

**Playtime Kiddie Wear, Inc., Deer Park Mfg. Co.,
Inc. and Local 107, International Ladies Garment
Workers Union, AFL-CIO. Case 29-CA-1683**

June 30, 1970

DECISION AND ORDER

BY MEMBERS FANNING, MCCULLOCH, AND JENKINS

On March 27, 1970, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the 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 and brief and the entire record in the case, and except as noted in the margin, hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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, as herein modified, and hereby orders that Respondents, Playtime Kiddie Wear, Inc., and Deer Park Mfg. Co., Inc., their officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modification:

Delete paragraph 1(a) of the Recommended Order and renumber the remaining paragraphs accordingly.

¹ We do not adopt that portion of the Trial Examiner's Decision which finds that the Respondents violated Section 8(a)(1) of the Act by (1) restoring the 5-minute clean-up bell in late November or early December 1968, (2) instituting, at the same time, a 10-minute coffee break, and (3) granting wage increases to certain of the unorganized employees between late December 1968 and early 1969.

The record establishes the existence of economic considerations which reasonably justified the above-described actions. In these circumstances,

and considering also the absence of any evidence that the employees were led to believe these changes were related to the union campaign, we do not find sufficient evidence that the grant of the foregoing benefits was unlawfully motivated.

We correct the Trial Examiner's inadvertent reference, in the first part of section B of his Decision, to February 15, 1969, as the date on which DiGirolamo began visiting the plant once a month. It is clear from the record that the correct date is February 15, 1968.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPH I. NACHMAN, Trial Examiner. This matter tried before me at Brooklyn, New York, on January 5, 6, and 9, 1970, with all parties present and represented by counsel, involves a complaint¹ pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), alleging that in the course of an organizational campaign by Local 107, International Ladies Garment Workers Union, AFL-CIO (herein Local 107 or the Union), Playtime Kiddie Wear, Inc., and Deer Park Mfg. Co., Inc. (herein Playtime and Deer Park, respectively, and collectively called Respondent, and which allegedly constitute a single integrated business enterprise), by various acts, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act. For reasons hereafter stated, I find that Respondent violated Section 8(a)(1) of the Act, and recommended a remedial order.

At the trial the parties were afforded full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to argue on the record, and to submit briefs. Oral argument was waived. A brief submitted by the General Counsel has been duly considered.² Upon the pleadings, evidence, stipulations of counsel, and the entire record in the case, including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, the answer admits, and I find that Playtime and Deer Park are New York corporations, engaged in the village of Deer Park, New York, in the manufacture of children's clothing, and that Playtime annually receives from and ships to points and places outside the State of New York, raw materials and finished products valued in excess of \$50,000. However, Respondents deny the further averment in the complaint that Playtime and Deer Park constitute a single integrated business enterprise. The uncontradicted

¹ Issued August 29 on a charge filed and served May 29. Unless otherwise indicated, all dates are 1969.

² Although counsel for Respondent stated at the hearing that he would file a brief, and obtained an extension of time for that purpose, no such brief has been received.

testimony on that issue shows that Harold Rose³ is president of Playtime and vice president of Deer Park; that Mortimer Cherin is vice president of Playtime and president of Deer Park, there being no other officers of either corporation; and the stock in both corporations is owned in equal shares by the two individuals mentioned. Cherin devotes himself primarily to the purchasing of materials, production, and costing, while Rose handles primarily sales, finances, and office management. In addition to sample makers, Playtime employs cutters who cut materials to specified sizes and shapes. The cut material is then turned over to Deer Park who contracts for the necessary sewing operations at various needle shops in the New York area. Upon completion of the sewing operations, the garments are returned to Deer Park, where pressers, drapers, and finishers employed by Deer Park put the garments in condition for sale. The finished garments are returned to Playtime where they are stored until packed for shipment in fulfillment of orders obtained by Playtime; the work of storing, packing, and shipping being done by employees of Playtime. Playtime conducts these operations from premises known as 699 and 721 Long Island Avenue, while Deer Park's operations are in a portion of the building known as 699 Long Island Avenue, separated from Playtime's operations by a concrete wall with five openings at each end, which are generally kept open to permit the free flow of merchandise between the two operations. At Playtime all decisions respecting labor relations are made as a result of consultation between Rose and Cherin. Although Rose initially claimed that matters of labor relations at Deer Park were determined by its manager of operations (at the time of the events here material, one Paul Goldman), he subsequently admitted that a decision with respect to whether a union should be recognized or not could only be made after he and Cherin had discussed the matter.⁴ On the basis of the foregoing facts, applied in the light of the tests developed by the Board for a "single employer," I find and conclude that Playtime and Deer Park constitute a single integrated business enterprise administering a common labor policy for the employees of said Companies. See *Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, and the cases there cited.

II. THE LABOR ORGANIZATION INVOLVED

Although the complaint does not allege that the

³ When called to testify, the witness identified himself as Harold Rose, and he is so known to the employees. However, the parties stipulated that his correct name is Harold G. Rosengarten.

⁴ My findings to this point are based on the uncontradicted testimony of Rose. Respondents sought to adduce testimony and made an offer of proof tending to show that the two corporations operate at arms length as separate entities, that each pay their employees from their separate bank accounts; that neither guarantees the credit of the other; and that each leases its own space by separate lease agreements, for which they pay by separate checks drawn on separate bank accounts. All such testimony was rejected as being irrelevant and immaterial to the issue.

Union is a labor organization, the evidence shows that Local 107 has entered into a contract with Playtime covering the wages, hours, and terms and conditions of employment of a unit of cutters employed by Playtime. On the basis of this evidence, and the organizational activities of Local 107, hereafter set forth, I find and conclude that Local 107 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES ALLEGED

A. Background

On February 15, 1968, Playtime recognized and entered into a collective-bargaining agreement with Local 107 with respect to a unit composed of "all employees of the cutting department, employed at the Company's premises located at Long Island Avenue, Deer Park, New York, including but not limited to cutters, spreaders, graders, marker makers and floor boys . . ." for a term of 2 years. The contract makes no reference to the subject of a bonus to employees covered by it. Union Agent John DiGirolamo conducted the campaign in fall of 1967 which led to the organization of the cutting department employees, and after February 15, 1968, serviced the employees covered by the aforementioned contract, visiting the premises on Long Island Avenue at least once a month. Except for the cutting department employees, all employees of Playtime and Deer Park are unorganized.

B. Current Facts

The Organizational Campaign

As a result of a telephone call from a sample maker at Playtime, Local 107 in early November 1968 began a campaign to organize all the unorganized employees of both Playtime and Deer Park. DiGirolamo was the principal union agent engaged in this activity, visiting employees at their homes where he obtained a number of authorization cards.⁶ No effort was made to keep the Union's activity in that regard a secret. Paul Goldman, an admitted agent of Respondent,⁷ conceded that employee Muriel Reha discussed with him the fact that union agents were visiting employees. Although Goldman claimed that these discussions with Reha did not occur until "sometime in January 1969," and that he did not know DiGirolamo until the

⁵ The unit description excludes "all other production and maintenance employees, office clerical employees, guards, watchmen, professional employees, and all supervisors" as defined in the Act.

⁶ There is no evidence to indicate whether the number of cards obtained by the Union approached a majority of the employees involved.

⁷ Goldman described himself as general manager in charge of production at Deer Park, and quality control manager for Playtime. The evidence leaves no room for doubt that Goldman was the highest authority of Respondent at the plant with respect to its day-to-day operations, Rose and Cherin spending their time at premises in New York City, visiting the plant in Deer Park with such frequency as they deemed necessary.

latter part of January 1969, I do not credit his testimony in that regard. I find it impossible to believe that in this small plant where total employment does not exceed 70, DiGirolamo could have visited the plant at least once a month since February 15, 1969, and Goldman, who admitted that he saw DiGirolamo about the plant, would not have known who he was and the reason for being on the premises. I also find it impossible to believe that with the union campaign being a subject of discussion among the employees in the plant, as employee Daddino testified it was, information of that fact did not come to Goldman before January 1969. Accordingly, I find and conclude that Goldman was aware of the Union's organizational efforts among its unorganized employees virtually from the inception of the Union's campaign which began in early November 1968.⁸ The Union's campaign was continuing at the time of the hearing.

The General Counsel contends that during the period from November 1968 through January 1969, Respondent engaged in a series of acts violative of Section 8(a)(1) of the Act. The evidence with respect to these incidents will now be detailed.

1. Reinstitution of the warning bell and establishment of the morning coffee break

For some years prior to October 1968, Playtime employees who worked as sample makers received a 10-minute coffee break at 2:30 p.m. each day, but no coffee break during the morning hours. In addition a bell rang at 4:25 p.m., at which time these employees were permitted to quit work so they could wash up and leave the plant at 4:30 p.m. Sometime in October, before the Union began its campaign, the 4:25 p.m. bell was eliminated and work continued until 4:30, with employees making ready to leave on their own time. In late November or early December, after the Union began its campaign, the employees were told that an additional coffee break running from 10 to 10:10 a.m., was being granted, and that the 4:25 p.m. bell was being restored. No reason was given the employees for the additional coffee break or for the restoration of the 4:25 p.m. bell.⁹

⁸ That a trier of fact may find the contrary of the uncontradicted testimony of a witness is settled. See *NLRB v. Walton Manufacturing Co.*, 369 U.S. 404, where the Supreme Court, quoting with approval from the opinion of Judge Learned Hand writing for the Second Circuit in *Dyer v. MacDougall*, 201 F.2d 265, 269, stated that the demeanor of a witness "may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story, for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies." 369 U.S. at 408.

⁹ The above findings are based on the testimony of employee Daddino Plant Manager Goldman admitted the establishment of the morning coffee break and the reinstitution of the 4:25 p.m. bell. However, his reasons therefor are not credited.

¹⁰ The findings in this section are based on a stipulation of the parties and Resps Exhs 5 and 7.

2. The wage increases

Employee Daddino had worked for Playtime as a samplemaker for something over 8 years. At the beginning of 1966, Daddino was receiving a weekly salary of \$60, which was increased to \$65 as of the week ending September 26, 1966; to \$70 as of the week ending May 31, 1967; and further increased to \$80 in January 1969, when all samplemakers were increased to that figure. In addition, a substantial number of Deer Park employees were given wage increases during November and December 1968 and January 1969.¹⁰

C. The Christmas Bonus

During the Christmas season of 1966 and 1967, Playtime paid its cutter employees a Christmas bonus, but no bonus was paid to the remaining employees of Playtime or to the employees of Deer Park.¹¹ The day before Christmas 1968, Respondent gave a Christmas party which was attended by all employees of Playtime and Deer Park who were at work that day, as well as by Playtime President Rose. During the party an office employee dressed as Santa Claus announced that he was going to read off a list of names, and that those persons called should step up and receive an envelope containing a gift. The names so called by "Santa Claus" were the unorganized employees of Playtime and Deer Park.¹² After so distributing the envelopes "Santa Claus" announced "Now I am going through the cutting department," and with that he went through a door leading to the street, and did not reappear. Playtime President Rose was present during this entire event, but made no comment.¹³

A day or two after Christmas, Beltram, a cutter employed at Playtime, complained to his union representative about his failure to receive a bonus in 1968, and the union agent thereupon conferred with Rose regarding the matter. Rose admittedly took the position that he was under no obligation to pay a bonus to the cutters, and would not do so. In the course of the discussion, when pressed for a reason for not paying a bonus to the cutters, Rose

¹¹ Cutter Beltram, who started work at Playtime in February 1967, testified that at Christmas of that year he received a bonus of \$50, but that other cutters who had been there longer received \$100.

¹² The envelopes so distributed contained a check which Respondent calls a Christmas bonus. The method of computing the bonus is not disclosed by the evidence, nor does the evidence disclose the precise number of employees who received such a bonus or the amount paid each. It does appear that the amount of the bonus paid employee Daddino was \$10.46, which indicates that it was computed by some kind of formula.

¹³ Rose admits his presence at the party, but denies that he knew of or authorized the distribution of the envelopes by "Santa Claus," or that he heard the remark made by the latter about taking care of the cutters, claiming that intoxicants were flowing freely, and that "half of us [presumably including himself] were pretty well loaded at that time." I do not credit his testimony disclaiming knowledge of the event.

remarked, "Well, maybe I don't like the cutters anymore."¹⁴

D. *The Meeting With Employees*

On January 17, and again on January 24, 1969, all of the unorganized employees of Playtime and Deer Park were notified by management to assemble in the lunchroom during an approaching break period. Certain statements made at these meetings by management officials which the General Counsel contends violated Section 8(a)(1) of the Act are set separately for each meeting.

1. January 17 meeting

At this meeting Plant Manager Goldman stated that it had come to his attention that the employees were being visited at their homes by Union Agent DiGirolamo, and this was fine with him if the employees wanted a union. One employee stated that DiGirolamo came to her home that preceding evening and that she had signed a union card. After asking what the card said and being told that she did not know, Goldman stated that the paper she signed could have been a commitment to pay \$100 a week or a month. In the course of the meeting Goldman also stated that the advent of the Union could bring strikes, reduced work, loss of earnings, possible plant closure, and in any event would not make things better for the employees.¹⁵

2. The January 24 meeting

This meeting, like the previous one, was attended by the unorganized employees of both Playtime and Deer Park. When the approximately 30 employees first assembled, no representative of management was present. After employee Daddino asked the purpose of the meeting, employee Marion Leo remarked it was to take a vote on whether the employees wanted the Union or not. When Daddino announced, in a voice loud enough for all assembled to hear, that she would not vote because such a vote did not mean anything, Leo left the room and returned with Company President Rose and

Plant Manager Goldman. After asking what the problem was, and being told that the employees "don't want to take a vote," Goldman told the assembled group that if they wanted a union they could have one, but suggested that they form their own union and select one of their group to represent them. After some further discussion regarding the mechanics of Goldman's suggestion, but without any agreement thereon, the meeting concluded without any vote being taken. The only comment made by Rose at this meeting was that if the employees wanted a union they could have one, and that if anyone was interested in seeing the contract he had with the Union representing the cutters, he would be glad to show it to them.¹⁶

E. *The Alleged Surveillance*

After being informed of what transpired at the meetings of January 17 and 24, Union Agent DiGirolamo beginning on January 27 or 28, 1969, and continuing for the next 4 days, stationed himself at lunchtime and the end of the workday, at the plant entrance used by all Playtime and Deer Park employees when they report for or leave work, for the purpose of speaking with the employees. During these 4 days, whenever DiGirolamo so appeared at Respondent's premises, Plant Manager Goldman stationed himself outside the building near the employee entrance, in full view of all employees that would pass, and stayed there for the entire period that DiGirolamo remained at the premises. DiGirolamo testified without contradiction that on these occasions when he attempted to converse with the employees as they came out of the building, some of them refused to talk with him. The evidence also shows that on some of these occasions, Goldman was not aware the DiGirolamo had arrived outside the building, but was notified of that fact and promptly moved to station himself outside the employee entrance to the building. Goldman admitted that at the times involved nothing connected with the Company's business required him to be at the employee entrance to the building, and claimed that his presence there was motivated only by curiosity.¹⁷

Goldman admitted that at one of the meetings he had with the employees he was asked what would happen if they selected the Union to represent them and demands were made to which Respondent would not agree, and that he replied, "the possibility then was they would go out on strike, the possibility was that they would lose time from work, that means they would lose income, the Company would lose business and possibly lose accounts because they didn't deliver and this may possibly cause a loss of some jobs." Goldman also admitted that at these meetings he told the employees that a union's demand for hours and wages were dependent on the ability of the Company to pay, and that if the demands were beyond its ability to pay, it was possible the Company would have to close down. To the extent that the testimony of Goldman and Rose conflicts with that of Daddino, I credit the latter.

¹⁷ As indicated above, I do not credit Goldman's testimony that he did not know DiGirolamo until January 27, 1969, the first day the latter stationed himself outside the employee entrance, and that his purpose in going to the employee entrance that day was to ascertain the identity of an apparent stranger and the reason for his being there. Neither do I credit Goldman's testimony that his presence at the employee entrance, as above indicated, was dictated solely by his curiosity.

¹⁴ This finding based on the testimony of Jesus Beltram and Union Agent DiGirolamo. Rose did not deny the quoted remark attributed to him.

¹⁵ Upon learning of the January 17 meeting, the Union, on January 20, 1969, wrote Goldman that as the latter had assembled and addressed the employees concerning their union activities, the Union wished equal time to address the employees during working hours on the Company's premises. Respondent received this letter on January 22 and admittedly did not reply to it.

¹⁶ My findings with respect to the two meetings are based on the credited testimony of employee Daddino, and in some instances the admissions by Goldman. Goldman admitted that at the January 17 meeting, he did tell the employee who said she had signed a union card without reading it that the card might have been a purchase order obligating her to the payment of several hundred dollars. He claimed, however, that the information that the employee had signed a card was volunteered by the employee, and was not in response to a question by him. Goldman also admitted that at the January 24 meeting, the subject of the employees forming their own union and selecting one of their own group to represent them was discussed, but claimed that the suggestion came from one of the employees and not from him, and in this regard Goldman is corroborated by Rose. Additionally,

F. Contentions and Conclusions

1. The violations of Section 8(a)(1)

I find and conclude that Respondent violated Section 8(a)(1) of the Act in the following particulars:

(a) By reestablishing the 4:25 p.m. bell, instituting the morning coffee break, granting the wage increases to the samplemakers employed by Playtime and certain employees of Deer Park in late December 1968 and early 1969, and the payment of the Christmas bonus in 1968 to the noncutting employees. Upon the entire record and in view of the timing of these benefits, I am convinced, and therefore find and conclude, that the benefits referred to were granted as blandishments to demonstrate to the employees that that selection of union representation was not only unnecessary, but unwise. Or, as the Supreme Court expressed it in *N.L.R.B. v. Exchange Parts Company*, 375 U.S. 405, 409:

The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. 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.

(b) The statements of Goldman made at his meeting with employees on January 17 and 24 that the advent of the Union would bring about strikes, reduced work, loss of earnings, and possible plant closure, as well as his suggestion that the employees form their own union and select one of their group to represent them. Although Goldman's remarks about strikes, reduced volume of work, loss of earnings, and plant closure were phrased in terms that such events were possible, on consideration of the entire record, and particularly Respondent's union animus, I am convinced and accordingly find and conclude "that the intended and understood import of [Goldman's] message was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities" (*N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 619), and hence constitute threats proscribed by Section 8(a)(1) of the Act. In this connection, it may be noted that Respondent offered no testimony even tending to show that the dire consequences referred to by Goldman had any basis in fact. Cf. *N.L.R.B. v. Gissel, supra* at 618. That an

¹⁸ The General Counsel contends that Respondent additionally violated Section 8(a)(1) of the Act by announcing, in February 1969, the formation of a profit-sharing plan. Respondent contends that the plan was formulated and announced to the employees in the late summer of 1968, some 2 to 3 months before the Union's organizational campaign began, by posting a notice thereof on the bulletin board located over the timeclock. Although employee Daddino testified that she never saw the notice on the bulletin board and knew nothing of the plan until she was given a statement of her interest therein sometime in February 1969, I find it a little strange that no other employee was called by the General Counsel to refute the positive

employer's suggestion to his employees that they organize their own union constitutes the interference proscribed by Section 8(a)(1) is settled by Board adjudication. *Abex Corporation*, 162 NLRB 328; *Yankee Distributors*, 152 NLRB 1018, 1024.

(c) Goldman's conduct during the latter part of January 1969, in stationing himself outside the employee entrance to Respondent's premises when DiGirolamo came to that entrance, which conduct I find and conclude constitutes surveillance which is proscribed by Section 8(a)(1) of the Act. As the facts set forth above demonstrate, Goldman did not go to the employee entrance for the purpose of attending to any legitimate company activity. Indeed he admits that his sole reason was curiosity; a reason which I reject as specious. While Goldman carried on this activity on company property, at a place where he had every right to be, and was not required to close his eyes to union activity taking place in his direct line of vision, I am convinced and therefore find and conclude that Goldman engaged in the activity referred to with the intent and purpose of demonstrating to employees that management was watching their contacts with the Union's agent and to discourage such contact. That Goldman's conduct had the effect he intended is indicated by DiGirolamo's testimony that although the employees talked freely to him in other circumstances, they indicated reluctance to do so while Goldman was observing them. Accordingly, I find and conclude that Goldman's conduct constitutes surveillance violative of Section 8(a)(1) of the Act. *J. W. Mortell Company*, 168 NLRB 435; *Certain-Teed Products Corporation*, 153 NLRB 495, 498, 507; cf. *Atlanta Gas Light Co.*, 162 NLRB 436. See also *Tex Manufacturing Company*, 180 NLRB 808. Goldman's purpose, as above found, distinguished the instant case from *Salant & Salant, Incorporated*, 92 NLRB 417, 446-447.¹⁸

2. The 8(a)(3) violation

The General Counsel conceded that Respondent was under no contractual obligation to pay the cutters a bonus at Christmas 1968. He further concedes that the Christmas bonuses paid in prior years to the cutters had not been paid under circumstances from which it might be appropriately concluded that the bonus had by custom and practice become a part of the regular rate of pay. Rather, the General Counsel contends that the bonus was withheld from the cutters for the purpose of demonstrating to the noncutting employees

testimony of Plant Manager Goldman that he posted the notice on the bulletin board sometime in September 1968, and that it was still on the bulletin board on the last day of the trial herein. Accordingly, I find and conclude that the General Counsel failed to establish by a preponderance of the evidence that the profit-sharing plan was not made known to the employees prior to the Union's campaign. Additionally, it may be noted that even if it were to be found that Respondent did announce a profit-sharing plan under circumstances constituting a violation of Section 8(a)(1) of the Act, such finding would add nothing to the scope of the order that will be recommended.

whom the Union was then attempting to organize that they could expect to lose benefits if they selected union representation. Consideration of the entire record convinces me, and I find and conclude, that Respondent withheld the 1968 Christmas bonus from the cutters with the intent and purpose asserted by the General Counsel. The statement and conduct of "Santa Claus" at the Christmas party about taking care of the cutters, all of which Rose not only saw and heard, but remained silent, and Rose's statement when the Union complained about the failure to pay a bonus to the cutters that perhaps he "didn't like the cutters anymore," when considered in the light of Respondent's union animus evidenced by its other unfair labor practices herein found, in my opinion dictate the conclusion which I have reached. Although Rose denied that the decision to withhold the bonus from the cutters was in any way motivated by the fact that an organizational campaign was in progress among the noncutting employees, and claimed that his decision was predicated solely on the fact that costs in the cutting department went up and production fell during 1968, no company records, which certainly exist, were introduced. Instead Respondent relies solely on Rose's uncorroborated testimony, which itself makes the defense suspect. For, as the Supreme Court said in *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 226, "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse."

As the withholding of the bonus from the cutters constituted discrimination and had the natural and foreseeable effect of discouraging membership in the Union, said conduct violated Section 8(a)(3) of the Act, and as it also constituted interference with, and restraint and coercion of, both the cutting and noncutting employees, it also violated Section 8(a)(1) of the Act. I so find.

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

CONCLUSIONS OF LAW

1. Playtime and Deer Park constitute a single integrated enterprise administering a common labor policy and an employer engaged in commerce within the meaning of Section 2(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 the conduct set forth in section III, C, hereof, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By denying a Christmas bonus to its cutters

for the purpose of demonstrating to noncutter employees that their adherence to the Union would result in reduced benefits, all as found in section III, C, hereof, Respondent discriminated against said cutters in regard to their hire and tenure of employment and the terms and conditions thereof, to discourage membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action found necessary and designed to effectuate the policies of the Act.

Having found that Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, it will be recommended that it be required to cease and desist therefrom. Because of the nature and character of the unfair labor practices found, which go to the very heart of the Act, I shall recommend that Respondent be required to cease and desist from in any manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4); *California Lingerie, Inc.*, 129 NLRB 912, 915.

Having also found that Respondent discriminatorily denied a 1968 Christmas bonus to its cutting department employees, it will be recommended that it be required to make each of said employees whole for the loss suffered by reason of said discrimination against them by paying to each of them the bonus they normally would have received but for said discrimination, with interest thereon at the rate of 6 percent per annum, from December 24, 1968, until paid, as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716. To assist in procuring compliance with this provision, it will be recommended that Respondent be required to preserve and make available to agents of the Board all payroll and other records necessary or useful in determining compliance with the Board's order, or in computing the amount of backpay due.¹⁹

RECOMMENDED ORDER

Upon the basis of the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the National Labor Relations Board order Playtime Kiddie Wear, Inc., and Deer Park

¹⁹ With respect to remedy, the General Counsel urges that in addition to the customary posting of notices in its plant, Respondent be required to mail a copy of said notice to each employee at his or her last known ad-

dress I find nothing in the evidence to indicate why the usual and customary posting at Respondent's plant would not be adequate to fully advise the employees of their statutory rights

Mfg. Co., their officers, agents, successors, and assigns, to:

1. Cease and desist from:

(a) Changing the wages, hours, or the terms and conditions of employment of its employees for the purpose of inducing employees to cease supporting a labor organization.

(b) Telling employees that their selection of a labor organization to act as their collective-bargaining representative will bring about strikes, reduced work, loss of earnings, or plant closure.

(c) Urging or suggesting to employees that they select one of their fellow employees as a collective-bargaining representative rather than a labor organization.

(d) Granting or refusing to grant employees a bonus for the purpose of discouraging employees from assisting or supporting a labor organization.

(e) Engaging in surveillance of the union activities of employees, or in any conduct from which employees may reasonably infer that their union activities are under such surveillance.

(f) Discouraging membership in Local 107, International Ladies Garment Workers Union, AFL-CIO, or any other labor organization by discriminating against any employee in regard to his or her hire, tenure, or any term or condition of employment.

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

2. Take the following affirmative action found necessary and designed to effectuate the policies of the Act:

(a) Make whole the employees in its cutting department for the bonus they would have received in December 1968 but for the discrimination against them in the manner set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Deer Park, New York, plants copies of the attached notice marked "Appendix."²⁰ Copies of said notice, on forms provided by the Re-

gional Director for Region 29 (Brooklyn, New York), after being duly signed by an authorized 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 it to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.²¹

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a full trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we, Playtime Kiddie Wear, Inc., and Deer Park Mfg. Co., Inc., violated the National Labor Relations Act, and ordered us to post this notice. We therefore notify you that:

The Act gives all employees these rights

To organize themselves

To form, join, or help unions

To act together for collective bargaining or other mutual aid or protection

To refuse to do any or all of these things.

WE WILL NOT do anything to interfere with you in the exercise of these rights. All of our employees are free to become or remain a member of Local 107, International Ladies Garment Workers Union, AFL-CIO, or any other union, or not to become or remain a member of any union.

WE WILL NOT tell our employees that the selection of a union to represent them in collective bargaining may result in strikes, reduced work, loss of earnings, or the closing of our plants.

WE WILL NOT urge or suggest that you select one of your fellow employees as your collective-bargaining representative, rather than a union.

WE WILL NOT spy on your union activities, or engage in any conduct to make you think we are spying on you.

national Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

²¹ 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"

²⁰ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the Na-

WE WILL NOT pay or refuse to pay any of our employees a bonus, or make any change in your wages, hours, or other terms and conditions of your employment for the purpose of influencing you not to help or support a union. We fully understand, however, that nothing in the order of the National Labor Relations Board requires us to withdraw, change, or abandon any term or condition of employment that you now enjoy.

As it has been found that we violated the law when we withheld a bonus from our cutting department employees at Christmas 1968, to induce our employees not to assist or support Local 107, we will pay to said cutting department employees the bonus they would normally have received at Christmas 1968, with interest.

PLAYTIME KIDDIE WEAR,
INC., DEER PARK MFG.
CO., INC.
(Employer)

Dated

By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212-596-3535.