Field Container Corporation *and* Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO. Cases 13-CA-8737 and 13-RC-11647

September 19, 1969

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS JENKINS AND ZAGORIA

On June 11, 1969, Trial Examiner George Turitz issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. The Trial Examiner also found merit in certain objections to the election of October 18, 1968, in Case 13-RC-11647, and recommended that the election be set aside and that a new election be ordered. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Charging Party filed a brief in answer to Respondent's exceptions.

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 these cases 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 these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

The Trial Examiner found that the Respondent violated Section 8(a)(1) of the Act and interfered with the election by coercing two employees and by announcing a profit-sharing plan. We do not agree.

The Union has been attempting to organize Respondent's employees since 1961. It lost elections in 1961, 1962, 1963, and 1964, carried on unsuccessful organizing campaigns in 1965 and 1966; and filed, and then withdrew, a petition in September 1967. In 1966 Respondent first discussed instituting a profit-sharing plan but decided its profits did not justify a plan. In June 1968 Respondent instructed its attorney, Weinberger, to draft a plan. In July, after discussions with Respondent's official and its accountant, Weinberger submitted the plan to the Internal Revenue Service requesting an advance ruling on qualification under Section 401(a) of the Internal Revenue Code. On August 26, Weinberger was informed by IRS that if certain amendments were made within 15 days the plan would be approved. Weinberger drafted the amendments, and upon receipt of Respondent's approval, submitted the revised plan to IRS on August 29. On the same day at 10 a.m. Respondent announced to its employees that a profit-sharing plan had been submitted to IRS for approval. Later that day the Union filed its petition in Case 13-RC-11647. The Union lost the election, which was conducted October 18, 1968, by a vote of 21 to 100.

It is well-settled that an allegation of Section 8(a)(1) violation and an objection to an election on the conferral of a benefit can be sustained only where it is shown that the employer's purpose in granting the benefits was to interfere with employees' exercise of their right under the Act to select a representative of their choice.[1]

The Respondent's decision to institute the profit-sharing plan is not alleged by the General Counsel or contended by the Charging Party to be unlawful, and of course it was made several weeks before the petition was filed. As to the announcement of the plan, the Respondent contends, and the record shows, that the announcement was made as soon as the Respondent was informed that Internal Revenue Service would be likely to accept the plan. There is no evidence, and we find no basis for inferring, that the Respondent knew whether or when the petition would be filed or requested its attorney to rush this matter. That the IRS code did not require the announcement to be made at the particular time did not prohibit the Respondent from doing so, if as here, the Respondent had a valid explanation. In view of the continual organization campaigns conducted at this plant every year for the last 7 years, the most recent campaign extending over a period of 7 months, from March until October 1968, we are not prepared to find unlawful intent based on timing of the announcement. No other evidence of unlawful intent has been shown. In all the circumstances, therefore, we find that a preponderance of the evidence fails to establish that the purpose of the announcement was to interfere with the Union's organization campaign or with the Board election. As we find the announcement was not unlawfully made, the Respondent was entitled to refer to it during the election campaign.

The remaining conduct found affected 2 out of a total complement of 122 employees, and consisted of interrogation and an allegedly threatening statement by a leadmen whose supervisory or

[1] *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405. *Tonkawa Refining Co.*, 175 NLRB No. 102.

managerial status was marginal at best.[2] We find that these were isolated incidents and that they were insufficient to affect the results of the election. Accordingly, we shall dismiss the complaint in its entirety, overrule the objections, and certify the results of the election.

ORDER

It is hereby ordered that the complaint herein be, and it hereby is, dismissed in its entirety.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots has not been cast for Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, and that said organization is not the exclusive bargaining representative of the Employer's employees in the stipulated appropriate unit, within the meaning of Section 9(c) of the National Labor Relations Act, as amended.

[2]We do not agree with the Trial Examiner, that plant superintendent Badal's remark, to one of these two employees after the employee said he wanted to be a union observer, "That is your opinion, you know what you are doing?" was a threat

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

GEORGE TURITZ, Trial Examiner: On August 29, 1968, Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO (the Union), filed a petition with the Regional Director of the National Labor Relations Board (the Board) for Region 13 in Case 13-RC-11647 for certification as representative of employees of Field Container Corporation (Respondent and at times the Company) Pursuant to a stipulation for certification upon consent election executed by Respondent and the Union the Regional Director conducted an election on October 18, 1968. Of the 122 valid votes counted, 21 were for and 100 against the Union. There were also 8 challenged ballots. On October 25, 1968, the Union filed timely objections to the election and also filed a charge against Respondent in Case 13-CA-8737, which was served upon Respondent on October 29, 1968. On January 30, 1969, the Regional Director, on behalf of the General Counsel of the Board, issued a complaint and notice of hearing against Respondent in Case 13-CA-8737 and on March 14, 1969, he issued an amendment to the Complaint. On January 30, 1969, the Regional Director also issued a report on objections and order consolidating cases. In the Report on Objections, the Regional Director recommended that Objections 1, 2, 4, and 5 be overruled, noted that Objections 9 and 10 had been withdrawn by the Union, and directed that Objections 3, 6, 7, and 8, which he stated were substantially similar to allegations in the complaint, be disposed of in a consolidated hearing on the complaint and the objections. By order of dated February 17, 1969, the Board adopted the Regional Director's recommendations. The complaint and notice of hearing, the amendment to complaint, and the report on objections and order consolidating cases were duly served upon Respondent and the Union Respondent filed an answer to the complaint in which it denied all allegations of unfair labor practices. The hearing was held on March 19, 20 and 21, 1969, in Chicago, Illinois, before me. The General Counsel, Respondent and the Charging Party were represented by their respective counsel and have filed briefs with the Trial Examiner.

Upon the entire record[1] and from his observation of the witnesses the Trial Examiner makes the following:

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation having its principal office and place of business at Elk Grove Village, Illinois, where it is engaged in the manufacture, sale, and distribution of folding paperboxes and related items. In the course of its operations Respondent annually manufactures and sells at its Elk Grove Village plant products valued at in excess of $100,000, of which products valued at in excess of $50,000 are shipped from said plant directly to customers of Respondent located in the States of the United States other than the State of Illinois. It is found that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act, as amended (the Act).

II. THE LABOR ORGANIZATION INVOLVED

Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES AND THE OBJECTIONS

The principal issues litigated at the hearing were whether Respondent coerced and restrained employees in the exercise of their rights under Section 7 of the Act, and interfered with their freedom of choice in the election (1) by its announcement to employees that it had submitted to the Internal Revenue Service for approval a profit-sharing plan, and (2) by interrogating employees, promising them other benefits, and threatening them with loss of work. Also at issue was the supervisory authority of one Bob Kubasiak [2]

A *The Profit-Sharing Plan*

For some years the Union has been attempting to organize Respondent's employees. It filed petitions for certification in 1961, 1962, 1963, 1964 and 1967, conducting organizational campaigns in each of those years as well as in 1965 and 1966. All its campaigns were unsuccessful. The 1967 campaign was discontinued in

[1]The transcript at page 215 shows that the notice of election was received in evidence but fails to show the exhibit number It has been assigned G C. Exh 11 and a copy has been placed in the exhibit file

[2]Unless otherwise stated, all incidents took place in 1968

September 1967. The Union started a new campaign in 1968, distributing leaflets on March 7 and 25, April 10, 16, and 29, May 27, July 10, and August 22 and 28. Respondent kept a file of the Union's leaflets, noting thereon their dates of distribution.

In May Respondent's officials discussed with their attorney, Weinberger, the question of instituting a profit-sharing plan. In 1966 it had discussed the matter with him, as well as with its bank and its accountant, but had decided not to do anything. In June 1968 Respondent instructed Weinberger to draft a plan. On July 25, following a series of discussions with Respondent's officials and its accountant, Weinberger submitted to Internal Revenue Service (IRS) a proposed plan and requested an advance ruling as to whether the plan would initially qualify under Section 401(a) of the Internal Revenue Code. Weinberger discussed the matter with agents of IRS who on August 20 wrote requesting additional information, which was submitted promptly. On August 26 Weinberger had a further discussion with IRS during which an agent informed him that if certain amendments were made, it was likely that the plan would be approved; and IRS handed Weinberger a letter that day noting that amendments were to be submitted within 15 days

Weinberger proceeded immediately to draft the necessary amendments and other appropriate documents and that same evening he delivered to Eli Field, president of Respondent, at Field's home[3] drafts in final form of the following

(a) A plan revised in accordance with the IRS agent's suggestions;

(b) A proposed formal announcement of the plan to the employees;

(c) Proposed minutes of a meeting of the board of directors setting forth resolutions adopting the plan, authorizing its execution by appropriate officers and by the trustee, which was a bank, approving the plan and authorizing the president to take the necessary action to make it effective, appointing two officers as administrators of the plan, and directing "that appropriate notice of the adoption of said plan shall be given to employees of the corporation."

The documents were accompanied by a letter from Weinberger to Field. The letter, *inter alia*, described the changes and gave instructions, if the plan was approved, as follows

1. The minutes should be adopted.

2 The Plan (together with additional copies) should be executed and submitted to Central National Bank for its execution

3 Written announcement of the adoption of the Plan (substantially as per my form but improved by your public relations representative) should be posted and delivered to each employee.

Early on the morning of August 28 Field brought to Weinberger at the latter's home the signed minutes and copies of the plan executed by Respondent. It had not been executed by the trustee, as directed in Weinberger's August 26 letter, and Weinberger promised Field that he would attend to that and would file the fully executed documents and the minutes with IRS. Weinberger informed Field that regulations required that the announcement to the employees contain certain features but that there was no requirement to give the notice immediately He testified that under regulations Respondent had until July 1969 to make the announcement.[4] He explained to Field that his draft announcement would satisfy the requirements of the regulations, but that it was customary for employers to "dress up" the announcement for presentation to the employees, and he suggested that the draft be submitted to Respondent's "advertising people" to see what they could do to make it more presentable. Field told Weinberger that he desired to let the employees know that the plan was likely to be approved, and he asked if could make an announcement to the employees immediately. Weinberger replied that he had no objection but he gave no advice. On August 29 Weinberger forwarded to IRS the revisions in the plan, requesting that the revised plan be approved. On September 10 Weinberger again forwarded to Respondent copies of a profit-sharing plan and of a certification of resolutions. He directed that all copies of the plan and certification be executed and impressed with the corporate seal and returned to Weinberger, who again undertook to have the plan executed by the bank-trustee. On September 14 Weinberger again submitted papers to IRS[5] and shortly thereafter[6] IRS wrote to Respondent that the plan met the requirements and would be exempt "if adopted and amended as proposed in your attorney's letters dated July 25, 1968, August 29, 1968, and September 14, 1968." The record does not show what was submitted on September 14. On October 1 Weinberger requested the bank-trustee to send him executed copies of the plan and trust agreement and this was done on October 4. The record does not disclose when Respondent executed the plan. On October 7 Weinberger submitted to IRS an executed counterpart of the plan and a certified copy of the resolution adopting it. The letter stated, "Formal announcement of the adoption of the plan is being prepared and will be attached to the form 2950 that will accompany the income tax return for the year ending April 30, 1969." That same day Weinberger wrote to Respondent that it was ".. now appropriate that you finalize the 'announcement' to employees," calling attention, also, to the requirement that Respondent determine the amount of contribution for the year ending April 30, 1969, prior to April 30, 1968 [7]

Meanwhile, about 10 o'clock on the morning of August 29, Respondent had posted the following announcement to the employees and had distributed copies in Spanish or in English to each employee individually

August 29, 1968

TO ALL EMPLOYEES

We are pleased to announce that several weeks ago we authorized our attorneys to submit for approval to the Internal Revenue Service a Profit Sharing Plan covering all employees of our Company from the top executives all the way through all employees of the factory, with everyone participating Our attorneys have now advised us that this plan has now been filed with the Internal Revenue Service.

[3]Weinberger and Field lived less than two blocks apart Weinberger merely delivered the papers and left

[4]Weinberger also testified that he informed Field that the announcement could be made "as late as the end of the calendar year "

[5]This finding is based on a statement in Respondent's Exhibit 21

[6]The date of the IRS letter is not clear on the copy in evidence, Resp Exh 21 However the letter refers to Weinberger's letter dated September 14, which had been previously received

[7]This was apparently an error, 1969 was intended

> The purpose of this plan is to allow everyone to share in a portion of the profits of the company
>
> Further details will be announced when the plan is finally approved by the Internal Revenue Service and it is further defined and developed.
>
> This is another of the voluntary benefits that we have given to you over the years, and which we will continue to do as business conditions allow.

Cooper, Respondent's vice president and general manager, testified that the announcement was decided on in the ordinary course of business. At about 1:30 that afternoon the Union filed the petition in Case 13-RC-11647. That same day it wrote to Respondent demanding recognition and issued a leaflet informing the employees that the petition had been filed and the letter sent During the weeks that followed Respondent issued a number of leaflets to the employees urging them to vote against the Union. At least three such leaflets used as an argument that Respondent had granted the employees profit sharing.

Concluding Findings as to the Profit-Sharing Plan

The grant of economic benefits during an organizational campaign is not *per se* violative of the Act, the General Counsel must establish that the grant was for the purpose of the influencing employees in their choice of a bargaining representative. See *Tonakwa Refining Co.*, 175 NLRB No. 102, cf. *Medo Photo Supply Corporation* v. *N L R B*, 321 U.S. 678, 686. On the other hand, the grant or promise of benefits during an organizational campaign ordinarily does have some natural tendency to affect employees in their choice of a bargaining representative For this reason it incumbent upon an employer who has granted or promised benefits under such circumstances to come forward with evidence that the benefits were granted or promised for other reasons. See *Bata Shoe Company, Inc.*, 116 NLRB 1239, 1241; *Glosser Bros. Inc.*, 120 NLRB 965, 966; *Des Moines Glove Co., etc.*, 146 NLRB 225, 226, cf. also *N.L R.B.* v *Great Dane Trailers, Inc.*, 388 U.S. 26.

While Respondent claimed that in 1966 it gave some thought to instituting a profit-sharing plan, it acknowledged that the matter was dropped at that time, and it is undisputed that action looking towards instituting a profit-sharing plan was never begun until June or, at the earliest, May 1968 At that time respondent knew that the Union's organizational campaign was well under way and that five union leaflets had been distributed to the employees. Cooper testified that the profit-sharing plan would have been premature in 1966, ". . . because our profit structure was not set up so that all the employees could get a fair share of the proceeds of this and we wanted to institute something for all the employees that we thought would give them a fair and adequate compensation in this regard." Cooper did not state what change had been made in the "profit structure" between 1966 and May 1968, nor did he explain in what respect Respondent's "profit structure" had anything to do with "a fair share" of profits, nor, indeed, how the plan which was adopted assured any employee of getting a fair or unfair share of anything So far as is disclosed by the evidence, Respondent had the option at the end of each fiscal year, as to whether to contribute anything at all to the trust fund.[8]

As the plan was still in its formative stage and no action was called for until months later, and as it was announced in the midst of an organizing campaign of which Respondent was aware and which it opposed, and as Respondent has failed to offer a plausible explanation based on business or other considerations for choosing to announce it at that time, it is inferred that Respondent's purpose was to influence the employees' response to the organizational activity of the Union.

An examination of Weinberger's actions strengthens this inference. Without passing upon whether Weinberger would have accomplished all he did on August 26 in the absence of a request by Respondent that he rush the matter,[9] Weinberger's delivery to Field on August 26 of copies of the plan for execution by the bank-trustee and by Respondent was certainly premature, notwithstanding the IRS agent's indication that his suggested amendments would make the plan acceptable. The fact is that the bank was not asked at that time to execute the plan, either by Field or by Weinberger himself, who testified that on August 28, he undertook to do so: and on August 29 what Weinberger sent to IRS was only the six pages which had to be retyped because of the amendments.[10] An executed plan was not submitted to IRS until October 7. It had been executed by the bank-trustee between October 1 and 4, the record does not disclose when it was executed by Respondent. Having in mind that the plan had not received actual approval and that nothing had to be done under the plan until at least 4 months, and more probably 11 months later,[11] Weinberger's actions on August 26 in preparing a proposed formal announcement and a final draft of the plan, and directing that the plan be executed forthwith by Respondent and the bank-trustee cannot be explained on the basis of business considerations. Those actions point, rather, to an effort to comply with a requirement for speedy completion of the project imposed by his client In the absence of proof of business motivation for immediate completion, the actual motivation must be found in what Respondent did on August 29—it announced to the employees the submission of a profit-sharing plan to the IRS. Moreover, it then proceeded to hammer the message home in its election propaganda. The inference is inescapable that the purpose of all the hurry was to place Respondent in a position to

[8] The only record evidence as to the content of the plan is Weinberger's draft proposed announcement sent to Respondent on August 26 It stated

> *CONTRIBUTIONS* FIELD has agreed to contribute for its fiscal year ending 4/30/69 and each fiscal year thereafter, such amount as FIELD'S Board of Directors shall determine, but not more than permitted under Internal Revenue Code Limitations Contributions by employees are *not* required under the Plan

Employees became participants in the plan after 5 years of continuous service At the time of the informal announcement less than 50 percent met that requirement, but the announcement emphasized that the plan covered " all employees of our Company from the top executives all the way through all employees in the factory, with everyone participating The purpose of this plan is to allow everyone to share in a portion of the profits of company " Weinberger had nothing to do with the informal announcement

[9] On August 26 Weinberger conferred with an agent of IRS, went back to his office and re-did five pages of the plan in accordance with the agent's suggestions, wrote a two-page letter to Respondent explaining the changes and giving Respondent instructions as to what to do, drafted two pages of corporate minutes for a meeting to be held the next day, drafted a proposed formal announcement to comply with IRS regulations, and finally personally delivered all these papers, together with copies of the plan in final form ready for execution, to Field at his home

[10] The record does not show whether these amendments were in fact sufficient Resp Exh 21 indicates that Weinberger may have submitted additional changes on September 14

[11] The discrepancy between Weinberger's testimony that Respondent had until July 1969 to make the announcement, and that he told Field that it had until "the end of the calendar year," was not explained.

make an announcement which would chill the employees' desire for unionization.[12] The Trial Examiner does not credit Cooper's testimony that the announcement was decided on in the ordinary course of business.

It is found that Respondent's purpose in making the August 29 announcement was to influence the employees in their choice of a bargaining representative and that Respondent thereby interfered with, restrained and coerced the employees in the exercise of their right under Section 7, thereby violating Section 8(a)(1) of the Act.

There remains for consideration the question of whether, under established Board policy, this interference by Respondent in the employees' freedom of choice in the election can, in view of the time when it occurred, constitute a proper ground for objection. Respondent's announcement of the profit-sharing plan took place before the petition was filed, but on the same day. The cutoff time for consideration of objectionable conduct affecting the results of an election is the date on which the petition is filed. *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275, 1278 It is immaterial whether the objectionable conduct occurred before or after the actual filing of the petition: the critical period includes the entire day on which the petition was filed See *West Texas Equipment Company*, 142 NLRB 1358, 1359; cf. also *Joanna Western Mills, Co*, 119 NLRB 1789, 1791. As it has been found that the announcement was made for the purpose of influencing the result of the election and did tend to have such influence, it is recommended that Objection 3 be sustained.

B. *Interrogation, Threats, and Promise of Benefits*

1. Elias Delagarza, who ultimately acted as a union observer at the election, testified that during the week prior to the election he was summoned to the office of Respondent's plant superintendent, Herbert Badal, who asked him what he thought of the Union; that he replied that he had no opinion; that Badal said that the employees were doing all right and the Union was not necessary and, in fact, was not very good; and that Delagarza assured Badal, "Don't worry about me. I'm with you." Ernesto Gaytan[13] testified that 2 or 3 days before the election he was summoned from work to Badal's office where Badal asked him what he thought of the Union, to which he replied, "I don't know nothing." He said that Badal further told him that the employees did not need a union, and that the Company gave them vacations and the right to come back to their jobs under the same conditions after taking leave of absence. Badal denied both conversations *in toto* The Trial Examiner found Delagarza's and Ernesto Gaytan's testimony more convincing than Badal's and finds that Badal did summon those two employees to his office where he interrogated them as to their opinion of the Union and urged them to vote against the Union. While Badal made no direct threats or promises of benefit, the mere summoning of employees to a seat of authority, such as a plant superintendent's office, to urge them to vote against a union is in itself conduct which interferes with the conditions necessary to a free choice by the employees in the selection of a bargaining representative. See *Peoples Drug Stores, Inc.*, 119 NLRB 634, 636. Moreover, Respondent failed to show that Badal's questioning of the two employees had any legitimate purpose. Especially because of the circumstances under which the questioning took place—the employees were summoned from work to Badal's office—it had a tendency to coerce and was therefore violative of Section 8(a)(1).

2. About 3 days before the election Elias Delagarza was summoned to Badal's office, where Badal said he had heard that Delagarza had been telling employees that he was going to bring in nonemployees to vote for the Union. Badal cautioned him not to make such statements. Juan Gaytan, a witness for the General Counsel, testified that he had indeed told Badal that employees reported that Delagarza was making such statements and that he had asked Badal if that was possible. Badal's action in cautioning Delagarza not to misinform the employees as to who could vote was not improper in view of his well-founded belief that Delagarza had been spreading the misinformation and that it was a matter of concern to some employees.

3. Ernesto Gaytan testified that on the morning of the election, which was held at 3 p.m., he was summoned from work to Badal's office. Badal had Texidor, an office employee, on hand to act as interpreter. Ernesto Gaytan testified that Texidor said,[14] "You want [to be] an observer for the union?" When he answered that he did, Texidor asked why and said to Gaytan, "That is your opinion, you know what you are doing?" Badal testified that Ernesto Gaytan had asked to see him and that Gaytan had initiated the conversation, saying that the Union was putting pressure upon him to be an observer, that he did not want to be an observer, that he was leaving the job in 2 weeks and did not know what to do, and he asked Badal's advice. Badal further testified that he advised Ernesto Gaytan that he had a right to be an observer and did not have to leave for that reason. Texidor corroborated Badal, including Badal's testimony as to the beginning of the conversation. Ernesto Gaytan categorically denied having requested to see Badal or having initiated the conversation when he arrived in the office, and he denied that he said anything about leaving the job in 2 weeks or about being under pressure to be an observer for the Union. He did quit shortly after the election.

On the day following the election Ernesto Gaytan and Delagarza, the two union observers, were called to Badal's office to meet with Badal and Cooper, Respondent's vice president and general manager. Badal and Cooper both assured the two employees, as testified by Ernesto Gaytan, that "What has happened has happened. They are not going to treat us badly at our work on our job, because

[12] There is evidence that on August 22 and 27 employees were signing union designation cards openly, and that Respondent did know about the Board's requirement for a 30-percent showing of interest, and Respondent's experience with five representation proceedings between 1961 and 1967 suggests that Respondent was probably aware that the Board had a policy, as discussed below, establishing a cutoff date for objections It is unnecessary, however, to decide whether Respondent was aware that the Board has a precisely defined policy and was therefore trying to make the announcement before the filing of an anticipated petition since it is plain from the evidence that Respondent's actions were not in the regular course of business

[13] Ernesto Gaytan was a nephew of another employee, Juan Gaytan. References in the transcript to Ernesto Gaytan "Senior" or "Junior" are to the nephew Ernesto Gaytan was no longer in Respondent's employ at the time of the hearing

[14] The witness testified that these things were stated by Texidor However, the conversation took place in Badal's office and Texidor had been called in by Badal to act as interpreter In view of these facts, and as Badal was present throughout the conversation, everything said by Texidor must be deemed to have been said by, or on the authority of, Badal This same finding as to Texidor's agency applies to all other conversations in Badal's presence where he acted as interpreter.

we were union observers. If anybody tells us anything bad, tell it to Herb." Badal and Cooper also testified to substantially the same effect. However, Badal also testified:

> I initiated the conversation by telling Mr. Ernesto Gaytan that the reason I had him there was because yesterday he had wanted me to get involved in him being an observer and wanting to know my feelings, which I said yesterday and at the time I told him these are your feelings, whatever you want to do you can do So I wanted to assure him.

Cooper testified that during the conversation Ernesto Gaytan said that he had called Badal over the day before to tell him that he was going to be an observer and that the reason he did not care about it was that he was going to Mexico in a couple of weeks. Cooper and Badal both attempted to weave into their testimony about the postelection conversation reference to Ernesto Gaytan's having initiated the preelection conversation. However, Badal's version was that he himself had made such reference, whereas Cooper ascribed it to Ernesto Gaytan.[15] Moreover Badal's assurances would have been superflous if the preelection conversation had been as devoid of threatening implication as he and Texidor testified. The Trial Examiner found Ernesto Gaytan credible and finds that both conversations took place as testified by him.

Because of the circumstances in which it was made Badal's comment to Ernesto Gaytan, "That is your opinion, you know what you are doing?" implied a threat that Respondent might not treat him as well as previously on the job. The mere fact that Badal thought it necessary to reassure Ernesto Gaytan is some indication that Gaytan had reason to feel threatened. More importantly, Badal had Ernesto Gaytan interrupt his work and come to the seat of managerial authority to explain why he was going to be an observer and to hear Gaytan's comment. Badal's questions were not for the purpose of obtaining legitimate information but were an integral part of the threat he was trying to convey as to the consequences of assisting the Union. It is found that on the morning of the election Badal coercively interrogated Ernesto Gaytan as to his activities on behalf of the Union and threatened him with unspecified reprisals because of such activities, thereby violating Section 8(a)(1) of the Act. Badal and Cooper's assurances to Ernesto Gaytan after the election could not negate the coerciveness of the original interrogation and warning.

4 Elias Delagarza testified that about 2 or 3 days before the election he had a conversation with his leadman. Bob Kubasiak. He said that he himself had started the conversation, asking Kubasiak what he thought "about a union." Kubasiak replied that the Union was not good, that he had a friend "who belonged to the Union" who had informed him that the Union was not good, that during a previous employment of his own the Union had never helped him, and that overtime would be canceled if the Union came in. Kubasiak completely denied Delagarza's testimony. He also denied ever having discussed the Union with any other employee or with any member of management; and he stated that he never accepted any of the union leaflets and received none of the company leaflets which were distributed Kubasiak impressed the Trial Examiner unfavorably with respect to credibility, and the Trial Examiner has credited Delagarza.

[15]Delagarza was not questioned about the incident

Robert Kubasiak was leadman for the 18 to 20 employees in the cutting department on the day shift, which had about 80 employees in all. The day shift was under the overall supervision of Badal, who spent 90 percent of the day on the factory floor. Kubasiak was the individual who handed the cutting department employees the various orders they were to work on and who, as occasion arose during the day, directed some of them to change from one type of work to another in the department At times Kubasiak operated machines, especially to relieve men on "breaks" or when work was pressing, but he spent the greater part of his time walking about the department checking the work of others. He spoke to Badal 30 to 50 times each day and he testified that he went into the office "many times" in the course of his work. Respondent's scheduling department specified on the various job tickets the particular press that each job was to be done on, and before the beginning of work on each day Badal met with Kubasiak and gave him detailed instructions as to which employee was to perform each operation where there was room for selection. Employees referred to Kubasiak as their "boss," but when they wanted wage increases or permission to go away for a time and be reinstated. they directed their requests to Badal Kubasiak made no recommendations to Respondent concerning employees and he had the same fringe benefits as the other employees

If Kubasiak discovered that an employee failed to correct a defect in his work—for example, if the cardboard was not being scored accurately so that the cartons would fold properly—he had the employee make the necessary corrections, or he made them himself. He also had employees adjust the speed of their machines.[16] Kubasiak would from time to time throw away products or materials he considered defective. Pressmen did that also, but only after consulting Kubasiak, who, in cases he considered doubtful, sometimes consulted Badal. Kubasiak made certain that the products turned out by various employees in his department were placed in the proper boxes for their respective destinations; if they were misplaced, Kubasiak required the employees to place them in the proper box or on the proper skid He also at times required employees to move products from his department to other departments. Kubasiak gave employees permission to leave early on personal business, sometimes on his own decision, at other times after consulting Badal. Respondent's practice was to be liberal in this respect. When made a leadman, Kubasiak was informed by Respondent that he was to be paid 25 cents per hour more than the other pressmen for the job. However, several employees in the cutting department had the same wage rate as he Kubasiak attended meetings with management where problems of production and safety were discussed

Respondent established that Kubasiak exercised no discretion or judgement in assigning work, including overtime, to the employees but merely carried out Badal's detailed instructions. However he had no instructions as to what employees were to move products to other departments Moreover, he did exercise discretion with respect to whether corrections had to be made in the

[16]Kubasiak testified that these were merely suggestions on his part and that even when he himself thought the speed was clearly wrong, the pressman did, if he wished, continue to operate the old speed In another connection, however, he testified that in his entire 4-year experience as leadman, he never had problems with any employee and that employees had never refused to do, or raised questions about, what he asked Cooper, Respondent's vice president, testified that the employees followed Kubasiak's instructions to change jobs "with great allegiance"

operations While some employees made the same corrections, it was on their own machines and did not involve directing others, as was the case with Kubasiak. Kubasiak also exercised authority to allow employees to leave early Respondent's lenient policy in this regard may have made Kubasiak's job easy in this respect, but he was responsible for using proper judgement when allowing an employee to leave. On the basis of the large portion of his time spent directing others and his exercise of discretion in having corrections made and allowing employees to leave early, it is found that Kubasiak was a supervisor.[17]

While Delagarza initiated the conversation, he only asked Kubasiak about the Union. That Respondent would cancel overtime was not responsive to Delagarza's question

It is found that Respondent threatened to cancel overtime if the Union became the employees' representative It is further found that Respondent thereby violated Section 8(a)(1) of the Act

5. Within the 2-week period before the election a conversation took place in Badal's office between Badal and Juan Gaytan. Badal had Texidor on hand to act as interpreter. Juan Gaytan was an employee who, as Badal knew, had many friends among the employees who were recent immigrants and whom he had brought to the plant. He testified as follows Having been sent to the office by his leadman, he asked when he arrived there what it was all about. Badal informed him that he wanted to know what the employees he worked with were saying about the election and whether they would vote for or against the Union When he professed ignorance, Badal told him ". . . that I should talk to the people to see whether they were convinced . . ," and that he himself replied that he could not control their opinion. Juan Gaytan also testified that he raised two questions with Badal. First, he asked why employees with less service than he were getting more pay. He testified that Badal replied that after the election he would be earning more than those others. Second, on cross-examination he said that he told Badal that Delagarza had told Jaime Guide, the employee Gaytan worked with, that the Union would win the election by bringing strangers in to vote, and that he asked Badal if that was possible but got no answer. Badal testified that Juan Gaytan had initiated the interview, stopping Badal on the factory floor to request him to summon Texidor to act as interpreter about something. Badal testified that there was no interrogation about how Juan Gaytan's friends viewed the election, or any request that Gaytan convince them, and he denied saying that employees would have less work if they voted for the Union. Badal stated that in reply to Gaytan's question about the Union bringing outsiders in to vote, he told Gaytan of the eligibility requirements, called his attention to the posted notice, and asked Gaytan to explain these matters to his friends among the employees. As to earnings, he stated that he explained to Gaytan that there was some overlap among the wage progressions, and that later he would be earning more than some employees who at the time had greater earnings than Gaytan Texidor corroborated Badal.

When asked on cross-examination whether he knew Jaime Guide, Juan Gaytan first replied, "I don't talk much with the people there." Pressed, he stated, "I think I recall that that was an employee who left for Mexico " It subsequently developed, and Gaytan admitted, that the two men had worked closely together The Trial Examiner infers that Gaytan's original vagueness about his job partner was an attempt to evade the significant issue of Guide's involvement in the subject matter of his conversation with Badal and has therefore credited Badal's testimony that Juan Gaytan initiated the interview.[18] In view of this evasiveness and the lack of corroboration of Juan Gaytan's testimony, it is found that the General Counsel has failed to prove by a preponderance of the credible evidence that Badal interrogated him or threatened that the employees would lose work if they voted for the Union As to the question raised by Juan Gaytan concerning his wages, the Trial Examiner has credited Badal's version of his response and finds that it was not a promise of benefit

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of Respondent set forth above in section III, occurring in connection with its operations described in section I, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

As it has been found that the Respondent has engaged in certain unfair labor practices, it is recommended that the Board issue the recommended order set forth below requiring Respondent to cease and desist from said unfair labor practices and take certain affirmative action which will effectuate the policies of the Act

The Union has requested that a union representative and a Board representative be permitted to address the employees at Respondent's plant to assure them of their rights, claiming that Respondent "engaged in a reprehensible campaign of intimidating and terrifying its Spanish-speaking employees " The Trial Examiner considers this description an exaggeration and sees no basis for the exceptional remedy requested.

VI. THE REPRESENTATION PROCEEDING

On the basis of the findings of section III, B, 1 and 3 in this Decision it is recommended that Objections 6 and 7 be sustained. On the basis of the findings in section III, B, 3 and 4 it is recommended that Objection 8 be sustained. As it has been found that Respondent interfered with the employees' free choice in the election and engaged in conduct which tended to affect the results of the election, as alleged in Objections 3, 6, 7, and 8, it is recommended that the Tally of Ballots be vacated and the election set aside and a new election held at an appropriate time to be determined by the Regional Director.

Upon the basis of the foregoing findings of fact and of

[17]There is no evidence that the employees were aware that Kubasiak's assignment of work, including overtime, was pursuant to Badal's detailed instructions Moreover the employees were aware that he attended meetings with supervisors and management Respondent thus gave Kubasiak the appearance of being the individual through whom Respondent controlled their entire workday The record establishes that his instructions were always followed without question Even if Kubasiak was not a supervisor, therefore, his threat that Respondent would cancel overtime if the Union won the election would reasonably appear to the employees to be a threat by Respondent

[18]Guide had gone to Mexico and was not readily available as a witness

the entire record in this case the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1 Respondent, Field Container Corporation, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and at all times material has been, an employer within the meaning of Section 2(2) of the Act.

3. Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4 Respondent's leadman in the cutting department is a supervisor within the meaning of Section 2(11) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6 The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, Respondent, Field Container Corporation, its officers, agents, successors, and assigns, shall.

1 Cease and desist from:

(a) Interrogating employees concerning their union membership or desires in a manner or under circumstances constituting interference, restraint or coercion within the meaning of Section 8(a)(1) of the Act

(b) Promising employees economic or other benefits in order to induce them to vote against Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, or any other labor organization or in order to discourage its employees from becoming or remaining members of, or giving assistance or support to, such labor organization

(c) Threatening employees with reprisals because of their activities on behalf of the Union.

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

2. Take the following affirmative action which, it is found, will effectuate the policies of the Act:

(a) Post at its office and place of business at Elk Grove Village, Illinois, copies of the attached notice marked "Appendix."[19] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by its representative, shall be posted 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 to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the receipt of this Recommended Order, what steps Respondent has taken to comply herewith.[20]

IT IS ALSO RECOMMENDED that the complaint be dismissed insofar as it alleges labor practices not specifically found in this Decision.

[19]In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a decree of the United States Court of Appeals enforcing an Order" shall be substituted for the words "a Decision and Order"

[20]In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that

WE WILL NOT promise you benefits in order to induce you to vote against Printing Specialties and Paper Products Union No. 415, affiliated with the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, or any other labor organization.

WE WILL NOT question you about your union activities or your attitude towards the Union.

WE WILL NOT threaten you with reprisals because of any activities on behalf of the Union.

WE WILL respect your rights to self-organization, to form, join, or assist any labor organization, and to bargain collectively in respect to terms or conditions of employment through the Union or any other representative of your own choosing, and WE WILL NOT interfere with, restrain or coerce you in the exercise of these rights, except insofar as these rights could be affected by a contract with a labor organization, if validly made in accordance with the National Labor Relations Act, whereby membership in a union is a condition of employment after the 30th day following the date of such contract or the beginning of such employment, whichever is later.

PRINTING SPECIALTIES AND PAPER PRODUCTS UNION NO. 415, AFFILIATED WITH THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS UNION OF NORTH AMERICA, AFL-CIO
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate

directly with the Board's Regional Office, 881 U.S Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312 - 353-7570.