objection II to alleged employer conduct affecting the October 5 election. That objection, timely filed, is based upon Stuntz' described threat to Mrs. Shirley on or about September 30, to eliminate unit job classifications or jobs in the event the Union was selected by the employees as their bargaining representative. I have already found the corresponding unfair labor practice alleged in the complaint (par. 5(e)) to have been established. It cannot be said that the threat of loss of job classifications by the Employer just before the election did not unfairly hobble the Union by placing a prohibitive price on organizational adherence. It follows[23] that union objection II to Employer conduct affecting the October 5 election outcome should be sustained, and I so recommend.

Upon the foregoing findings and the entire record, I state the following:

CONCLUSIONS OF LAW

1. Joslyn Stainless Steels, a Division of Joslyn Mfg. & Supply Co., Respondent herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By the conduct set forth in section II which has been found to constitute unfair labor practices, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[22] Although credited testimony of Wyss supplies basis for finding that Respondent also conveyed the impression of surveillance of employees' protected concerted activities, such finding is here omitted in view of the failure to place Respondent on fair notice through the complaint or otherwise at the hearing that it was being required to defend against such an allegation.

[23] Cf *Industrial Steel Products Company, Inc*, 143 NLRB 336, *Playskool Manufacturing Company,* 140 NLRB 1417, 1419, *Dal-Tex Optical Company, Inc*, 137 NLRB 1782, 1786–87 It cannot be presumed that a threat by the plant chief, a scant few days before the election, to do away with job classifications in the event of unionization, was without powerful coercive effect upon the employee voters and therefore the election outcome Employees, as voters generally, may be expected to vote against something they fear may cost them their jobs See cases quoted and cited *supra*, fn 11

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Inasmuch as the unfair labor practices involved strike at the roots of employee rights intended to be secured by the Act, I shall further recommend that Respondent refrain from like or related acts infringing upon employees' untrammeled exercise of Section 7 rights. I shall also recommend that Respondent be required to post an appropriate notice.

I am also recommending that union objection II to the election of October 5, 1966, in Case 25–RC–3307 be sustained, that said election be set aside, and that said case be remanded to the Regional Director for Region 25 to conduct a new election at such time as he deems circumstances permit free choice of bargaining representative.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this consolidated proceeding, and pursuant to Section 10(c) of the Act, I hereby make the following:

RECOMMENDED ORDER

Joslyn Stainless Steels, a Division of Joslyn Mfg. & Supply Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of any existing work or work condition, overtime or overtime practice, or fringe or other benefits or favorable personnel policy or practice, in case of or by reason of union membership, adherence, assistance, activity, support, or sympathy.

(b) Threatening or indicating to employees that if they desire to become or remain union members or to assist or support a union, they should quit Rspondent's employ.

(c) Threatening to eliminate, reduce, or transfer job classification, jobs, or work, or any employee incumbent of any thereof, in the event of unionization of Respondent's plant or portion thereof, or by reason of union membership, adherence, assistance, activity, support, or sympathy.

(d) Threatening discharge of or any reprisal against any employee by reason of voting for a union or otherwise in any Board-conducted election, or because of union membership, adherence, assistance, activity, support, or sympathy.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

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

(a) Post at its plant in Fort Wayne, Indiana, copies of the attached notice marked "Appendix."[24] Copies of said notice, to be furnished by the Regional Director for Region 25, after being duly signed by Respondent's authorized representative, shall be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[25]

I FURTHER RECOMMEND that the complaint in Case 25–CA–2641 be and the same is hereby dismissed as to all violations alleged but not herein found;[26] and that the election held on October 5, 1966, in Case 25–RC–3307 be set aside and that said case be remanded to the Regional Director for Region 25 to conduct a new election at such time as he deems that circumstances permit free choice of bargaining representative.[27]

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[24] In the event that this Recommended Order is 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 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"

[25] 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"

[26] On brief, Respondent renews its contention that the complaint should be dismissed because its allegations, although responsively pleaded to in the answer and now litigated, are not coterminous with the charge. As at the hearing, the motion is denied, since Respondent overstates the requirement Cf. Act, Sec 10(b), *N.L.R.B* v *Fant Milling Co*, 360 U S. 301, 307–308, *National Licorice Company* v *N L R B*, 309 U S. 350, 368–369, *Consolidated Edison Co* v *N.L.R.B*, 305 U.S 197, 224–225, *N L R B* v *Mackay Radio & Telegraph Co*, 304 U S 333, 349–351, *Bakery Wagon Drivers and Salesmen, Local 484* [*Continental Bakery Co.*] *v N L R B*, 321 F 2d 353, 356 (C A D.C), *N L.R.B* v *Wichita Television Corporation, d/b/a KARD-TV*, 277 F 2d 579, 583 (C A 10), cert denied 364 U S 871

[27] In the event Respondent refuses or fails to comply with the terms of the Order in Case 25–CA–2641, I recommend that said Regional Director should also be authorized to conduct the new election herein recommended, upon written request of the Union *Ideal Baking Company of Tennessee, Inc*, 143 NLRB 546, 554, fn. 9

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 threaten employees with loss of any existing work or work condition, overtime or overtime practice, or fringe or other benefit or favorable personnel policy or practice, in case of or by reason of union membership, adherence, assistance, activity, support, or sympathy.
>
> WE WILL NOT threaten or indicate to employees that if they desire to become or remain union members or to assist or support a union, they should quit our employ.
>
> WE WILL NOT threaten to eliminate, reduce, or transfer job classification, jobs, or work, or any employee incumbent of any thereof, in the event of unionization of our plant or portion thereof, or by

reason of union membership, adherence, assistance, activity, support, or sympathy.

WE WILL NOT threaten discharge of or any reprisal against any employee by reason of voting for a union or otherwise in any Board-conducted election, or because of union membership, adherence, assistance, activity, support, or sympathy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights, guaranteed by Congress, to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from engaging in any or all such activities.

WE WILL NOT in any manner interfere with the right of our employees to make a free and untrammeled choice in any election conducted by the National Labor Relations Board.

All employees are free to become, remain, or refrain from becoming or remaining, members of United Steelworkers of America, AFL–CIO, or any other labor organization.

JOSLYN STAINLESS STEELS,
A DIVISION OF JOSLYN MFG.
& SUPPLY CO.
(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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone Melrose 3–8921.