

Central Bio-Analytical Laboratories, Inc. and Local 1199, Drug and Hospital Employees Union, Retail, Wholesale and Department Store Workers Union, AFL-CIO. Case 29-CA-1191

June 26, 1969

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On January 22, 1968, Trial Examiner William W. Kapell issued his Decision in the above-entitled proceeding, 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief, the Charging Party filed exceptions to part of the Trial Examiner's Decision, and the Respondent filed a reply brief.

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 Trial Examiner's findings, conclusions, and recommendations, as modified herein.¹

The Trial Examiner found, and we agree, that the Respondent violated Section 8(a)(1) of the Act by its premature announcement of its health insurance policy. However, we find, contrary to the Trial Examiner, that remedial action is required for this violation, as hereinafter set forth.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as

¹The Trial Examiner correctly recited McQuade's testimony on direct examination that Pachter advised him that he fired Shepard for union activity. He also recited his testimony on cross-examination that Pachter denied firing Shepard for that reason. These inconsistencies are resolved in fn 23 of his Decision. We therefore find without merit the Respondent's claim that the Trial Examiner committed serious error in omitting McQuade's testimony on cross-examination.

modified below, and hereby orders that Respondent Central Bio-Analytical Laboratories, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

Insert the following in the first indented paragraph of the notice, after the word "increases":

"or bonuses or make advance announcements of employee benefits"

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE¹

WILLIAM W. KAPPELL, Trial Examiner. This matter a proceeding under Section 10(b) of the National Labor Relations Act, as amended, herein called the Act, was heard at Brooklyn, New York, on June 24-25, July 9-10, and October 7 and 28, 1968, with all parties participating pursuant to due notice on a complaint issued by the General Counsel on April 9, 1968.² The complaint, in substance, alleges that Central Bio-Analytical Laboratories, Inc., hereinafter referred to as Central Bio or Respondent, engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act by specified acts of unlawful interrogation of their employees, promises of economic benefits to them and threats of economic reprisals against them to discourage their union support, and the discharge of Robert Shepard because of his union activities. Respondent in its answer denied the commission of any unfair labor practices.

All parties were represented and afforded opportunity to adduce evidence, to examine and cross-examine witnesses, and to file briefs. Able and comprehensive briefs were received from General Counsel and Respondent and have been carefully considered. Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. COMMERCE

At all times material herein, Respondent has maintained its principal office and place of business in the village of Levittown, county of Nassau, State of New York, where it has been engaged in performing medical laboratory tests and related services. During the past year in the course and conduct of its operations, it derived revenues in excess of \$500,000, and purchased and caused to be transported and delivered to its plant laboratory glassware, chemicals, supplies, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its principal place of business directly from States other than New York State.

At all times material herein, Patcher's Medical Laboratory, Inc., a New York corporation, herein called

¹Pursuant to unopposed motions during the hearing, the complaint was amended to correct the name of the Charging Union as it appears herein. Pursuant to the stipulation filed by all parties on January 15, 1969, the transcript is corrected as stipulated.

²Based upon charges filed on December 27, 1967, and January 16, 1968, respectively, by Local 1199, Drug and Hospital Union, Retail, Wholesale and Department Store Workers Union, AFL-CIO, hereinafter referred to as the Union or Local 1199.

Patcher's with places of business in the village of Uniondale, county of Nassau, State of New York, and at the Levittown plant, and Dr. Gerald Finkel an individual proprietor doing business under the trade name and style of Laboratories of Gerald C. Finkel, M.D., with his principal place of business at the Levittown plant have been engaged in performing medical laboratory tests and related services.

Respondent admits, and I find, at all times material herein, that Respondent, Patcher's and Finkel have been affiliated businesses with common ownership and operators and constitute a single-integrated business enterprise with a common labor policy, and that said companies have been employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It was stipulated and I find that at all times material herein Local 1199 has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED VIOLATIONS

A. Background

In March 1964, Robert Shepard, the alleged discriminatee herein, while serving a prison term in Attica State Prison as a convicted felon for the crime of arson wrote to Bernard Patcher, the president of Central Bio requesting a job, stating that he had been granted conditional parole subject to his finding suitable employment. In his letter Shepard also related that during his term in prison he worked in the medical lab of the prison hospital, received extensive psychiatric treatment as a result of which he became aware that the cause of his crime was the excessive use of alcohol, and with the help of Alcoholics Anonymous gained control of his drinking problem. Following further correspondence with Shepard, the recommendation of his prison supervisor, and a discussion with his parole officer, Patcher offered him a job as an apprentice in the Company's laboratory and Shepard was paroled from prison. He began working at a salary of \$65 per week and within a year his salary was raised to \$140 a week and then to \$200 as a technician. In addition, he also earned about \$70 per week as a driver, picking up lab specimens from doctors for analysis and thereafter delivering reports of the findings. Patcher also hired Shepard's wife and two of his daughters, one of whom with Mrs. Shepard presently continues in the employ of the Company.

During the course of his employment, Patcher loaned him money, cosigned notes to help him purchase a home, and helped him personally in other ways. At the end of 1965 or early 1966, Shepard was promoted to night supervisor. However, in or about May 1967,³ he failed to pass a test which would qualify him to work in the laboratory as a supervisor for Medicare. As a result, the State inspector required Shepard's dismissal as night supervisor in order for the lab to obtain Medicare approval. The next day Shepard was removed as night supervisor and continued his work as a technician without reduction in his salary. In early June, soon after his removal as night supervisor and following admonitions from Patcher concerning his resumption of drinking which allegedly adversely affected his work, Shepard got angry while at work and abruptly walked out of the lab after informing one of his coworkers that he was quitting. The

following workday Shepard reported for work and upon being questioned by Patcher as to whether he had quit, replied he had but did not mean it. Patcher then discussed the situation with him, during which Shepard stated that he had been upset and nervous and was under a lot of pressure. Patcher, however, refused to permit him to return to work and discharged him.

About 2 months later in August, Shepard approached Patcher and requested reinstatement to his former job. Patcher agreed to rehire him on a temporary basis but imposed certain conditions, including assurances from Shepard that he would stop drinking and join Alcoholics Anonymous, and would agree to have the company bookkeeper deposit his weekly paycheck and apply part of it to pay his debts, including notes that Patcher previously had cosigned for him. In the meantime Shepard had fallen behind in payments on one of the notes, for which Patcher cosigned a new note and loaned him additional money. His salary, however, was reduced to \$150 per week. Within a short time thereafter Shepard received two \$25-a-week increases and again began earning \$200 per week as a technician. One of these increases was to compensate him for work on urine microscopics done after 2 a.m., following the completion of his regular work. In September or October a company driver quit and Shepard requested and received permission to undertake that job, which previously used to be his run.⁴ In October, Shepard confided to Patcher that he was faced with several family problems, involving a girlfriend, his wife's drinking, and money problems, and expressed a desire to quit and return to prison. Patcher prevailed upon him to consult his (Patcher's) attorney, which he did in an effort to get himself straightened out, and he remained on the job.⁵

B. The Union Campaign

Soon after Shepard was informed of the reduction in his salary, he contacted a union representative on December 12 for the purpose of unionizing the company employees. On Sunday, December 17, a union meeting was held at the Chaston Lounge, a bar located a few doors from the laboratory. About 20 employees attended this meeting and according to Shepard he received signed authorization cards from a number of employees. During that afternoon Patcher received a telephone call from William Panzella, the night supervisor, to come to the lab because of a mixup in tests performed the preceding night. Upon his arrival, Panzella informed him that they were having union trouble and suggested they go to his (Panzella's) home to discuss the matter.⁶ At their meeting in Panzella's home Patcher was informed that union cards had been distributed to the employees during the week.⁷

³All dates hereafter refer to the year 1967 unless otherwise noted.

⁴Drivers had specific routes assigned to them for picking up specimens to be tested and delivering the test findings.

⁵There is also conflicting testimony that during November and December Shepard was blamed in connection with missing urines, making incorrect autoanalyzer results, and writing illegible IBM cards, and accused of performing urine microscopics before 2 a.m., during the time he was supposed to do his regular work. As a result he was taken off the Auto Analyzer, and the \$25 increase in salary given to him to perform that work was withdrawn.

⁶Before they left the lab other events occurred at the Chaston Lounge and lab, which are related *infra*.

⁷According to Shepard he had advised Panzella on the previous day, December 16, that he was soliciting union cards and displayed a few signed cards to him.

C. The Alleged 8(a)(1) Violations

The complaint alleges that Respondent through its agents and/or supervisors, Pachter, Panzella, and John Todaro, interrogated its employees concerning their union membership and support of the Union, threatened them with discharge and other reprisals if they became or remained union members or supported the Union, promised and granted wage increases, and offered contracts guaranteeing their employment if they abstained from supporting or assisting the Union. General Counsel also contends that Respondent announced the existence of a health insurance policy to the employees prior to Christmas, although initially planned to be announced at Christmas as a bonus, in order to adversely affect the Union's organizing campaign, and thereby also violated Section 8(a)(1). Respondent denied committing any of these violations but in its answer and/or admissions at the hearing denied only the agency or supervisory status of Todaro⁸ or its responsibility for his activities at times material herein. It, accordingly, first becomes necessary to determine the status of Todaro with respect to the violative incidents attributed to him.

1. The alleged agency and/or supervisory status of Todaro

The parties entered into the following stipulations concerning Todaro's activities: Todaro's job was to sell lab services to physicians, to confer with physicians regarding arrears in their accounts, and to substitute for absent technicians or drivers when so assigned by Pachter or Gardner T. Jefferies.⁹ His salary was \$17,500 plus expenses and a \$20 commission for each new account which he or his salesmen-trainees brought in. Prior to the hiring of Jefferies as general manager in October, Todaro interviewed and hired prospective employees and assigned work to office worker Beatrice Shepard by advising her which drivers were to be sent out first. In October Pachter introduced a prospective employee (a Mr. Nimfo) to Todaro and thereafter asked Todaro's opinion about employing him. On January 22, 1968, in a conversation with employee Beatrice Shepard in which she complained about being saddled with too much work, Todaro advised her that he would recommend a raise for her, and shortly thereafter she received a weekly increase of \$4.38 in her take-home pay. Pursuant to Pachter's instructions in December, Todaro trained three new salesmen by having them accompany him on his calls, and thereafter reported their progress weekly to Pachter. In January 1968, pursuant to Todaro's recommendation, one of his trainees (Nimfo) received additional technical training and thereafter was permitted to sell on his own.

Panzella testified without contradiction that when he assumed the position of supervisor on the night shift in October, he questioned Pachter as to the chain of command and was told that he was responsible first to Pachter, then to Todaro, and thirdly to Jefferies. Employee Gary Albert testified that in December he asked Todaro for a raise which had originally been promised to him by Todaro. Following Todaro's assurances, he received a raise of 25 cents to \$2.75 an hour. It also appears that during July 1968, Beatrice Shepard received paychecks signed by Todaro.

Pachter testified that Todaro had no right to hire or fire employees during December and was only a salesman, and that from May to October, when Jefferies became general manager, Todaro was used to interview people.

2. Conclusions as to Todaro's status

I find no merit in Respondent's contention that Todaro's agency came to an end in October. There is no evidence indicating that the employees whom Todaro had previously interviewed and hired were informed of any change in his status, and, apparently, they continued to regard him as part of management. In fact, as appears *infra*, Todaro, in questioning employees concerning the Union, gave the impression that he was speaking for management in attempting to persuade them that they would not derive any benefits by the advent of the Union, because a recently obtained health insurance policy satisfied their most important demand. It also appears that Pachter advised Panzella that Todaro was number 2 in the chain of command, thereby rating him even above General Manager Jefferies. Todaro was also called to a management meeting on December 17, to discuss the union problem with Pachter and Policastro, a supervisor. Also, after October he continued to make effective recommendations for salary increases to, and training of, employees. Viewing the evidence in its totality, I find that Todaro attempted to adjust employee grievances, effectively recommended raises for employees, represented management in dealing with employees, and gave the impression to employees that he was a spokesman for management. I, therefore, conclude that, at all times material herein, Todaro's activities carried on in behalf of Respondent and with its approval made him its agent and/or supervisor, and also warranted the employees in regarding him as such. It, accordingly, follows that Respondent bears the responsibility for his conduct.

3. The alleged interrogation, threats of economic reprisal, and promises of economic benefits

As related above, Pachter was summoned to the lab by Panzella during the afternoon of December 17. Later that day at or about 6 p.m., Todaro appeared pursuant to a call from Pachter who informed him that he had heard of a meeting of employees to organize a union at the lab. Shortly thereafter, Todaro went to the nearby Chaston Lounge to purchase some cokes. There, he met employees Ronald Johnson, Carl Vinciguerra, Paul Sequeira, and Gail Haller. He asked what they were doing at the bar, and was told by either Johnson or Sequeira that they had attended a union meeting. Todaro thereupon questioned them as to what they wanted, and was informed that there was no medical or retirement plan covering the employees. Vinciguerra then inquired as to whether Pachter was at the lab, and upon being told that he was, he left the lounge. Vinciguerra went to the lab where he met Pachter who told him that he understood that he (Vinciguerra) was at the union meeting, and asked why he wanted to join the Union after having given 2 weeks' notice of leaving. When Vinciguerra replied that he was concerned about job security and working conditions, Pachter revealed the existence of a new health insurance policy¹⁰ and told him that he had intended to announce it to the employees at Christmas as a bonus. Upon hearing this,

⁸Respondent also questioned the agency of Panzella but admitted his supervisory status.

⁹Jefferies became general manager of the lab in October.

¹⁰It was stipulated that the insurance had been obtained by Respondent on December 12, and became effective on that day upon payment of the initial premium.

Vinciguerra suggested that Pachter inform the employees at a meeting about the insurance plan and, in effect, stated that had the employees known of the changes a lot of "this" could have been avoided. Becoming somewhat remorseful about the whole matter, he then asked Anthony Policastro¹¹ what he would like him to do in connection with it, and it was proposed that following the employee meeting at which an insurance representative would explain the insurance plan, he (Vinciguerra) would ask the employees what their grievances were and would report back to Panzella.

On the following morning, December 18, Todaro observed employee Catherine Miller crying in the outpatient department of the lab and inquired as to the reason. She replied that on the preceding day she and Lynn Miller had attended the union meeting and had signed union cards and now regretted it because Pachter had treated them so well. Todaro then asked what people hoped to gain by bringing in a union, but did not recall whether she made any reply.

According to Shepard, Pachter approached him about noon of that day (December 18) and asked whether he was the union "ringleader," to which he replied that he was for the Union and doing all he could to bring it about. Pachter allegedly then berated him for his ingratitude after having done so much for him and told him that he would have to go out of business if the Union came in. He stated further that he could fire him, and then instructed him to return to work. Pachter denied ever having spoken to Shepard on that day or making the alleged threats, and explained that he was out of the lab most of the day at meetings. Based on the demeanor of the witnesses and in view of Shepard's other misstatements,¹² Pachter's testimony is credited.

Employee Ronald Johnson testified that in a conversation with Todaro on Monday night, December 18, he was asked why he signed a union card, and after replying that it was to help the employees, they discussed what benefits the employees would derive from a union, including the health insurance plan which already was in effect. When questioned as to whether Todaro had said anything to him about getting rid of union supporters, Johnson replied that he could not remember it. His prehearing affidavit in which he stated that Todaro told him he had ways of getting rid of union supporters was then shown to him but it failed to refresh his recollection concerning this point.¹³ Although Todaro did not controvert this statement in his testimony, his affidavit which was admitted in evidence and stipulated to be true in its contents states that he did not tell Johnson that he had ways of getting rid of union supporters by finding their work faulty. Johnson also testified that he told Todaro that the employees did not want the Union if they could obtain certain benefits, such as health and retirement plans, better working conditions, and more money. In view of Todaro's affidavit and Johnson's testimony on cross-examination which reflected his uncertainty and hesitancy about having made the statement, I find that Todaro did not tell Johnson that he had ways of getting rid of union supporters.

Following his conversation with Johnson, Todaro approached Shepard at or about 7:30 p.m. According to Shepard, Todaro questioned him as to why he wanted the Union. When he replied that he wanted a union for

protection and retirement, Todaro asked him whether he would try to keep the Union out if he were promised a contract which would secure his job and give him a retirement policy, to which Shepard responded that he would let him know. Todaro's affidavit, however, states that he only mentioned to Shepard what Johnson had told him in his earlier conversation with him, and denies having asked Shepard whether he would stop supporting the Union if he were given a hospitalization and retirement plan or that Pachter would give him a contract guaranteeing his job. These statements appearing in Todaro's affidavit are credited, and I find that no offer of a job guarantee and retirement pay was made to Shepard to oppose the Union.

It was stipulated that on December 19, Panzella was instructed by Pachter to inquire of the employees why they wanted the Union,¹⁴ and that he, in fact, thereafter questioned several employees including Krashes,¹⁵ Griemsmann, Fitzgerald, Welsh, and Spiegelman as to why they wanted the Union and their replies indicated whether they signed union cards or attended the union meeting.

Employee Paul Sequeira testified without contradiction that he had a conversation with Todaro on December 18 or 19, in which he was asked why he joined the Union. Sequeira replied that it was because he was interested in a health plan. Todaro then asked whether he had any other grievances, he was told that he had none.

Pachter testified that on December 19 at or about noontime he had a conversation with Shepard in which he deplored his poor and inaccurate work, and stated that he was considering firing him. Shepard begged him to reconsider, promising that he would stop drinking. Pachter also questioned him about the Union and Shepard denied having signed a union card or that he could derive any possible benefits from the Union, and stated that he had tried to talk several employees out of joining the Union.¹⁶

Employee Gary Albert testified that in a conversation with Pachter about December 20, he was asked what he thought about the Union and whether the relationship between management and the employees was strained. Albert replied that he would ascertain how the other employees felt about the Union and would then make up his mind. Pachter placed this conversation in January or February, and asserted that Albert claimed to be indifferent about the Union because he intended to go to medical school, and that they discussed Shepard's criminal record and what Pachter had done for him. Albert also testified without contradiction that about a week after his conversation with Pachter, Panzella asked how he felt about the Union and whether he was in favor or opposed to it, and was told that he favored the Union.

It was stipulated that in the middle of January 1968, Pachter had a conversation with employee Alfred Carraturo in which he asked how Carraturo felt about the Union and why he was in favor of it. When Carraturo replied that he was in favor of unions, Pachter told him that employees Joe Brocone and Paul Sequeira had changed their minds about the Union, and were now

¹¹Any contention by Respondent that Panzella acted outside the scope of his employment and contrary to Respondent's instructions in this matter is obviously without merit.

¹²Krashes also testified that Todaro asked him whether he understood the full implications of having signed the union card, and told him not to sign things so quickly in the future.

¹³Shepard's testimony that in this conversation he readily admitted his union support is not credited.

¹⁴A supervisor who also attended part of the meeting at the lab

¹⁵Related hereafter

¹⁶The statement was admitted in evidence as past recollection recorded.

opposed to it, and that if he (Carraturo) spoke to Sequeira he also would oppose the Union.¹⁷

4. Conclusions as to the alleged interrogations, threats of reprisals, and promises of benefits

As related and found above, it clearly appears that Pachter, Todaro, and Panzella interrogated employees as to their union sympathies, attendance at union meetings, and benefits which they expected to obtain from the advent of the Union. As soon as they learned of the union campaign they began interrogating the employees in a concerted effort to persuade them to withdraw their support from, and oppose, the Union, thereby clearly demonstrating their union opposition. At no time did they explain the purpose of the interrogations to the employees or give them any assurances that no reprisals would be taken against them. Under these circumstances I find that the aforesaid interrogations tended to interfere with the exercise of the statutory rights of employees, and thereby constituted violations of Section 8(a)(1) of the Act. See *Struksnes Construction Co.*, 165 NLRB No. 102.

In view of my findings that Pachter did not threaten Shepard that he would go out of business if the Union came in, and that Todaro did not tell Johnson he had ways of getting rid of union supporters or offer Shepard a contract guaranteeing his job and providing a retirement policy if he would oppose the Union, I conclude that the General Counsel has failed to establish by the preponderance of the evidence that Respondent threatened economic reprisals against, or made offers or promises of economic benefits to, employees to withdraw from and/or oppose the Union. I, therefore, shall recommend that such allegations in the complaint be dismissed.

5. The health insurance policy

As related above, the health insurance policy was obtained and became effective on December 12, but was not disclosed to the employees because Pachter intended to announce it just before Christmas as a bonus. In the course of Pachter's conversation with Vinciguerra concerning the Union on the night of December 17, he asked why the employees were dissatisfied. When Vinciguerra replied that they wanted a health insurance plan, Pachter revealed the existence of the health policy. Vinciguerra thereupon suggested that the employees be informed about it, and stated that a lot of "this" could have been avoided had the employees known about the policy.¹⁸ An employee meeting was thereafter held on December 19 at which an insurance company representative explained the benefits of the policy.

¹⁷With respect to Brocone's and Sequeira's alleged disaffection from the Union, referred to by Pachter, the record shows that on Tuesday, December 19, Joe Brocone informed Jefferies that he was resigning. Jefferies then attempted to dissuade him from doing so but Brocone insisted, stating that he had been very active in the Union, and had been misled into believing that the employees favored the Union, which he subsequently learned was untrue. Later that day, Paul Sequeira approached Pachter and said he wished to resign because he felt badly about having been active in the Union's campaign after Pachter had been so good to him. Pachter told him that he was doing a good job and asked him to stay on, expressing his indifference as to whether or not he had signed up with the Union. He also advised Sequeira that if he had been around earlier in the day he would not have accepted Brocone's resignation and would have attempted to persuade him to stay on, and asked Sequeira to tell Brocone he could have his job back if he wished.

¹⁸Vinciguerra also stated that he thought the employees would not have signed up with the Union had they known about the policy.

The General Counsel contends that, although obtainment of the policy on December 12, before the union organizing campaign began did not violate the Act, the acceleration of the notice of its existence to the employees was intended to dissuade them from further support of the Union and constituted a violation of Section 8(a)(1).

6. Conclusions as to the health policy

It is obvious that the advancement of the notification of the policy's existence from Christmas, as originally planned, to December 17, 18, and 19, did not in effect grant any greater benefits to the employees than previously existed. It did, however, serve to placate the employees concerning one of their chief grievances while a union organizing campaign was in progress, and it was intended to and undoubtedly did affect their desire for a union. However, the circumstances leading up to its accelerated announcement show that it was induced by Vinciguerra's statement that the lack of such a policy was the main cause of employee dissatisfaction and motivated them to join the Union. Had Pachter refrained from mentioning the existence of the policy until Christmas, as originally planned, he would not have violated the Act. As it turned out, the timing of its existence was advanced less than a week. At most, it constituted a technical violation of minimal effect, which would require no relief.

7. The alleged wage increases and bonuses

The General Counsel contends that the Respondent promised and/or granted wage increases to employees at times material herein in violation of Section 8(a)(1) of the Act. Pachter testified that he gave wage increases pursuant to an established policy based primarily on merit and also on the length of service of the employee, and that bonuses were given at Christmastime depending upon the amount of money available for that purpose, the length of service, the salary of the employee, and how friendly they were. The record shows that bonuses from \$5 to \$100 were given to employees during December, that varying wage increases were given to some employees within 2 weeks after they were hired whereas other employees received no increases despite employment of as many as 8 or 9 months, and that several employees received wage increases for the payroll weeks ending in late December, while others received such increases in February 1968. It also appears that new night employees hired in February 1968 received salaries in excess of the minimum wage requirements then in effect, ostensibly to compensate them for a night differential which was inaugurated at that time, and that other employees also received salary increases which included minimum wage increases as well as the night differential. Pachter, however, denied that any of the aforementioned increases were related in any way to the union campaign, and, it was stipulated that in the ordinary course of business, a wage increase may have been given in every month of the year to some employee.

8. Conclusions as to the wage increases

I find that there was no objective standard governing wage increases, including Christmas bonuses, and that varying wage increases and bonuses were given to employees during the Union's organizing campaign solely at the discretion of Pachter. Because of the potential effect that such increases may have on employees

regarding their support or lack of support during an organizing campaign, the Board has consistently held that such increases constitute benefits in violation of Section 8(a)(1) of the Act, and I so find.

D. *The Alleged Constructive Discharge of Shepard*

As related above, Pachter had a conversation with Shepard about noon on December 19, in which he criticized his work and stated that he was considering firing him. Later that evening about 6 p.m., following an employee meeting at which an insurance representative explained the new health insurance policy, Pachter summoned Shepard and accused him of having previously lied to him about his union support. When Shepard denied it, Pachter replied that "this whole thing makes me sick" and walked away. That night while at work, Shepard asked John Carney, a fellow employee why he did not support the Union. Carney replied by relating his unfortunate experiences on a former job at Kings County Laboratory where after working hard and successfully organizing the employees for Local 1199, a bargaining contract was signed. Thereafter, however, the Union failed to support or represent him in an altercation with a supervisor, required him to do picket duty on behalf of the Union, refused to permit him to work overtime, and caused him a lot of trouble concerning the payment of dues. As a result, Carney stated that he was opposed to Local 1199 but might have become interested if it were any other Union. After hearing this, Shepard told him "It looks like everybody is pulling out on me also. I am standing all by myself, also. I'm all alone."

Carney testified further that the following morning, Shepard told him that he wanted to quit because he couldn't "take it any more," nobody was talking to him, everybody was leaving him, and he was unable to "take the pressure any more." He then asked Carney to tell Pachter that he quit but that he should fire him in order to enable him to collect unemployment insurance. After unsuccessfully attempting to talk Shepard out of quitting, and pursuant to Shepard's insistence, Carney approached Pachter and Jefferies and related Shepard's request, adding that Shepard was waiting for an answer at the Chaston Lounge. Pachter refused to fire him and Carney was directed to so inform Shepard. After Carney returned to Shepard and advised him to that effect, Shepard volunteered to sign any paper in order to get fired and stated that he would continue to sit and drink at the lounge and refuse to make his regular assigned truck run to compel them to fire him. Carney again reported to Pachter and Jefferies what he had been told by Shepard, and he was instructed to return to work. In about 15 minutes, Shepard called Carney on the phone to ascertain what they were going to do. Carney replied that he did not know and that they were making arrangements to get a substitute driver to make his run. Shepard then stated that he would quit like a man and to tell them to draw up a letter which he would sign. Carney thereupon again approached Pachter and related his last conversation with Shepard. A resignation was then drawn up by Pachter and Jefferies and given to Carney for Shepard's signature. Carney then returned to the lounge with Ed Corsi, a salesman, after being instructed to make sure that Shepard read the resignation and to witness his signature. When presented with the resignation Shepard, however, refused to sign unless he was paid what was owed to him, and Carney conveyed his refusal to Pachter and Jefferies. Pachter and Jefferies then discussed what should be paid

to Shepard, and over Jefferies' objections, Pachter decided to draw up a check for a week and a half salary to be given to Shepard.¹⁹ Carney, again accompanied by Corsi, then returned to the lounge and gave the check to Shepard who signed the resignation²⁰ which was witnessed by Carney and Corsi.²¹

Shepard's wife testified that her husband told her at the time his employment was terminated that he quit his job at the lab because there was too much pressure. He made no mention at that time that Pachter had threatened to expose his criminal background unless he quit. It was only several months later that he informed her about Pachter's threats.

Anthony McQuade, Shepard's parole supervisor, testified that Shepard informed him shortly after his termination that he had been fired by Pachter because of his union activities. It was not until the hearing that McQuade learned for the first time that Shepard claimed he was forced to resign to avoid exposure of his criminal background. No explanation was offered by Shepard as to why he failed to inform McQuade about the signing of his resignation and the circumstances surrounding it.²²

McQuade testified further that he came to see Pachter upon his request in April 1968, at which time Pachter informed him about the proceedings before the Labor Board involving Shepard. Pachter also advised him that he had fired Shepard because of his union activities, his solicitation of union memberships, and his drinking, and that in view of what he had previously done for Shepard he felt his trust in him had been violated. Following the original closing of the hearing, Respondent moved to reopen the hearing in order to cross-examine McQuade further, claiming that he had revised his previous testimony after Respondent's counsel interviewed him and

¹⁹According to Pachter he actually owed Shepard for half a week but decided to give him an additional week's salary in lieu of a Christmas bonus which he would have received had he remained in the employ of the Company.

²⁰The resignation read as follows

I hereby tender my resignation as of this date, December 20, 1967 from Central Bio-Analytical Laboratories, Inc.

There has been no coercion [sic] on the part of the Management of Central Bio-Analytical Laboratories, Inc to bring about this decision and I am signing this of my own free will.

Robert V Shepard

John F. Carney

Edward A Corsi

²¹The above findings are based upon the testimony of Carney, which was corroborated by Pachter to the extent that he directly participated in the events. Shepard's version of the matter differs substantially. He testified that he met Pachter on the parking lot on December 20, and in the ensuing conversation Pachter threatened to expose his criminal record to his friends, relatives, his newly acquired son-in-law, and his parole officer unless he quit, and also offered to give him a week and a half salary and to pay off the note on which he cosigned with Shepard. The conversation then became so heated that he (Shepard) was unable to talk to Pachter and walked away. He then met and told Carney that he could not take any more with Pachter and requested him to tell Pachter that he would resign under the conditions set by him and would await Pachter's answer at the Chaston Lounge. Carney left to see Pachter and returned shortly accompanied by an unidentified man, and requested him to sign a resignation. Shepard refused because no paycheck was offered to him. Carney and his companion thereupon left, but soon returned with a paycheck which Shepard took and then signed the resignation. Pachter denied ever threatening to expose Shepard's criminal record unless he quit or offered him any inducements to quit.

²²It is pertinent to note that Shepard made other inconsistent statements to McQuade. Thus, although Shepard testified that he was responsible for initiating the Union's organizing campaign and was its chief instigator, he advised McQuade that other employees were more involved than he in the Union.

he had an opportunity to refer to his notes which he customarily made and kept concerning contacts involving the parolees whom he supervised. The hearing was reopened and McQuade, upon consulting his notes, when examined revised his previous testimony by admitting that there was no mention of Shepard's drinking as one of the causes for his discharge in his conversation with Pachter in April 1968. He also admitted that his notes reflected that Shepard's drinking was discussed in his conversations with Pachter in June 1967 after Shepard had quit his job, at which time Pachter had stated that Shepard's drinking was a reason for refusing to reinstate him. McQuade further admitted on cross-examination that during his April 1968 conversation Pachter denied firing him because of his union activities.²³

Viewing all the evidence concerning Shepard's alleged constructive discharge and considering the demeanor of the witnesses, I find it more plausible and persuasive to credit the version offered by Carney and Pachter, and to discredit Shepard's version.

Conclusions Regarding the Constructive Discharge of Shepard

The resolution of the issue as to whether Shepard was pressured into resigning by Pachter's alleged threats to expose him depends upon whose version of the circumstances attending the termination of his services is credited. Conceivably, some doubt or suspicion can be conjured up as to whether the resignation was "voluntary" because of its timing, inasmuch as it occurred in the midst of a union campaign. However, if Respondent's version of the attendant circumstances is credited, as related above, it would indicate that Shepard, himself, picked the time. It also appears that at first Shepard informed his wife that he quit because he was unable to tolerate the tensions of the job, which would be consistent with Respondent's defense. It was several months later before he advised her that he was forced to quit in order to avoid having his criminal record exposed. Another unexplained facet in the resignation was the failure of Shepard to advise McQuade that he was pressured into signing a resignation by Pachter's threat to expose his criminal record, a matter which obviously should have impressed Shepard as being of paramount interest to his parole officer. I conclude that the General Counsel has failed to establish by the preponderance of evidence that Shepard was pressured into resigning in order to avoid exposure of his criminal record in violation of Section 8(a)(3) of the Act. I, therefore, recommend that the complaint be dismissed insofar as it alleges that Shepard was constructively discharged in violation of Section 8(a)(3).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close,

²³These inconsistent and conflicting positions allegedly expressed by Pachter to McQuade, if credited, would defy any logical explanation. I find that McQuade's recollection of these events was confused. In fact, he admitted that he had difficulty in remembering what occurred in his frequent contacts involving the parolees whom he supervised because there were at least 60 of them. It would be both plausible and reasonable to surmise that Pachter told him in his April 1968 conversation that he was being charged in the pending Board proceeding with firing Shepard because of his union activities, and that he denied it

intimate, and substantial relationship to trade, traffic, and commerce among the several States and constitute unfair labor practices which tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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

CONCLUSIONS OF LAW

1. At all times material herein the Union has been a labor organization within the meaning of Section 2(5) of the Act.

2. At all times material herein, Respondent, Pachter's and Finkel constituted a single-integrated business, which has been engaged in commerce as an employer within the meaning of Section 2(6) and (7) of the Act.

3. By interrogating its employees, granting wage increases, and advancing the time of its announcement of its health insurance policy, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, within the meaning of and in violation of Section 8(a)(1) of the Act.

4. All allegations of the complaint as to which specific findings of violation have not been made have not been sustained by the preponderance of the evidence.

THE REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act. Although Respondent's premature announcement of its health insurance policy was a technical violation, I find that the nature of the violation and the attendant circumstances indicate that no relief is required therein, and none will be recommended.

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

RECOMMENDED ORDER

Central Bio-Analytical Laboratories, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their statutory rights within the meaning of Section 8(a)(1) of the Act, by interrogating them about union matters or granting wage increases or bonuses to influence their union sympathies. However, this order shall not be construed to require the rescission of any wage increases or bonuses heretofore granted.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

(a) Post at its laboratories located in Nassau County, New York, copies of the attached notice marked "Appendix."²⁴ Copies of said notice, on forms provided by

²⁴In 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

the Regional Director for Region 29, after being duly signed by Respondent's 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.²⁵

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

²⁵In 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

THIS NOTICE IS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

After a trial in which all parties had a chance to give evidence, a Trial Examiner of the National Labor Relations Board found that we, Central Bio-Analytical Laboratories, Inc., violated the National Labor Relations Act, and ordered us to post this notice to inform our

employees of their rights.

The Trial Examiner's Recommended Order has directed us to assure our employees that:

WE WILL NOT question you about your union activities or grant wage increases for the purpose of influencing your union sympathies;

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights to self-organization or to form, join, or assist any labor organization, or to bargain collectively with us concerning terms or conditions of employment through the representative you select, or to refrain from any of these activities if you so choose, except as these rights may be affected by a contract validly made under the National Labor Relations Act, whereby membership in a labor organization is a condition of employment after the 30th day following the date of the contract or the beginning of a person's employment, whichever is later.

All our employees are free to become or remain or to refrain from becoming members of or withdrawing membership in any labor organization.

CENTRAL BIO-ANALYTICAL
LABORATORIES, 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.

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